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PART I

ADMINISTRATIVE LEGISLATION

Chapter 1
GENERAL PROVISIONS

ARTICLE I
Adoption of Code

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Adoption of Code

[A local law adopting the Code of the Town of Concord and making certain substantive changes to existing local laws of the Town is presently proposed before the Town Board. Upon final adoption, it will be included here as Article I of this chapter.]

Chapter 4

ASSESSOR

§ 4-1. Title.

§ 4-5. Inconsistency.

§ 4-2. Authority.

§ 4-6. Severability.

§ 4-3. Intent.

§ 4-7. Not subject to referendum.

**§ 4-4. Abolition of the Office of the
Elected Assessor.**

§ 4-8. When effective.

[HISTORY: Adopted by the Town Board of the Town of Concord 3-8-1971 by L.L. No. 1-1971; amended in its entirety 4-13-2023 by L.L. No. 2-2023. Subsequent amendments noted where applicable.]

§ 4-1. Title.

A chapter to establish the office of a single appointed Assessor pursuant to Real Property Tax Law § 328.

§ 4-2. Authority.

This chapter is adopted pursuant to Real Property Tax Law § 328.

§ 4-3. Intent.

It is the intent of this chapter to abolish the Office of Elected Assessor in the Town of Concord and to substitute therefor a single appointed Assessor to be appointed pursuant to Real Property Tax Law § 310.

§ 4-4. Abolition of the Office of the Elected Assessor.

- A. The Office of the Elected Assessor as previously established and continued by the Town of Concord is hereby abolished. The term of the office of the Elected Assessor shall terminate on December 31 of the year in which this chapter shall take effect.
- B. In the place and stead of the Elected Assessor, the Town of Concord shall have one single Assessor to be appointed by the Town Board of the Town of Concord.

§ 4-5. Inconsistency.

All other local laws and ordinances of the Town of Concord that are inconsistent with the provisions of this chapter are hereby repealed; provided, however, that such repeal shall only be to the extent of such inconsistency and in all other respects this chapter shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered by this chapter.

§ 4-6. Severability.

If any clause, sentence, paragraph, word, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation of the clause, sentence, paragraph, word section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 4-7. Not subject to referendum.

Pursuant to Chapter 521 of the Laws of 2006, this chapter shall not be subject to referendum.

§ 4-8. When effective.

This chapter shall take effect upon adoption and filing in the office of the Secretary of State of the State of New York.

Chapter 9

CONTRACTS

ARTICLE I Best Value

- § 9-1. Authority; findings.
- § 9-2. Definitions.

§ 9-3. Authorization to award contracts on basis of best value.

§ 9-4. When effective.

§ 9-5. Severability.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Best Value

[Adopted 2-13-2014 by L.L. No. 1-2014]

§ 9-1. Authority; findings.

Pursuant to General Municipal Law § 103, Subdivision 1, as amended, the Town is authorized to adopt a local law which would permit the Town to use the "best value" standard in awarding purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for completion of a public works contract pursuant to Article 8 of the Labor Law) by competitive bidding or accepting offers for purchase. The Town determines that it is in the best interests of the Town that such legislation be enacted and that such standard be used in the Town where appropriate for the award of such contracts.

§ 9-2. Definitions.

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

BEST VALUE — Best value as defined in State Finance Law § 163, as such may be amended from time to time.

PURCHASE CONTRACT — All purchase contracts, including service contracts, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law, as such may be amended from time to time.

§ 9-3. Authorization to award contracts on basis of best value.

- A. Pursuant to the provisions of General Municipal Law § 103, the Town Board is hereby authorized, if and when it is determined by such Board to be in the best interests of the Town, to award a particular purchase contract on the basis of best value.
- B. Such authority may be exercised by the Town Board with regard to any such purchase contract, whether or not it reaches the threshold requiring competitive bidding pursuant to General Municipal Law § 103.

§ 9-4. When effective.

This article shall be effective immediately upon filing with the Secretary of State.

§ 9-5. Severability.

If any clause, sentence, paragraph or section of this article shall be held to be invalid by any court of competent jurisdiction, or the application of this article to any person or set of circumstances shall be held to be invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder hereof but shall be confined in its operation to the clause, sentence, paragraph section or operation of this article directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions of this article are hereby declared to be severable.

Chapter 12

DEFENSE AND INDEMNIFICATION

§ 12-1. Purpose.

§ 12-2. Adoption and acceptance of statutory provisions.

[HISTORY: Adopted by the Town Board of the Town of Concord 10-13-1986 by L.L. No. 2-1986. Amendments noted where applicable.]

§ 12-1. Purpose.

The purpose of this chapter is to provide for the legal defense and financial protection of various officers and employees of the Town of Concord from state or federal civil actions or proceedings commenced against officers and employees as a result of an act or omission occurring while they were acting within the scope of their employment or duties.

§ 12-2. Adoption and acceptance of statutory provisions.

The Town Board of the Town of Concord does hereby determine and agree:

- A. To confer the benefits of § 18 of the Public Officers Law upon its employees and officers.
- B. That the Town shall be liable for the costs incurred under these provisions.

Chapter 18

ETHICS, CODE OF

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| <p>§ 18-1. Purpose.</p> <p>§ 18-2. Definitions.</p> <p>§ 18-3. Applicability.</p> <p>§ 18-4. Prohibition on use of municipal position for personal or private gain.</p> <p>§ 18-5. Disclosure of interest in legislation and other matters.</p> <p>§ 18-6. Recusal and abstention.</p> <p>§ 18-7. Exceptions.</p> <p>§ 18-8. Investments in conflict with official duties.</p> <p>§ 18-9. Private employment in conflict with official duties.</p> | <p>§ 18-10. Future employment.</p> <p>§ 18-11. Personal representations and claims permitted.</p> <p>§ 18-12. Use of municipal resources.</p> <p>§ 18-13. Interest in contracts.</p> <p>§ 18-14. Nepotism.</p> <p>§ 18-15. Political solicitations.</p> <p>§ 18-16. Confidential information.</p> <p>§ 18-17. Gifts.</p> <p>§ 18-18. Board of Ethics.</p> <p>§ 18-19. Posting and distribution.</p> <p>§ 18-20. Enforcement.</p> <p>§ 18-21. Effective date.</p> |
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[HISTORY: Adopted by the Town Board of the Town of Concord at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

§ 18-1. Purpose.

Officers and employees of the Town of Concord hold their positions to serve and benefit the public, and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The Town Board recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This Code of Ethics establishes those standards.

§ 18-2. Definitions.

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

BOARD — The governing board of a municipality and any municipal administrative board (e.g., planning board, zoning of board of appeals), commission, or other agency or body comprised of two or more municipal officers or employees.

CODE — This Code of Ethics.

INTEREST — A direct or indirect financial or material benefit, but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse, or a member of his or her

household is an owner, partner, member, director, officer, employee, or directly or indirectly owns or controls more than 5% of the organization's outstanding stock.

MUNICIPALITY — The Town of Concord. The word "municipal" refers to the municipality.

MUNICIPAL OFFICER OR EMPLOYEE — A paid or unpaid officer or employee of the Town of Concord, including, but not limited to, the members of any municipal board.

RELATIVE — Spouse, parent, step-parent, sibling, step-sibling, sibling's spouse, child, step-child, uncle, aunt, nephew, niece, first cousin, or household member of a municipal officer or employee, and individuals having any of these relationships to the spouse of the officer or employee.

§ 18-3. Applicability.

This Code of Ethics applies to the officers and employees of the Town of Concord, and shall supersede any prior municipal Code of Ethics. The provisions of this Code of Ethics shall apply in addition to all applicable state and local laws relating to conflicts of interest and ethics, including, but not limited to, Article 18 of the General Municipal Law and all rules, regulations, policies and procedures of the Town of Concord.

§ 18-4. Prohibition on use of municipal position for personal or private gain.

No municipal officer or employee shall use his or her municipal position or official powers and duties to secure a financial or material benefit for himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.

§ 18-5. Disclosure of interest in legislation and other matters.

The Supervisor of the Town of Concord shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town of Concord within 30 days after the effective date of this chapter. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his or her office or employment. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code nor on the enforcement provisions thereof.

- A. Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative, or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose, in writing, the nature of the interest.
- B. The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee, or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.

- C. In the case of a person serving in an elective office, the disclosure shall be filed with the governing board of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position. In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

§ 18-6. Recusal and abstention.

- A. No municipal officer or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any private organization in which he or she is deemed to have an interest.
- B. In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:
- (1) If the power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or
 - (2) If the power or duty that is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy or, if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function.
 - (3) If the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

§ 18-7. Exceptions.

- A. This code's prohibition on use of a municipal position (§ 18-4), disclosure requirements (§ 18-5), and requirements relating to recusal and abstention (§ 18-6), shall not apply with respect to the following matters:
- (1) Adoption of the municipality's annual budget;
 - (2) Any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:
 - (a) All municipal officers or employees;
 - (b) All residents or taxpayers of the municipality or an area of the municipality; or
 - (c) The general public; or

- (3) Any matter that does not require the exercise of discretion.
- B. Recusal and abstention shall not be required with respect to any matter:
 - (1) Which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by § 18-6 of this chapter;
 - (2) Which comes before a municipal officer when the officer would be prohibited from acting by § 18-6 of this chapter and the matter cannot be lawfully delegated to another person.

§ 18-8. Investments in conflict with official duties.

- A. No municipal officer or employee may acquire the following investments:
 - (1) Investments that can be reasonably expected to require more than sporadic recusal and abstention under § 18-6 of this chapter; or
 - (2) Investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties.
- B. This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:
 - (1) Real property located within the municipality and used as his or her personal residence;
 - (2) Less than 5% of the stock of a publicly traded corporation; or
 - (3) Bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

§ 18-9. Private employment in conflict with official duties.

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when the employment:

- A. Can be reasonably expected to require more than sporadic recusal and abstention pursuant to § 18-6 of this chapter;
- B. Can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee;
- C. Violates § 805-a, Subdivision 1c or d, of the General Municipal Law; or
- D. Requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matter to which the municipality is a party.

§ 18-10. Future employment.

- A. No municipal officer or employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the 30 days following final disposition of the matter.
- B. No municipal officer or employee, for the two-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.
- C. No municipal officer or employee, at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

§ 18-11. Personal representations and claims permitted.

This chapter shall not be construed as prohibiting a municipal officer or employee from:

- A. Representing himself, herself, or his or her spouse or minor children before the municipality; or
- B. Asserting a claim against the municipality on his or her own behalf or on behalf of his or her spouse or minor children.

§ 18-12. Use of municipal resources.

- A. Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel, and the municipality's money, vehicles, equipment, materials, supplies or other property.
- B. No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:
 - (1) Any use of municipal resources authorized by law or municipal policy;
 - (2) The use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or
 - (3) The occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters, such as family care and changes in work schedule.
- C. No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

§ 18-13. Interest in contracts.

- A. No municipal officer or employee may have an interest in a contract that is prohibited by § 801 of the General Municipal Law.
- B. Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by § 803 of the General Municipal Law.

§ 18-14. Nepotism.

Except as otherwise required by law:

- A. No municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board.
- B. No municipal officer or employee may supervise a relative in the performance of the relative's official powers or duties.

§ 18-15. Political solicitations.

- A. No municipal officer or employee shall, directly or indirectly, compel or induce a subordinate municipal officer or employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.
- B. No municipal officer or employee may act or decline to act in relation to appointing, hiring or promoting, discharging, disciplining, or in any manner changing the official rank, status or compensation of any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

§ 18-16. Confidential information.

No municipal officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers and duties.

§ 18-17. Gifts.

- A. No municipal officer or employee shall solicit, accept or receive a gift in violation of § 805-a, Subdivision 1a, of the General Municipal Law as interpreted in this section.
- B. No municipal officer or employee may directly or indirectly solicit any gift.
- C. No municipal officer or employee may accept or receive any gift, or multiple gifts from the same donor, having an annual aggregate value of \$75 or more when:

- (1) The gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties;
 - (2) The gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or
 - (3) The gift is intended as a reward for any official action on the part of the officer or employee.
- D. For purposes of this section, "gift" includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed \$75 must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.
- E. Gifts intended to influence or reward.
- (1) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.
 - (2) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding twelve months.
- F. This section does not prohibit any other gift, including:
- (1) Gifts made to the municipality;
 - (2) Gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;
 - (3) Gifts given on special occasions, such as marriage, illness, or retirement, which are modest, reasonable and customary;
 - (4) Unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, notepads, and calendars;
 - (5) Awards and plaques having a value of \$75 or less which are publicly presented in recognition of service as a municipal officer or employee, or other service to the community; or
 - (6) Meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

§ 18-18. Board of Ethics.

- A. There is hereby established a Board of Ethics for the municipality. The Board of Ethics shall consist of three members, a majority of whom shall not be officers or employees of the municipality, but at least one of whom must be a municipal officer or employee. The members of such Board of Ethics shall be appointed by the Town Board, serve at the pleasure of the appointing authority, and receive no salary or compensation for their services as members of the Board of Ethics.
- B. The Board of Ethics shall render advisory opinions to the officers and employees of the Town of Concord with respect to Article 18 of the General Municipal Law and this chapter. Such advisory opinions must be rendered pursuant to the written request of any such officer or employee under such rules and regulations as the Board of Ethics may prescribe. The Board of Ethics shall have the advice of legal counsel employed by the Board or, if none, the municipality's legal counsel. In addition, the Board of Ethics may make recommendations with respect to the drafting and adoption of a Code of Ethics, or amendments thereto, upon the request of the Town of Concord Town Board.

§ 18-19. Posting and distribution.

- A. The Town Supervisor must promptly cause a copy of this chapter, and a copy of any amendment to this chapter, to be posted publicly and conspicuously in each building under the municipality's control. The chapter must be posted within ten days following the date on which the chapter takes effect. An amendment to the chapter must be posted within ten days following the date on which the amendment takes effect.
- B. The Town Supervisor must promptly cause a copy of this chapter, including any amendments to this chapter, to be distributed to every person who is or becomes an officer and employee of the Town of Concord.
- C. Every municipal officer or employee who receives a copy of this chapter or an amendment to this chapter must acknowledge such receipt in writing. Such acknowledgments must be filed with the Town Clerk, who must maintain such acknowledgments as a public record.
- D. The failure to post this chapter or an amendment to this chapter does not affect either the applicability or enforceability of this chapter or the amendment. The failure of a municipal officer or employee to receive a copy of this Code of Ethics or an amendment to this chapter, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of this chapter or amendment to this chapter.

§ 18-20. Enforcement.

Any municipal officer or employee who violates this chapter may be censured, fined, suspended or removed from office or employment in the manner provided by law.

§ 18-21. Effective date.

This chapter shall take effect immediately upon filing with the Secretary of State of the State of New York.

Chapter 40
PLANNING BOARD

§ 40-1. Increase in membership.

§ 40-2. Powers and duties.

[HISTORY: Adopted by the Town Board of the Town of Concord 9-13-1995 by L.L. No. 3-1995. Amendments noted where applicable.]

§ 40-1. Increase in membership.

The number of members of the Planning Board of the Town of Concord is increased to seven. Terms shall be as set forth in § 271 of the Town Law.

§ 40-2. Powers and duties.

The powers and duties of the Planning Board shall be as set forth in § 271 of the Town Law.

Chapter 47
TOWN BOARD

ARTICLE I
Meetings

- | | |
|---|---|
| § 47-1. Adoption of rules. | § 47-9. Items to be in writing. |
| § 47-2. Regular meetings. | § 47-10. Keeping of order;
parliamentary procedures. |
| § 47-3. Special meetings. | § 47-11. Quorum. |
| § 47-4. Placement of items on agenda. | § 47-12. Executive sessions. |
| § 47-5. Preparation and availability of
agenda. | § 47-13. Appointment of committees. |
| § 47-6. Procedure for speaking on
agenda items. | § 47-14. Recording of votes on roll call. |
| § 47-7. Fair and courteous treatment to
be extended. | § 47-15. Suspension of rules. |
| § 47-8. Voting procedure. | § 47-16. Withdrawal of resolution or
motion. |
| | § 47-17. Nondebatable motions. |
| | § 47-18. Amendment of rules. |

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Meetings
[Adopted 2-10-1986]

§ 47-1. Adoption of rules.

Pursuant to the authority of § 63 of the Town Law, the Town Board of the Town of Concord hereby adopts the following revised rules of procedure for the conduct of Town Board meetings commencing with the next regular meeting of this Town Board following the adoption of this article.

§ 47-2. Regular meetings. [Amended 9-13-1995 by L.L. No. 3-1995; 6-9-2005 by L.L. No. 2-2005]

Regular meetings of the Town Board of the Town of Concord shall be held at the Town Hall, 86 Franklin Street, Springville, New York.

§ 47-3. Special meetings.

Special meetings of the Town Board shall be called from time to time as provided for in the Town Law of the State of New York. Special meetings may be called upon written request of at least two members of the Town Board. One of the two members may be the Supervisor. At

least two days' notice shall be given for a special meeting. Only business specified in the notice may be transacted at the special meeting.

§ 47-4. Placement of items on agenda.

Items to be placed on the agenda for each regular meeting of the Town Board are to be filed in the office of the Town Supervisor of the Town of Concord not later than 12:00 noon four days preceding the regular meeting. Any matter to be considered or brought before the meeting of the Town Board not filed with the Town Supervisor as above required and not contained on the written agenda shall be considered by the Town Board upon completion of the prefiled public participation items before the Board on the written agenda and upon the consent of three members of the Town Board.

§ 47-5. Preparation and availability of agenda. [Amended 6-9-2005 by L.L. No. 2-2005]

The Town Supervisor shall prepare said agenda, and written copies of the agenda shall be available to each member of the Town Board at the office of the Town Supervisor two days prior to the scheduled meeting.

§ 47-6. Procedure for speaking on agenda items.

A person desiring to speak on any item on the agenda shall identify himself by name and address, and the person shall be allowed to speak once on each item for a period not exceeding five minutes. All persons speaking in favor of the item shall not exceed 30 minutes. Any individual speaking in opposition to an item shall be limited to five minutes. All persons speaking in opposition to the item shall not consume more than 30 minutes.

§ 47-7. Fair and courteous treatment to be extended.

Fair and courteous treatment shall be extended to all persons appearing before the Town Board.

§ 47-8. Voting procedure.

At any and every meeting of the Town Board, the vote on all Town Board resolutions, actions or questions determined shall be recorded or called in alphabetical order as to the last names of the members present, excepting the Supervisor, who shall vote last.

§ 47-9. Items to be in writing.

All resolutions and amendments thereof shall be in writing.

§ 47-10. Keeping of order; parliamentary procedures.

The Supervisor shall take the Chair promptly at the hour specified for the convening of the Town Board meeting and shall preserve order and decorum. In debate, the Supervisor shall

prevent personal reflections and confine members to the question under discussion. The Supervisor shall decide all questions of order. Robert's Rules of Order will prevail in matters of questionable parliamentary procedures.

§ 47-11. Quorum.

A majority of the Board constitutes a quorum to carry on a meeting, but a lesser number may adjourn. A majority of all members of the Board must approve each act, motion or resolution in order for such to be adopted. The majority of the Board which constitutes the quorum means the majority of officers constituting the Town Board and not the majority of residuum resulting from vacancies, disqualifications or absences. The inclusion of every act in this rule contemplates executive and appointing functions of the Board as well as legislative functions.

§ 47-12. Executive sessions.

Executive sessions of the Town Board of the Town of Concord may be held for informal discussion only. All official actions of the Town Board must be taken at meetings that are open to the public and in accordance with these rules of order.

§ 47-13. Appointment of committees.

The Supervisor may, from time to time, appoint one or more committees, consisting of members of the Board and others, to aid and assist the Board in the performance of its duties.

§ 47-14. Recording of votes on roll call.

On roll call, the ayes and noes shall be taken without explanation, and the Town Clerk shall record the names of the members and the way each shall have respectively voted.

§ 47-15. Suspension of rules.

These rules may, at any time during the session, be suspended by a majority of all the members of the Town Board present; however, the member making the application for such suspension must state the purpose for which the same is asked.

§ 47-16. Withdrawal of resolution or motion.

Any resolution or motion offered by a member may be withdrawn by the member presenting it at the time before an announcement by the Supervisor of the vote thereon or before an amendment to such resolution or motion has been adopted.

§ 47-17. Nondebtable motions.

All motions for an adjournment, for a recess, to refer to a committee or department head or to lay on the table shall be neither amended nor debated.

§ 47-18. Amendment of rules.

The rules shall not be rescinded, altered or amended, nor any additional rule added thereto, except by a majority vote of the total members of the Town Board and only after at least one day's notice, in writing, filed with the Town Clerk of the Town of Concord.

PART II
GENERAL LEGISLATION

Chapter 53

ANIMALS

ARTICLE I Dog Licensing Fees

§ 53-1. Purpose.

§ 53-2. Annual license fees.

ARTICLE II Dog Control

§ 53-3. Title.

§ 53-4. Purpose.

§ 53-5. Definitions.

§ 53-6. Running at large.

§ 53-7. Nuisances prohibited.

§ 53-8. Dangerous dogs.

§ 53-9. Investigation of complaints; seizure.

§ 53-10. Redemption of seized dogs; fees; disposition of unredeemed dogs.

§ 53-11. Lost or stolen dogs.

§ 53-12. Enforcement.

§ 53-13. Penalties for offenses and other costs.

ARTICLE III Licensing and Identification of Dogs

§ 53-14. Licensing of dogs.

§ 53-15. License fees and surcharges.

§ 53-16. Identification of dogs.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Dog Licensing Fees [Adopted 7-9-1979 by L.L. No. 1-1979]

§ 53-1. Purpose.

The purpose of this article is to provide for identification of dogs, the control and protection of the dog population, protection of persons and property and financing of all dog-related expenses through the increase of the licensing fees.

§ 53-2. Annual license fees. [Amended 6-9-2005 by L.L. No. 2-2005]

The annual fee for each dog license issued pursuant to Subdivision 1 of § 109 of Article 7 of the Agriculture and Markets Law shall be as set by the Town Board from time to time.¹

1. Editor's Note: A list of current fees is on file in the Town Clerk's office.

ARTICLE II

Dog Control**[Adopted 9-13-1995 by L.L. No. 3-1995]****§ 53-3. Title.**

This article shall be known as the "Dog Control Law of the Town of Concord, New York."

§ 53-4. Purpose.

The purpose of this article shall be to preserve the public peace and good order in the Town and protect the public welfare, safety and good order of its people by establishing certain regulations and restrictions on the activities of dogs that are consistent with the rights and privileges of owners of dogs and of other residents of the Town of Concord.

§ 53-5. Definitions.

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

AT LARGE — A dog shall be deemed to be at large if not under the control of the owner or his or her agent and elsewhere than on the premises of the owner or on the premises of another who has knowledge of the dog's presence thereon and assents thereto.

DOG — Any dog of either sex and of any age unless otherwise indicated herein.

DOG CONTROL OFFICER — Person(s) appointed by the Concord Town Board in accordance with § 113 of the Agriculture and Markets Law. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

OWNER — Includes any person who owns, keeps or harbors or has care of a dog. Dogs owned by minors shall be deemed to be in the custody and control of the minor's parents or other head of the household where the minor resides.

SERVICE OF NOTICE — Shall be by certified mail or personal delivery to the owner or another person at the last address reflected on the application to license the dog or, if it is unlicensed, then upon the owner, if ascertained, or another person or by certified mail. A notice tacked on the door of the residence shall be deemed sufficient notice.

§ 53-6. Running at large.

- A. No dog shall be permitted to run at large within the Town of Concord.
- B. No dog shall be permitted upon the public streets or upon any public property or within public buildings within the Town of Concord unless it shall be accompanied by an adult or by a minor who is able to restrain and control said dog and unless such person accompanying said dog shall actually control and restrain said dog.

§ 53-7. Nuisances prohibited.

No person being the owner or agent of the owner of any dog shall permit such dog to commit any nuisance within the Town of Concord or cause damage to the person or property of others. The following are declared public nuisances and are set forth herein for explanatory purposes only and are not to be considered as excluding other types of nuisances:

- A. Engaging in loud howling or habitual barking or so conducting itself so as to disturb the public peace. The Dog Control Officer shall be responsible for calls until 11:00 p.m. After 11:00 p.m., complaints shall be directed to the Erie County Sheriff's Department.
- B. Chasing and/or barking at moving vehicles or persons on foot or on a bicycle or at other domestic or farm animals. **[Amended 7-10-2014 by L.L. No. 3-2014]**
- C. Jumping upon any person or knocking any person over.
- D. Causing damage to property of others, including garbage containers.
- E. Depositing waste on the private property of another who does not have knowledge of the dog's presence thereon and does not assent thereto.

§ 53-8. Dangerous dogs.

Any dog which shall attack any person or domestic animal within the meaning of Article 7 of the Agriculture and Markets Law of the State of New York shall be dealt with in accordance with Article 7 of the Agriculture and Markets Law.

§ 53-9. Investigation of complaints; seizure.

The Dog Control Officer or a law enforcement officer shall investigate all written and oral complaints and seize any dog which is found at large within the Town of Concord in violation of this article as well as any dog or dogs otherwise required to be seized by virtue of the Agriculture and Markets Law of the State of New York.

§ 53-10. Redemption of seized dogs; fees; disposition of unredeemed dogs.

- A. Every dog seized shall be properly fed and cared for at the expense of said Town until disposition thereof is made as herein provided. The redemption of a seized dog shall be in conformance with and pursuant to the provisions of the Agriculture and Markets Law of the State of New York, both as to licensed and unlicensed dogs.
- B. In the event that the dog seized bears a license tag, the Dog Control Officer or officer shall ascertain the owner of the dog and shall give immediate notice, in writing, by certified mail, return receipt requested, or personal service on a person living at that address or by notice being tacked on the door of the residence and a copy mailed to the address, stating that the dog has been seized and that the dog will be placed for adoption or will be destroyed unless redeemed within the period hereinafter provided. **[Amended 7-10-2014 by L.L. No. 3-2014]**

- C. The owner of any dog seized may redeem the dog within three days of service of such notice, except that the owner of a dog bearing a tag may redeem the dog within seven days of such notice. The owner shall pay to the Town Clerk or the Dog Control Officer a seizure fee, said seizure fee to be increased for each subsequent violation in a year, in such amount as set forth from time to time by the Town Board, plus license fees and penalties prescribed by law, if the dog is unlicensed. If notice to an identified dog owner is given by mail only, then the redemption period is nine days pursuant to New York State Agriculture and Markets Law § 117(6). **[Amended 6-9-2005 by L.L. No. 2-2005; 10-8-2009 by L.L. No. 3-2009; 7-10-2014 by L.L. No. 3-2014; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- D. For a second and subsequent violation by one owner within a one-year period, the Dog Control Officer shall, upon determination and identification of the dog, seize and take into custody said dog and serve or deliver a notice of second violation upon the owner of said dog specifying the time, place and nature of said violation. The owner of such dog shall redeem the dog within five days by paying a sum as set forth from time to time by Town Board, which may be in addition to the amounts set forth in Subsection C above, and kennel fees as set forth from time to time by Town Board. The failure of the owner to make such payment within the required period shall render the owner subject to the penalties hereinafter provided. **[Amended 6-9-2005 by L.L. No. 2-2005; 10-8-2009 by L.L. No. 3-2009]**
- E. If any dog so seized is not redeemed within its time hereinbefore set forth, the owner shall forfeit all title to the dog and the dog shall be offered for adoption by the Town. In the case of seizure, the adoptive party must pay the cost of seizure to the Dog Control Officer and will obtain a license for such dog. The owner of a dog so seized shall pay to the Dog Control Officer the cost of seizure and kenneling of such dog, and such costs may be recovered by the Town in a civil action brought in the name of the Town before a Town Justice in the Town of Concord. Said action shall be brought by the Dog Control Officer by filing appropriate summons and complaint in the Concord Town Court. **[Amended 10-8-2009 by L.L. No. 3-2009]**
- F. Any dog seized by the Dog Control Officer and not redeemed within the above statutory period may be turned over to the SPCA or other such humane agency for proper and humane care. No dog seized hereunder shall be sold or surrendered to any person, firm, organization or institution for experimental use. **[Amended 10-8-2009 by L.L. No. 3-2009; 7-10-2014 by L.L. No. 3-2014]**
- G. Any section of the original text of the Dog Control Law of the Town of Concord (Article II, Chapter 53, Local Law No. 3 of 1995 adopted September 13, 1995) not amended by Local Law No. 3 of 2014 shall remain in full force and effect. **[Added 10-8-2009 by L.L. No. 3-2009; amended 7-10-2014 by L.L. No. 3-2014]**

§ 53-11. Lost or stolen dogs. [Amended 6-9-2005 by L.L. No. 2-2005]

Any dog reported by the owner to the Dog Control Officer as being lost or stolen and later recovered by the Dog Control Officer or law enforcement officer may not be subject to the fees hereinbefore established if said dog is redeemed within two days of notice of recovery.

§ 53-12. Enforcement.

- A. The Dog Control Officer appointed by the Town Board, as provided by Article 7 of the Agriculture and Markets Law, shall enforce the provisions of this article and may also investigate and report to a Town Justice any dangerous dog as described in § 123 of the Agriculture and Markets Law and shall carry out the order or orders of the Town Justice in those cases provided for in § 117 of the Agriculture and Markets Law and may enforce and carry out the duties outlined generally in Article 7 of said Agriculture and Markets Law. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. The Dog Control Officer shall also have the authority to issue an appearance ticket pursuant to the Criminal Procedure Law for any violation of this article.
- (1) An answer to such appearance ticket may be made by registered or certified mail, return receipt requested, within five days of the violation as provided in Subsection B(2) and (3) in lieu of personal appearance at Justice Court on the return date at the time specified in said appearance ticket.
 - (2) If a person charged with the violation admits to the violation as charged in the appearance ticket, he or she may complete the form attached to the appearance ticket and forward such form and appearance ticket. The Town Justice to whom the ticket has been referred shall inform the violator as to the amount of the penalty for the violation charged. A check or money order must then be submitted.
 - (3) If the person charged with the violation denies part or all of the violation as charged in the appearance ticket, he or she may complete the form likewise prescribed for that purpose and forward such form and appearance ticket, together with security in the amount of \$15, to the office specified on such appearance ticket. Upon receipt, such answer shall be entered and a new return date established by said office. Such person shall be notified by return mail of the date, time and place of such return date, and the security shall be returned upon appearance thereat. If a person shall fail to appear at a return date, when such is provided for pursuant to this section, the security posted to secure such appearance shall be forfeited and a summons or warrant of arrest may be issued pursuant to the Criminal Procedure Law.
- C. Every dog seized by the Dog Control Officer shall be maintained, redeemed, sold or destroyed in accordance with Article 7 of the Agriculture and Markets Law of the State of New York.
- D. The Dog Control Officer shall pursue all nonpayment of violations with a Town Justice of the Town of Concord.

§ 53-13. Penalties for offenses and other costs. [Amended 10-8-2009 by L.L. No. 3-2009]

- A. Any person committing an offense against any of the provisions of this article shall be punishable, upon conviction, by a fine of \$25 for the first violation, \$50 for the second violation and \$100 for the third and subsequent violations.

- B. The owner of a dog who is issued an appearance ticket may answer the same by registered or certified mail, return receipt requested, within five days of the violation(s), as hereunder provided, in lieu of a personal appearance on the return date at the time and court specified in said appearance ticket.
- C. In the event that there is a violation of this article based upon an information and not an appearance ticket and the owner of the dog demands a trial, the owner shall post bail of \$25, pay for the care of the dog while it is impounded and demand, in writing, a trial. The Dog Control Officer or other law enforcement officer shall immediately proceed to file an information with a Town Justice so that the matter will appear on the docket of the Town Justice Court as soon as possible. The rules of procedure and proof applicable in criminal actions shall apply.
- D. There shall be a fifty-dollar charge to be paid by the owner of the surrendered animal, which covers the cost of removal to the SPCA or other humane agency.

ARTICLE III

Licensing and Identification of Dogs [Adopted 12-9-2010 by L.L. No. 2-2010]

§ 53-14. Licensing of dogs.

All dogs within the Town of Concord being four months of age or older shall be licensed by the Town Clerk's office. The owner of each dog required to be licensed shall obtain, complete and return to the Town Clerk's office a dog license application, together with the license application fee, any applicable license surcharges and such additional fees as may be established by the Town Board of the Town of Concord. Each license application shall be accompanied by proof that the dog has been vaccinated against rabies or a statement from a licensed veterinarian that such vaccination would endanger the dog's life in which case vaccination shall not be required. Each license shall be valid for a period of one year from original issue date, and shall not be transferable.

§ 53-15. License fees and surcharges.

- A. License fees and surcharges under this article shall be prescribed from time to time by the Town Board of the Town of Concord by resolution.
- B. In the event that an owner of a dog which is licensed by another municipality in Erie County moves into the Town of Concord, he/she must obtain an identification tag from the Town Clerk's office within 30 days. In such instance, there will be no additional fee owing to the Town of Concord until such time as the license from the other municipality expires.

§ 53-16. Identification of dogs.

- A. Each dog licensed by the Town shall be assigned, at the time the dog is first licensed, a municipal identification number. Such identification number shall be carried by the dog on an identification tag which shall be affixed to a collar on the dog at all times. The

Town may exempt dogs participating in a dog show during such participation from this requirement.

- B. No tag carrying an identification number shall be affixed to the collar of any dog other than the one to which that number has been assigned.²

2. Editor's Note: Former § 53-17, Effective date, of the 2005 Code, which immediately followed this section, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 57

BINGO

§ 57-1. Conduct authorized.

§ 57-2. Sunday games.

[HISTORY: Adopted by the Town Board of the Town of Concord 4-28-1958. Amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

§ 57-1. Conduct authorized.

It shall be lawful for any authorized organization, as defined in § 476 of the General Municipal Law, upon obtaining the required license, to conduct the game of bingo within the territorial limits of the Town of Concord, subject to the provisions of this chapter, Article 14-H of the General Municipal Law and Article 19-B of the Executive Law.

§ 57-2. Sunday games.

Any game of bingo conducted within the Town pursuant to a license issued in accordance with this chapter and the applicable statutes may be operated by authorized organizations on the first day of the week, commonly known as "Sunday."

Chapter 58

BUILDINGS, NUMBERING OF

**§ 58-1. Posting of number required;
display specifications.**

**[HISTORY: Adopted by the Town Board of the Town of Concord 3-13-2003.
Amendments noted where applicable.]**

**§ 58-1. Posting of number required; display specifications. [Amended at time of
adoption of Code (see Ch. 1, General Provisions, Art. I)]**

The owner of any parcel of land in the Town of Concord upon which a building exists shall place the street address number assigned to that lot on the front face of the building located closest to the street. The number shall be affixed to the building in a prominent location facing and clearly legible from the principal street. If the building is not visible or the number not otherwise legible from the street, the number shall be permanently affixed to a mail box, post, wall, sign or other permitted structure adjacent to the entrance to the principal driveway serving the building. The number shall be composed of Arabic numerals or alphabet letters, at least four inches high with a minimum stroke width of 0.5 inch and in a color contrasting with the color of the surface upon which they appear. The owner of a new building shall comply with this chapter immediately upon completion of the siding or the issuance of a certificate of occupancy, whichever shall first occur.

Chapter 59

BUILDINGS, UNSAFE

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| § 59-1. Purpose. | § 59-8. Service and filing of notice. |
| § 59-2. Definitions. | § 59-9. Hearing. |
| § 59-3. Maintenance requirements. | § 59-10. Failure to comply. |
| § 59-4. Investigation and report. | § 59-11. Penalties for offenses. |
| § 59-5. Order to repair; hearing to be scheduled. | § 59-12. Assessment of expenses. |
| § 59-6. Prohibition of trespassing; penalty. | § 59-13. Emergency situations. |
| § 59-7. Contents of notice. | § 59-14. Application for court order. |
| | § 59-15. Special proceeding for costs. |

[HISTORY: Adopted by the Town Board of the Town of Concord 9-13-1995 by L.L. No. 3-1995. Amendments noted where applicable.]

§ 59-1. Purpose.

Unsafe buildings pose a threat to life and property in the Town of Concord. Buildings and structures may become unsafe by reason of damage by fire, the elements, age or general deterioration. Vacant buildings not properly secured at doorways and windows also serve as an attractive nuisance for young children who may be injured therein, as well as a point of congregation by vagrants and transients. A dilapidated building may also serve as a place of rodent infestation, thereby creating a health menace to the community. Debris, rubble or parts of buildings left on the ground and not removed constitute a dangerous, unhealthy and unsightly condition. It is the purpose of this chapter to provide for the safety, health, protection and general welfare of persons and property in the Town of Concord by requiring such unsafe buildings to be repaired or demolished or removed.

§ 59-2. Definitions.

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

BUILDING — Any building, structure or portion thereof used for residential, business, industrial, recreational or other purposes.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer of the Town of Concord and his or her duly appointed assistants or deputies or such other person appointed by the Town Board to enforce the provisions of this chapter.

PORTION OF BUILDING OR STRUCTURE — Any debris, rubble or parts of buildings which remain on the ground or on the premises after demolition, reconstruction, fire or other casualty.

UNSAFE BUILDING OR STRUCTURE — Any building or structure or portion thereof which:

- A. Has interior walls or other vertical structural members which list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle 1/3 of its base.
- B. Exclusive of the foundation, shows 33% or more damage to or deterioration of the supporting member or members or 50% damage to or deterioration of the nonsupporting enclosing or outside walls or covering.
- C. Has improperly distributed loads upon the floors or roofs or in which the same are overloaded or have insufficient strength to be reasonably safe for the purpose used.
- D. Has been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the Town of Concord.
- E. Has become or is so dilapidated, decayed, unsafe or unsanitary or which so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation or is likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.
- F. Has light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein.
- G. Has inadequate facilities for egress in case of fire or panic or has insufficient stairways, elevators, fire escapes or other means of communication.
- H. Has parts thereof which are so attached that they may fall and injure members of the public or property.
- I. Because of its condition, is unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of the Town of Concord.
- J. Is open at the doorways or windows or walls, making it accessible to and an object of attraction to minors under 18 years of age, as well as to vagrants and other trespassers.
- K. Is or may become a place of rodent infestation.
- L. Consists of debris, rubble or parts or buildings left on the ground after demolition, reconstruction, fire or other casualty.

§ 59-3. Maintenance requirements.

- A. It shall be unlawful for any owner, tenant or occupant of any building or structure or portion of any building or structure in the Town of Concord to maintain such building or structure or portion of such building or structure in any condition or manner which shall be unsafe as defined in § 59-2 of this chapter.
- B. Any owner, occupant or person in custody of real property located within the Town of Concord who allows or permits a building to continue as a dangerous building after due

notice as provided in § 59-5 shall be guilty of a violation of this chapter and shall be punished as provided in § 59-11.

§ 59-4. Investigation and report.

When, in the opinion of the Code Enforcement Officer, any building or structure located in the Town of Concord shall be deemed to be dangerous or unsafe to the public, as defined in § 59-2, the Code Enforcement Officer shall make a formal inspection thereof and report, in writing, to the Town Board his or her findings and recommendations in regard to the building's or structure's removal or repair.

§ 59-5. Order to repair; hearing to be scheduled.

The Town Board shall thereupon consider said report, and, if it finds that such building or structure is dangerous and unsafe to the public, it shall, by resolution, order its repair if the same can be safely repaired and, if not, its removal and demolition, and shall further order that a hearing be held before the Town Board at a time and place therein specified and on at least five days' notice to the owner of the building or structure, or persons having an interest therein, to determine whether said order to repair or remove shall be affirmed or modified or vacated and, in the event of modification or affirmance, to assess all costs and expenses incurred by the Town in the repair or removal of such building or structure against the land on which said building or structure is located.

§ 59-6. Prohibition of trespassing; penalty. [Amended 6-9-2005 by L.L. No. 2-2005]

In addition to serving the notice as provided in § 59-5, the Town Board may, if it determines that the purposes of this chapter will be further effectuated, order that no person other than the owner or the owner's agent shall enter upon the property and shall post on such property signs indicating "no trespassing." When such a determination is made, notice of such fact shall be included in the notice referred to in § 59-5. Anyone found trespassing in violation of this section shall be liable for a fine.

§ 59-7. Contents of notice.

The notice shall contain the following statements:

- A. The name of the owner or person in possession as it appears in the tax and deed records.
- B. A brief description of the premises and its location.
- C. A description of the building or structure which is unsafe or dangerous and a statement of the particulars in which it is unsafe or dangerous.
- D. An order requiring the same to be made safe and secure or to be removed.
- E. That the securing or removal of said building or structure shall commence within a specified number of days of the service of the notice and shall be completed within a specified number of days thereafter.

- F. The time and place of the hearing to be held before the Town Board, at which hearing the owner or occupant shall have the right to contest the order and findings of the Town Board.
- G. That in the event that such owner, occupant or other person having an interest in said premises shall fail to contest such order and fail to comply with the same, the Town Board will order the repair or removal of such building by the Town and that the Town will assess all costs and expenses incurred in such removal against the land on which such building or structure is located.
- H. That in any case where a building which is required to be made safe and secure under this chapter is made safe by the boarding up thereof, the material for such boarding shall be painted, as near as practicable, the same color as the building.
- I. That failure to commence the necessary repairs, improvements or demolition within the time specified in the notice will constitute a violation of the law subjecting the violator to a fine not to exceed \$250 or imprisonment not to exceed 15 days, or both, for each week of such violation.

§ 59-8. Service and filing of notice.

- A. A copy of said notice shall be personally served upon the owner or one of the owners, executors, legal representatives, agents, lessees or other person having a vested interest in the premises as shown on the Town tax records or in the records in the Erie County Clerk's office.
- B. If no such person can be reasonably found for personal service, then a copy of said notice shall be mailed to such person by registered mail addressed to his or her last-known address as shown on said records and by personally serving a copy of said notice upon any adult person residing in or occupying said premises or by securely affixing a copy of said notice upon the building or structure.
- C. A copy of said notice may be filed in the Erie County Clerk's office, which notice shall be filed in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules and shall have the same effect as a notice of pendency as therein provided. A notice so filed shall be effective for a period of one year from the date of filing. It may be vacated upon an order of a judge or justice of a court of record or upon the written consent of the Town Attorney or attorney for the Town. The Erie County Clerk shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or of a certified copy of such order.

§ 59-9. Hearing.

The Town Board shall conduct the public hearing at the time and place specified in the notice to repair or demolish. It may adjourn the hearing from time to time until all interested parties are heard and until the hearing is completed. At the conclusion of the hearing, the Town Board shall determine, by resolution, to revoke the order to repair or remove, to modify said order or to continue and affirm said order and to direct the owner or other persons to

complete the work within the time specified in the order or such other time as shall be determined by the Town Board.

§ 59-10. Failure to comply.

- A. In the event of the refusal, failure or neglect of the owner or person so notified to comply with said order of the Town Board within the time specified in said order and after the public hearing, the Town Board shall provide that such building or structure be made safe and secure or removed and demolished by Town employees or by independent contractors. Except in emergency cases as herein provided, any contract for repair or demolishing and removal of a building or structure in excess of \$5,000 shall be awarded through competitive bidding.
- B. In the event of the refusal, failure or neglect of the owner or person so notified to comply with said order of the Town Board within the time specified in said order and after the public hearing, such owner or person shall be guilty of a violation under the Penal Law.

§ 59-11. Penalties for offenses. [Amended 6-9-2005 by L.L. No. 2-2005]

Any person found guilty of violating this chapter shall be liable for a fine not to exceed \$250 or a term of imprisonment not exceeding 15 days, or both, for each violation. Each week such violation shall continue shall constitute a separate violation.

§ 59-12. Assessment of expenses.

All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building, including the cost of actually removing such building and attorney's fees, shall be assessed against the land on which such building is located and shall be levied and collected in the same manner as provided for the levy and collection of real property taxes.

§ 59-13. Emergency situations.

Where it reasonably appears that there is present a clear and imminent danger to the life, safety or health of any person or property unless an unsafe building or structure is immediately repaired and secured or demolished, the Town Board may, by resolution, authorize the Code Enforcement Officer to immediately cause the repair or demolition of such unsafe building or structure. The expenses of such repair or demolition shall be a charge against the land on which it is located and shall be assessed, levied and collected as provided in § 59-12 hereof.

§ 59-14. Application for court order.

The Town Board, in its discretion, may elect to apply to the Supreme Court of the State of New York for an order directing that the building be repaired and secured or demolished and removed.

§ 59-15. Special proceeding for costs.

The Town Board may commence a special proceeding pursuant to § 78-b of the General Municipal Law to collect the costs of demolition, including reasonable and necessary legal expenses.

Chapter 62
CHECKS, RETURNED

§ 62-1. Charge for returned checks.

§ 62-3. Waiver of fee.

§ 62-2. Form of future payments.

[HISTORY: Adopted by the Town Board of the Town of Concord 5-13-1991. Amendments noted where applicable.]

§ 62-1. Charge for returned checks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The Town officials collecting money from persons paying fees and/or real property taxes in the Town of Concord shall hereby charge \$20 for any check returned for insufficient funds, in accordance with Chapter 203 of the Laws of New York, 1989.¹

§ 62-2. Form of future payments.

Any person having had a check which was returned for insufficient funds shall be required to remit any future payments only in the form of cash or by certified or cashier's check.

§ 62-3. Waiver of fee.

Such fee may only be waived for those persons who can prove that it was through no fault of their own that a check was returned for insufficient funds.

1. Editor's Note: See § 85 of the General Municipal Law.

Chapter 68

FEES

ARTICLE I	§ 68-3. Fees established.
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§ 68-2. Findings.	§ 68-6. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Building Permits and Applications
[Adopted 12-29-1992 by L.L. No. 3-1992]

§ 68-1. Title. [Amended 6-9-2005 by L.L. No. 2-2005]

This article shall be known as the "Building Permit Fees and Application Fees Law of the Town of Concord."

§ 68-2. Findings.

The Town Board of the Town of Concord hereby determines that the building permit fees, application fees and other fees should reflect the present cost to administer and process such applications.

§ 68-3. Fees established. [Amended 6-9-2005 by L.L. No. 2-2005]

The fees established under this article shall be as set by the Town Board from time to time.

§ 68-4. Inspection fees; exceptions. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Inspection fees are included in the above building permit fees. No permit fee shall be required for farm barns, farm sheds or farm buildings, provided that the farm owner derives 50% or more of his or her net earned income from farming operations. The owner agrees to make available tax returns for the prior three years.

§ 68-5. Approval and issuance. [Added 6-9-2005 by L.L. No. 2-2005]

A. No person, firm, corporation, association or other organization shall commence the erection, construction, enlargement, alteration or improvement of any building or

structure in any zone within the Town of Concord without the approved building permit with the proper fees paid as per Town policy schedule.

- B. The Code Enforcement Officer or the Town Building Inspector shall have the authorization to issue building permits without the Town of Concord Board approval, providing that all rules and regulations are adhered to.
- C. The fees as listed within our Town policy will be automatically doubled for any building which is started without obtaining the required building permit.
- D. All other permits shall have the approval of the Town of Concord Town Board.

§ 68-6. Penalties for offenses. [Amended 9-13-1995 by L.L. No. 3-1995]

Violation of this article by failure to apply and pay the fees established herein is hereby declared an offense punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or both.

Chapter 72

FIRE PREVENTION AND BUILDING CONSTRUCTION

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| § 72-1. Purpose and intent. | § 72-11. Fire safety and property maintenance inspections. |
| § 72-2. Definitions. | § 72-12. Complaints. |
| § 72-3. Code Enforcement Officer and inspectors. | § 72-13. Climatic and geographical design criteria. |
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| § 72-6. Stop-work orders. | § 72-16. Enforcement; penalties for offenses. |
| § 72-7. Certificates of occupancy and certificates of compliance. | § 72-17. Fees. |
| § 72-8. Notification regarding fire or explosion. | § 72-18. Authorization for intergovernmental cooperation. |
| § 72-9. Unsafe buildings, structures and equipment; conditions of imminent danger. | |
| § 72-10. Operating permits. | |

[HISTORY: Adopted by the Town Board of the Town of Concord at time of adoption of Code (see Ch. 1, General Provisions, Art. I).¹ Amendments noted where applicable.]

§ 72-1. Purpose and intent.

This chapter provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") and the State Energy Conservation Construction Code (the "Energy Code") in this Town of Concord. This chapter is adopted pursuant to § 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, the Energy 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 this chapter.

§ 72-2. Definitions.

In this chapter, the following terms shall have the meanings shown in this section:

ASSEMBLY AREA — An area in any building, or in any portion of a building, that is primarily used or intended to be used for gathering fifty or more persons for uses including, but not limited to, amusement, athletic, entertainment, social, or other recreational functions;

1. Editor's Note: This local law also repealed former Ch. 72, Art. I, Minimum Standards for Administration and Enforcement, adopted 10-13-1986 by L.L. No. 3-1986, and Art. II, Administration and Enforcement, adopted 3-6-2008 by L.L. No. 2-2008, of the 2005 Code.

patriotic, political, civic, educational, or religious functions; food or drink consumption; awaiting transportation; or similar purposes.

BUILDING PERMIT — A building permit, construction permit, demolition permit, or other permit that authorizes the performance of work. The term "building permit" shall also include a building permit which is renewed, amended, or extended pursuant to any provision of this chapter.

CERTIFICATE OF COMPLIANCE — A document issued by the Town of Concord stating that work was done in compliance with approved construction documents and the codes.

CERTIFICATE OF OCCUPANCY — A document issued by the Town of Concord certifying that the building or structure, or portion thereof, complies with the approved construction documents that have been submitted to and approved by the Town of Concord, and indicating that the building or structure, or portion thereof, is in a condition suitable for occupancy.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer appointed pursuant to Subsection B of § 72-3 of this chapter.

CODE ENFORCEMENT PERSONNEL — The Code Enforcement Officer and all inspectors.

CODES — The Uniform Code and Energy Code.

ENERGY CODE — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law.

FCNYS — The 2020 Fire Code of New York State, as currently incorporated by reference in 19 NYCRR Part 1225.

FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTION — An inspection performed to determine compliance with the applicable provisions of 19 NYCRR Part 1225 and the publications incorporated therein by reference and the applicable provisions of 19 NYCRR Part 1226 and the publications incorporated therein by reference.

HAZARDOUS PRODUCTION MATERIALS — A solid, liquid, or gas associated with semiconductor manufacturing that has a degree-of-hazard rating in health, flammability, or instability of Class 3 or 4, as ranked by NFPA 704 (Standard Systems for Identification of the Hazards of Materials for Emergency Response), and which is used directly in research, laboratory, or production processes which have, as their end product, materials that are not hazardous.

INSPECTOR — An inspector appointed pursuant to Subsection D of § 72-3 of this chapter.

MOBILE FOOD PREPARATION VEHICLES — Vehicles that contain cooking equipment that produces smoke or grease-laden vapors for the purpose of preparing and serving food to the public. Vehicles intended for private recreation shall not be considered mobile food preparation vehicles.

OPERATING PERMIT — A permit issued pursuant to § 72-10 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.

ORDER TO REMEDY — An order issued by the Code Enforcement Officer pursuant to Subsection A of § 72-16 of this chapter.

PERMIT HOLDER — The person to whom a building 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.

PMCNYS — The 2020 Property Maintenance Code of New York State, as currently incorporated by reference in 19 NYCRR Part 1226.

RCNYS — The 2020 Residential Code of New York State, as currently incorporated by reference in 19 NYCRR Part 1220.

REPAIR — The reconstruction, replacement, or renewal of any part of an existing building for the purpose of its maintenance or to correct damage.

STOP-WORK ORDER — An order issued pursuant to § 72-6 of this chapter.

SUGARHOUSE — A building used, in whole or in part, for the collection, storage, or processing of maple sap into maple syrup and/or maple sugar.

TEMPORARY CERTIFICATE OF OCCUPANCY — A certificate issued pursuant to Subsection D of § 72-7 of this chapter.

TOWN — The Town of Concord.

UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code, Subchapter A of Chapter XXXIII of Title 19 of the NYCRR, adopted pursuant to Article 18 of the Executive Law.

§ 72-3. Code Enforcement Officer and inspectors.

- A. The Office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code, and this chapter. The Code Enforcement Officer shall have the following powers and duties:
- (1) To receive, review, and approve or disapprove applications for building permits, certificates of occupancy, certificates of compliance, temporary certificates of occupancy, and operating permits, and the plans, specifications, and construction documents submitted with such applications;
 - (2) Upon approval of such applications, to issue building permits, certificates of occupancy, certificates of compliance, temporary certificates of occupancy, and operating permits, and to include terms and conditions as the Code Enforcement Officer may determine to be appropriate in building permits, certificates of occupancy, certificates of compliance, temporary certificates of occupancy, and operating permits;
 - (3) To conduct construction inspections; inspections to be made prior to the issuance of certificates of occupancy, certificates of compliance, temporary certificates of

occupancy, 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;

- (4) To issue stop-work orders;
 - (5) To review and investigate complaints;
 - (6) To issue orders pursuant to Subsection A of § 72-16, Enforcement; penalties for offenses, of this chapter;
 - (7) To maintain records;
 - (8) To collect fees as set by the Town Board of this Town of Concord;
 - (9) To pursue administrative enforcement actions and proceedings;
 - (10) In consultation with this Town's 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
 - (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this chapter.
- B. The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer 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 other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.
- C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, another individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of their appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this chapter.
- D. One or more inspectors may be appointed to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this chapter. Each inspector 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, and each inspector shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.
- E. The compensation for the Code Enforcement Officer and inspectors shall be fixed from time to time by the Town Board of this Town.

§ 72-4. Building permits.

- A. Building permits required. Except as otherwise provided in Subsection B of this section, 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 a building permit from the Town.
- B. Exemptions. No building permit shall be required for work in any of the following categories:
- (1) Construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses), which are used for tool and storage sheds, playhouses, or similar uses, provided the gross floor area does not exceed 144 square feet;
 - (2) Construction of temporary sets and scenery associated with motion picture, television, and theater uses;
 - (3) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (4) Installation of partitions or movable cases less than 5' 9" in height;
 - (5) Painting, wallpapering, tiling, carpeting, or other similar finish work;
 - (6) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
 - (7) 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
 - (8) Repairs, provided that the work does not have an impact on fire and life safety, such as:
 - (a) Any part of the structural system;
 - (b) The required means of egress; or
 - (c) The fire protection system or the removal from service of any part of the fire protection system for any period of time.
- C. 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 B of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

§ 72-5. Construction inspections.

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an inspector authorized by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
- (1) Work site prior to the issuance of a building permit;
 - (2) Footing and foundation;
 - (3) Preparation for concrete slab;
 - (4) Framing;
 - (5) Structural, electrical, plumbing, mechanical, fire-protection, and other similar service systems of the building;
 - (6) Fire-resistant construction;
 - (7) Fire-resistant penetrations;
 - (8) Solid-fuel-burning heating appliances, chimneys, flues, or gas vents;
 - (9) Inspections required to demonstrate Energy Code compliance, including but not limited to insulation, fenestration, air leakage, system controls, mechanical equipment size, and, where required, minimum fan efficiencies, programmable thermostats, energy recovery, whole-house ventilation, plumbing heat traps, and high-performance lighting and controls;
 - (10) Installation, connection, and assembly of factory-manufactured buildings and manufactured homes; and
 - (11) A final inspection after all work authorized by the building permit has been completed.
- C. Remote inspections. At the discretion of the Code Enforcement Officer or inspector authorized to perform construction inspections, a remote inspection may be performed in lieu of an in-person inspection when, in the opinion of the Code Enforcement Officer or such authorized inspector, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer, or to such authorized inspector, that the elements of the construction process conform with the applicable requirements of the Uniform Code and Energy Code. Should a remote inspection not afford the Code Enforcement Officer or such authorized inspector sufficient information to make a determination, an in-person inspection shall be performed.
- D. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to the manner in which the work fails to comply with the Uniform Code or Energy Code, including a

citation to the specific code provision or provisions that have not been met. 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, reinspected, and found satisfactory as completed.

- E. Fee. The fee specified in or determined in accordance with the provisions set forth in § 70-17 (Fees) of this chapter must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 72-6. Stop-work orders.

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:

- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard as to whether such work is or is not work for which a building permit is required, and without regard as to whether a building permit has or has not been issued for such work; or
- (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard as to whether such work is or is not work for which a building permit is required, and without regard as to whether a building permit has or has not been issued for such work; or
- (3) 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.

- B. Content of stop-work orders. Stop-work orders shall:

- (1) Be in writing;
- (2) Be dated and signed by the Code Enforcement Officer;
- (3) State the reason or reasons for issuance; and
- (4) If applicable, state the conditions which must be satisfied before work will be permitted to resume.

- C. Service of stop-work orders. The Code Enforcement Officer 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 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 sentence shall not affect the efficacy of the stop-work order.

- D. 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, other than work expressly authorized by the Code Enforcement Officer to correct the reason for issuing the stop-work order.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection A of this section, 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 remedy or impose any other penalty under § 72-16 (Enforcement; penalties for offenses) of this chapter or under any other applicable local law 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.

§ 72-7. Certificates of occupancy and certificates of compliance.

- A. Certificates of occupancy and certificates of compliance required. A certificate of occupancy or 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 subclassification 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 or certificate of compliance.
- B. Issuance of certificates of occupancy and certificates of compliance. The Code Enforcement Officer shall issue a certificate of occupancy or 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, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the building, structure, or work prior to the issuance of a certificate of occupancy or 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, at the expense of the applicant for the certificate of occupancy or certificate of compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy or certificate of compliance:
 - (1) A written statement of structural observations and/or a final report of special inspections;
 - (2) Flood hazard certifications;
 - (3) A written statement of the results of tests performed to show compliance with the Energy Code; and

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- (4) Where applicable, the affixation of the appropriate seals, insignias, and manufacturer's data plates as required for factory-manufactured buildings and/or manufactured homes.
- C. Contents of certificates of occupancy and certificates of compliance. A certificate of occupancy or certificate of compliance shall contain the following information:
- (1) The building permit number, if any;
 - (2) The date of issuance of the building permit, if any;
 - (3) The name (if any), address and tax map number of the property;
 - (4) If the certificate of occupancy or certificate of compliance is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy or certificate of compliance is issued;
 - (5) The use and occupancy classification of the structure;
 - (6) The type of construction of the structure;
 - (7) The occupant load of the assembly areas in the structure, if any;
 - (8) Any special conditions imposed in connection with the issuance of the building permit; and
 - (9) The signature of the Code Enforcement Officer issuing the certificate of occupancy or certificate of compliance and the date of issuance.
- D. Temporary certificate of occupancy. The Code Enforcement Officer shall be permitted to issue a temporary certificate of occupancy 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 issue a temporary certificate of occupancy unless the Code Enforcement Officer determines 1) that the building or structure, or the portion thereof covered by the temporary certificate of occupancy, may be occupied safely, 2) that any required fire and life safety components, such as fire protection equipment and fire, smoke, carbon monoxide, and heat detectors and alarms, are installed and operational, and 3) that all required means of egress from the structure have been provided. The Code Enforcement Officer may include in a temporary certificate of occupancy such terms and conditions as he or she deems necessary or appropriate to ensure the health and safety of the persons occupying and using the building or structure and/or performing further construction work in the building or structure. A temporary certificate of occupancy shall be effective for a period of time not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate of occupancy. During the specified period of effectiveness of the temporary certificate of occupancy, 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.
- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy, certification of compliance, or a temporary certificate of occupancy was issued in error or on the basis of incorrect information, and if the

relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.

- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 72-17 (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 temporary certificate of occupancy.

§ 72-8. Notification regarding fire or explosion.

The chief of any fire department providing firefighting services for a property within this Town shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, fuel-burning appliance, chimney, or gas vent.

§ 72-9. Unsafe buildings, structures and equipment; conditions of imminent danger.

Unsafe buildings, structures, and equipment and conditions of imminent danger in this Town shall be identified and addressed in accordance with the procedures established Chapter 59, Buildings, Unsafe, as now in effect or as hereafter amended from time to time.

§ 72-10. Operating permits.

- A. Operation permits required. Operating permits shall be required for conducting any process or activity or for operating any type of building, structure, or facility listed below:
- (1) Manufacturing, storing, or handling hazardous materials in quantities exceeding those listed in the applicable Maximum Allowable Quantity tables found in Chapter 50 of the FCNYS;
 - (2) Buildings, structures, facilities, processes, and/or activities that are within the scope and/or permit requirements of the chapter or section title of the FCNYS as follows:
 - (a) Chapter 22, "Combustible Dust-Producing Operations." Facilities where the operation produces combustible dust;
 - (b) Chapter 24, "Flammable Finishes." Operations utilizing flammable or combustible liquids, or the application of combustible powders regulated by Chapter 24 of the FCNYS;
 - (c) Chapter 25, "Fruit and Crop Ripening." Operating a fruit- or crop-ripening facility or conducting a fruit-ripening process using ethylene gas;
 - (d) Chapter 26, "Fumigation and Insecticidal Fogging." Conducting fumigation or insecticidal fogging operations in buildings, structures, and spaces, except for fumigation or insecticidal fogging performed by the occupant of a detached one-family dwelling;

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- (e) Chapter 31, "Tents, Temporary Special Event Structures, and Other Membrane Structures." Operating an air-supported temporary membrane structure, a temporary special event structure, or a tent where approval is required pursuant to Chapter 31 of the FCNYS;
 - (f) Chapter 32, "High-Piled Combustible Storage." High-piled combustible storage facilities with more than 500 square feet (including aisles) of high-piled storage;
 - (g) Chapter 34, "Tire Rebuilding and Tire Storage." Operating a facility that stores in excess of 2,500 cubic feet of scrap tires or tire by-products or operating a tire rebuilding plant;
 - (h) Chapter 35, "Welding and Other Hot Work." Performing public exhibitions and demonstrations where hot work is conducted, use of hot work, welding, or cutting equipment, inside or on a structure, except an operating permit is not required where work is conducted under the authorization of a building permit or where performed by the occupant of a detached one- or two-family dwelling;
 - (i) Chapter 40, "Sugarhouse Alternative Activity Provisions." Conducting an alternative activity at a sugarhouse;
 - (j) Chapter 56, "Explosives and Fireworks." Possessing, manufacturing, storing, handling, selling, or using, explosives, fireworks, or other pyrotechnic special effects materials, except the outdoor use of sparkling devices as defined by Penal Law § 270;
 - (k) Section 307, "Open Burning, Recreational Fires and Portable Outdoor Fireplaces." Conducting open burning, not including recreational fires and portable outdoor fireplaces;
 - (l) Section 308, "Open Flames." Removing paint with a torch, or using open flames, fire, and burning in connection with assembly areas or educational occupancies; and
 - (m) Section 319, "Mobile Food Preparation Vehicles." Operating a mobile food preparation vehicle in accordance with the permitting requirements established by local law.
- (3) Energy storage systems, where the system exceeds the values shown in Table 1206.1 of the FCNYS or exceeds the permitted aggregate ratings in Section R327.5 of the RCNYS.
 - (4) Buildings containing one or more assembly areas;
 - (5) Outdoor events where the planned attendance exceeds 1,000 persons;
 - (6) Facilities that store, handle or use hazardous production materials;
 - (7) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Town; and

- (8) Other processes or activities or for operating any type of building, structure, or facility as determined by resolution adopted by the Town Board of this Town. Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection A shall be required to obtain an operating permit prior to commencing such activity or operation.
- B. 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. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer 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, at the expense of the applicant.
- C. Exemptions. Operating permits shall not be required for processes or activities, or the buildings, structures, or facilities listed in Subsection A(1) through (7) of this section, provided that the use is expressly authorized by a certificate of occupancy or certificate of compliance, fire safety and property maintenance inspections are performed in accordance with § 72-11 (Fire safety and property maintenance inspections) of this chapter, and condition assessments are performed in compliance with this chapter, as applicable.
- D. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit. Such inspections shall be performed either in-person or remotely. Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or inspector authorized by the Code Enforcement Officer that the premises conform with the applicable requirements of the Uniform Code and the code enforcement program. Should a remote inspection not afford the Town sufficient information to make a determination, an in-person inspection shall be performed. After inspection, the premises shall be noted as satisfactory and the operating permit shall be issued, or the operating permit holder shall be notified as to the manner in which the premises fail to comply with either or both of the Uniform Code and the code enforcement program, including a citation to the specific provision or provisions that have not been met.
- E. Multiple activities. In any circumstance in which more than one activity listed in Subsection A of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in their discretion, issue a single operating permit to apply to all such activities.
- F. Duration of operating permits. Operating permits shall be issued for a specified period of time consistent with local conditions, but in no event to exceed as follows:

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- (1) One hundred eighty days for tents, special event structures, and other membrane structures;
- (2) Sixty days for alternative activities at a sugarhouse;
- (3) Three years for the activities, structures, and operations determined per Subsection A(8) of this section; and
- (4) One year for all other activities, structures, and operations identified in Subsection A of this section. The effective period of each operating permit shall be specified in the operating permit. An operating permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
- (5) Revocation or suspension of operating permits. If the Code Enforcement Officer 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.
- (6) Fee. The fee specified in or determined in accordance with the provisions set forth in § 72-17 (Fees) of this chapter must be paid at the time submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

§ 72-11. Fire safety and property maintenance inspections.

- A. Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at the following intervals:
 - (1) At least once every 12 months for buildings which contain an assembly area;
 - (2) At least once every 12 months for public and private schools and colleges, including any buildings of such schools or colleges containing classrooms, dormitories, fraternities, sororities, laboratories, physical education, dining, or recreational facilities; and
 - (3) At least once every 36 months for multiple dwellings and all nonresidential occupancies.
- B. Remote inspections. At the discretion of the Code Enforcement Officer or inspector authorized to perform fire safety and property maintenance inspections, a remote inspection may be performed in lieu of in-person inspections when, in the opinion of the Code Enforcement Officer or such authorized inspector, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or such authorized inspector that the premises conform with the applicable provisions of 19 NYCRR Part 1225 and the publications incorporated therein by reference and the applicable provisions of 19 NYCRR Part 1226 and the publications incorporated therein by reference. Should a remote inspection not afford the Code Enforcement Officer or such

authorized inspector sufficient information to make a determination, an in-person inspection shall be performed.

- C. Inspections permitted. In addition to the inspections required by Subsection A of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an inspector authorized to perform fire safety and property maintenance inspections at any time upon:
- (1) The request of the owner of the property to be inspected or an authorized agent of such owner;
 - (2) Receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
 - (3) Receipt by the Code Enforcement Officer 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 subdivision 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.
- D. OFPC inspections. Nothing in this section or in any other provision of this chapter shall supersede, limit, or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (OFPC) and the New York State Fire Administrator or other authorized entity under Executive Law § 156-e and Education Law § 807-b. Notwithstanding any other provision of this section to the contrary, the Code Enforcement Officer may accept an inspection performed by the Office of Fire Prevention and Control or other authorized entity pursuant to §§ 807-a and 807-b of the Education Law and/or § 156-e of the Executive Law, in lieu of a fire safety and property maintenance inspection performed by the Code Enforcement Officer or by an inspector, provided that:
- (1) The Code Enforcement Officer is satisfied that the individual performing such inspection satisfies the requirements set forth in 19 NYCRR 1203.2(e);
 - (2) The Code Enforcement Officer is satisfied that such inspection covers all elements required to be covered by a fire safety and property maintenance inspection;
 - (3) Such inspections are performed no less frequently than once a year;
 - (4) A true and complete copy of the report of each such inspection is provided to the Code Enforcement Officer; and
 - (5) Upon receipt of each such report, the Code Enforcement Officer takes the appropriate action prescribed by § 72-16, Enforcement; penalties for offenses, of this chapter.
- E. Fee. The fee specified in or determined in accordance with the provisions set forth in § 72-17 (Fees) of this chapter must be paid prior to or at the time of each inspection

performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

§ 72-12. Complaints.

The Code Enforcement Officer 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 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 may deem to be appropriate:

- A. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- B. 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 § 72-16 (Enforcement; penalties for offenses) of this chapter;
- C. If appropriate, issuing a stop-work order;
- D. 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.

§ 72-13. Climatic and geographical design criteria.

- A. The Code Enforcement Officer shall determine the climatic and geographic design criteria for buildings and structures constructed within this Town as required by the Uniform Code. Such determinations shall be made in the manner specified in the Uniform Code using, where applicable, the maps, charts, and other information provided in the Uniform Code. The criteria to be so determined shall include but shall not necessarily be limited to the following:
 - (1) Design criteria to include ground snow load; wind design loads; seismic category; potential damage from weathering, frost, and termites winter design temperature; whether ice barrier underlayment is required; the air freezing index; and the mean annual temperature;
 - (2) Heating and cooling equipment design criteria for structures within the scope of the RCNYS. The design criteria shall include the data identified in the Design Criteria Table found in Chapter 3 of the RCNYS; and
 - (3) Flood hazard areas, flood hazard maps, and supporting data. The flood hazard map shall include, at a minimum, special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:
 - (a) The accompanying Flood Insurance Rate Map (FIRM);

- (b) Flood Boundary and Floodway Map (FBFM); and
 - (c) Related supporting data, long with any revisions thereto.
- B. The Code Enforcement Officer shall prepare a written record of the climatic and geographic design criteria determined pursuant to Subsection A of this section, shall maintain such record within the office of the Code Enforcement Officer, and shall make such record readily available to the public.

§ 72-14. Recordkeeping.

- A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all code enforcement personnel, including records of:
- (1) All applications received, reviewed and approved or denied;
 - (2) All plans, specifications and construction documents approved;
 - (3) All building permits, certificates of occupancy, certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;
 - (4) All inspections and tests performed;
 - (5) All statements and reports issued;
 - (6) All complaints received;
 - (7) All investigations conducted;
 - (8) All condition assessment reports received;
 - (9) All fees charged and collected; and
 - (10) All other features and activities specified in or contemplated by §§ 72-4 through 72-13, inclusive, of this chapter.
- B. 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.

§ 72-15. Program review and reporting.

- A. The Code Enforcement Officer shall annually submit to Town Board of this Town of Concord a written report and summary of all business conducted by the Code Enforcement Officer and the inspectors, including a report and summary of all transactions and activities described in § 72-14 (Recordkeeping) of this chapter and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town of Concord, on a form prescribed by the Secretary of State, a report of the activities of this Town of Concord relative to administration and enforcement of the Uniform Code.

- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State true and complete copies of the records and related materials this Town of Concord is required to maintain; true and complete copies of such portion of such records and related materials as may be requested by the Department of State; and/or such excerpts, summaries, tabulations, statistics, and other information and accounts of its activities in connection with administration and enforcement of the Uniform Code and/or Energy Code as may be requested by the Department of State.

§ 72-16. Enforcement; penalties for offenses.

- A. Orders to remedy. The Code Enforcement Officer 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. An order to remedy shall be in writing; shall be dated and signed by the Code Enforcement Officer; shall specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter; shall specify the provision or provisions of the Uniform Code, the Energy Code, or this chapter which is/are violated by the specified condition or activity; and shall include a statement substantially similar to the following: "The person or entity served with this order to remedy must completely remedy each violation described in this order to remedy by [specify date], which is 30 days after the date of this order to remedy." The order to remedy may include provisions ordering the person or entity served with such order to remedy to 1) begin to remedy the violations described in the order to remedy immediately, or within some other specified period of time which may be less than 30 days; continue diligently to remedy such violations until each such violation is fully remedied; and, in any event, to complete the remedying of all such violations within 30 days of the date of such order to remedy; and/or 2) to take such other protective actions (such as vacating the building or barricading the area where the violations exist) which are authorized by this chapter or by any other applicable statute, regulation, rule, local law or ordinance, and which the Code Enforcement Officer may deem appropriate, during the period while such violations are being remedied. The Code Enforcement Officer shall cause the order to remedy, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail within five days after the date of the order to remedy. The Code Enforcement Officer shall be permitted, but not required, to cause the order to remedy, 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 registered mail or certified mail, within five days after the date of the order to remedy; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.
- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- C. Penalties. In addition to such other penalties as may be prescribed by state law:
- (1) Any person who violates any provision of this chapter or any term, condition, or provision of any building permit, certificate of occupancy, certificate of

compliance, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be punishable by a fine of not more than \$250 per day of violation, or imprisonment not exceeding 15 days, or both; and

- (2) 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 or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be liable to pay a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town of Concord.
- D. Injunctive relief. An action or proceeding may be instituted in the name of this Town of Concord, 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, order to remedy, or other notice or order issued by the Code Enforcement Officer 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, order to remedy 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 of Concord, 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 shall be commenced without the appropriate authorization from the Town Board of this Town of Concord.
- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy 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 § 72-6 (Stop-work orders) of this chapter, in any other section of this chapter, or in any other applicable law. 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 other remedy or penalty specified in this section, in § 72-6 (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.

FIRE PREVENTION AND BUILDING
CONSTRUCTION

§ 72-17

§ 72-18

§ 72-17. Fees.

A fee schedule shall be established by resolution of the Town Board of This Town of Concord. Such fee schedule may thereafter be amended from time to time by like resolution. 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 described in or contemplated by this chapter.

§ 72-18. Authorization for intergovernmental cooperation.

The Town Board of this Town of Concord may, by resolution, authorize the Code Enforcement Officer of this Town of Concord to enter into an agreement, in the name of this Town of Concord, 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.

Chapter 76

FLOOD DAMAGE PREVENTION

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[HISTORY: Adopted by the Town Board of the Town of Concord 5-9-2019 by L.L. No. 1-2019.¹ Amendments noted where applicable.]

¹ Editor's Note: This local law superseded former Ch. 76, Flood Damage Prevention, adopted 6-8-1987 by L.L. No. 1-1987, as amended.

ARTICLE I

Statutory Authorization and Purpose**§ 76-1. Findings.**

The Town Board of the Town of Concord finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Concord 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.

§ 76-2. Statement of 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:

- A. 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;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages;
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 76-3. 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;

- 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 Terminology

§ 76-4. Definitions.

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

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

ACCESSORY STRUCTURE — A structure used solely for parking (two-car detached garages or smaller) or limited storage, represents a minimal investment of not more than 10% of the value of the primary structure, and may not be used for human habitation.

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 1% 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 1% 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 "100-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 1% 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 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 nonbasement 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 structural 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 — The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the Federal Emergency Management Agency 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 the Federal Emergency Management Agency, 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 the Federal Emergency Management Agency 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

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (a) The overflow of inland or tidal waters;

- (b) The unusual and rapid accumulation or runoff of surface waters from any source.
- (2) "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 (1)(a) of this definition above.

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source (see definition of "flooding").

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduces or eliminates 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:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) 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 to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;
or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior;
or

- (b) Directly by the Secretary of the Interior in states without approved programs.

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 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 factory-built home, originally transportable, designed to be used as a year-round single-family dwelling that is manufactured according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401). A manufactured home is sometimes referred to as a "HUD Code home." The term "manufactured home" does not include a mobile home or recreational vehicle. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

MANUFACTURED HOME PARK — Formerly known as a "mobile home court." A lot containing two or more manufactured homes. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

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 — A transportable, factory-built home, designed to be used as a year-round, single-family dwelling, built prior to June 15, 1976, the effective date of the Federal Manufactured Housing Construction and Safety Standards Act of 1974. "Mobile home" does not include a recreational vehicle. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

MOBILE HOME COURT — As defined pursuant to Local Law No. 2 of 1991,² entitled "A Local Law to License and Regulate Mobile Homes and Mobile Home Courts in the Town of Concord." Now known as a "manufactured home park." **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

MODULAR HOME — Factory-built housing that is certified as meeting the New York State Building Code. A modular home is constructed on site from components that are substantially made and assembled in a factory and that are delivered to a building site where they are assembled and installed on a permanent foundation. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

NEW CONSTRUCTION — 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.

2. Editor's Note: See Chapter 94, Mobile Homes, of this Code.

ONE-HUNDRED-YEAR FLOOD or 100-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:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) 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 the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 76-14B 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. The 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 — A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

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:

- (1) 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
- (2) Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an 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

§ 76-5. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Concord.

§ 76-6. 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 Maps: 36029C0660H, 36029C0670H, 36029C0676H, 36029C0680H, 36029C0681H, 36029C0682H, 36029C0685H, 36029C0690H, 36029C0693H, 36029C0694H, 36029C0695H, 36029C0705H, 36029C0785H, 36029C0805H, 36029C0806H, 36029C0807H; the effective date of which is June 7, 2019, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.
 - (2) A scientific and engineering report entitled "Flood Insurance Study, Erie County, New York (All Jurisdictions)" dated June 7, 2019.
- 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:

Concord Town Hall
86 Franklin Street
Springville, NY 14141

§ 76-7. 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.

§ 76-8. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

§ 76-9. Penalties for noncompliance.

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 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 of Concord 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 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 76-10. 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 hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Concord, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

ARTICLE IV
Administration

§ 76-11. Designation of local administrator.

The Code Enforcement Officer is hereby appointed local administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.

§ 76-12. Floodplain development permit required; fees.

- A. Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and ensuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 76-6, without a valid floodplain development permit. Application for a 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; and existing or proposed structures, fill, storage of materials, drainage facilities, and the locations of the foregoing.
- B. Fees. All applications for a floodplain development permit shall be accompanied by a fee set forth on the Town Fee Schedule, as amended from time to time. In addition, the applicant shall be responsible for reimbursing the Town of Concord for any additional costs necessary for review, inspection and approval of this project. The local administrator may require a deposit of no more than \$500 to cover these additional costs. **[Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

§ 76-13. Application for 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 floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the local administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.

- C. A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 76-16C, Utilities.
- D. A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 76-18, 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 the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 76-6, 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 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 homes and recreational vehicle parks and subdivisions) that are greater than either 50 lots or five acres.

§ 76-14. 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 § 76-13, 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, § 76-15A, 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

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.

B. Use of other flood data.

- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate Map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 76-13G, as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this chapter.
- (2) When base flood elevation data are not available, the local administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this chapter.
- (3) When an area of special flood hazard, base flood elevation, and/or floodway data are available from a federal, state or other authoritative source, but differ from the data in the documents enumerated in § 76-6, the local administrator may reasonably utilize the other flood information to enforce more restrictive development standards.

C. Alteration of watercourses.

- (1) Notification to adjacent municipalities that may be affected and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.
- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

D. Construction stage.

- (1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate

of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).

- (2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.
- E. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.
- F. Stop-work orders.
- (1) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 76-9 of this chapter.
 - (2) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 76-9 of this chapter.
- G. Certificate of compliance.
- (1) In areas of special flood hazard, as determined by documents enumerated in § 76-6, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.
 - (2) A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.
 - (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in § 78-14E, Inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.
- H. Information to be retained. The local administrator shall retain and make available for inspection copies of the following:
- (1) Floodplain development permits and certificates of compliance;
 - (2) Certifications of as-built lowest floor elevations of structures required pursuant to § 76-14D(1) and (2), and whether or not the structures contain a basement;

- (3) Floodproofing certificates required pursuant to § 76-14D(1), and whether the structures contain a basement;
- (4) Variances issued pursuant to Article VI, Variance Procedures; and
- (5) Notices required under § 76-14C, Alteration of watercourses.

ARTICLE V
Construction Standards

§ 76-15. General standards.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 76-6.

- 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 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 of Concord agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Concord 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 of Concord 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 § 76-6, 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 demonstrates through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or
 - (b) The Town of Concord agrees to apply to the Federal Emergency Management Agency (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 of Concord 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 of Concord for all costs related to the final map revisions.
- (3) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, if any development is found to increase or decrease base flood elevations, the Town of Concord shall as soon as practicable, but not later than six months after the date such information becomes available, notify FEMA and the New York State Department of Environmental Conservation of the changes by submitting technical or scientific data in accordance with standard engineering practice.

§ 76-16. Standards for all structures.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 76-6.

- A. Anchoring. New structures and substantial improvement to structures 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 to structures shall be constructed with materials and utility equipment resistant to flood damage.
 - (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
 - (3) Enclosed areas below the lowest floor.
 - (a) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE, AO or A, 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 of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - [2] The bottom of all such openings no higher than one foot above the lowest adjacent finished grade; and
 - [3] Openings not less than three inches in any direction.
- (b) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided 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 at least three feet above the highest adjacent grade in a Zone A without an available 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 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 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.

D. Storage tanks.

- (1) Underground tanks shall be anchored to prevent flotation, collapse and lateral movement during conditions of the base flood.
- (2) Aboveground tanks shall be:
 - (a) Anchored to prevent flotation, collapse or lateral movement during conditions of the base flood; or
 - (b) Installed at or above the base flood elevation as shown on the Flood Insurance Rate Map enumerated in § 76-6 plus two feet.

§ 76-17. 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 § 76-15A, Subdivision proposals, § 76-15B, Encroachments, and § 76-16, 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 the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 76-6 plus two feet (at least three 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.

§ 76-18. 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 § 76-15A, Subdivision proposals, § 76-15B, Encroachments, and § 76-16, 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 floodproofed 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.
- 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 the depth number specified in feet on the community's FIRM plus two feet (at least three feet if no depth number is specified); or

- (2) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in § 76-18A(2).
- C. If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing 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 § 76-18A(2), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- 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.

§ 76-19. Manufactured homes and recreational vehicles.

The following standards in addition to the standards in § 76-15, General standards, and § 76-16, 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 bottom of the frame of the manufactured home chassis 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.
- C. Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the bottom of the frame of 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 bottom of the frame of the manufactured home chassis 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 § 76-6 plus two feet (at least three feet if no depth number is specified).

§ 76-20. Accessory structures.

The following standards apply to new and substantially improved accessory structures, including detached garages, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 76-6.

- A. Within Zones A1-A30, AE, AO, AH, A, accessory structures must meet the standards of § 76-16A, Anchoring.
- B. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, areas below two feet above the base flood elevation shall be constructed using methods and practices that minimize flood damage.
- C. Within Zones AO and Zone A, if base flood elevation data are not available, areas below three feet above the highest adjacent grade shall be constructed using methods and practices that minimize flood damage.
- D. Structures must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in accordance with § 76-16B(3).
- E. Utilities must meet the requirements of § 76-16C, Utilities.

ARTICLE VI
Variance Procedure

§ 76-21. Appeals Board.

- A. The Board of Appeals as established by the Town of Concord shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The 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 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 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 § 76-21D and the purposes of this chapter, the Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The local administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

§ 76-22. 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 items in § 76-21D(1) to (12) have been fully considered. As the lot size increases beyond the one-half 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 creates 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, or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- G. 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:
 - (1) 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
 - (2) Such construction below the base flood level increases risks to life and property.
- H. Such notification shall be maintained with the record of all variance actions as required in § 76-14H of this chapter.

Chapter 78
FURNACES, OUTDOOR

§ 78-1. In general.

[HISTORY: Adopted by the Town Board of the Town of Concord at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

§ 78-1. In general.

Installation of outdoor furnaces shall comply with the regulations established by the NYS Department of Environmental Conservation found at 6 NYCRR Part 247, and applicable provisions of the Uniform Fire Prevention and Building Code.

Chapter 80
GAMES OF CHANCE

§ 80-1. Title.

§ 80-2. Definitions.

§ 80-3. License required; rules and regulations.

§ 80-4. Restrictions upon conduct of games of chance.

§ 80-5. Incorporation of statutory provisions.

§ 80-6. Enforcement.

[HISTORY: Adopted by the Town Board of the Town of Concord 12-10-1979 by L.L. No. 2-1979. Amendments noted where applicable.]

§ 80-1. Title.

This chapter shall be known and may be cited as the "Games of Chance Law of the Town of Concord, Erie County, New York."

§ 80-2. Definitions. ¹ **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

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

BOARD — The New York State Gaming Commission.

TOWN — The Town of Concord in the County of Erie and State of New York.

§ 80-3. License required; rules and regulations.

Authorized organizations may, upon the obtaining of a license from the Town Clerk, conduct games of chance within the Town of Concord, as provided in Article 9-A of the General Municipal Law and as provided further in this chapter. Such games of chance shall be conducted in accordance with the general state law and with the rules and regulations of the New York State Gaming Commission and this chapter.

§ 80-4. Restrictions upon conduct of games of chance. **[Amended 6-9-2005 by L.L. No. 2-2005]**

The conduct of games of chance authorized by this chapter shall be subject to the restrictions set forth in § 189 of the General Municipal Law.

1. Editor's Note: Former § 80-2B, Other terms, which immediately followed this definition, was deleted 6-9-2005 by L.L. No. 2-2005.

§ 80-5. Incorporation of statutory provisions.

This chapter shall be deemed to include all of the provisions of Article 9-A of the General Municipal Law, except as otherwise provided in this chapter, and any amendment to the provisions in such Article to the extent that such provisions and amending acts are otherwise applicable to games of chance authorized under this chapter.

§ 80-6. Enforcement.

The chief law enforcement officer of the County of Erie shall exercise control over and supervision of all games of chance conducted under a validly issued license hereunder. Said chief law enforcement officer of the County of Erie shall have all those powers and duties set forth in Article 9-A of the General Municipal Law.²

2. Editor's Note: Former § 80-7, When effective, as amended, which immediately followed this section, was deleted 6-9-2005 by L.L. No. 2-2005.

Chapter 85

JUNKYARDS

§ 85-1. Definitions.

§ 85-4. Penalties for offenses.

§ 85-2. Use prohibited.

§ 85-5. Permit fees.

§ 85-3. Existing junkyards.

[HISTORY: Adopted by the Town Board of the Town of Concord 9-13-1995 by L.L. No. 3-1995. Amendments noted where applicable.]

§ 85-1. Definitions.

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

JUNKYARD — An area of land, with or without buildings, used for or occupied by a deposit, collection or storage, outside a completely enclosed building, of used or discarded materials, such as wastepaper, rags or scrap material or used building materials, house furnishings, machinery, vehicles or parts thereof, with or without the dismantling, processing, salvage or sale or other use or disposition of the same. A deposit or the storage on a plot of two or more unregistered, wrecked or broken-down vehicles or part of two or more such vehicles for one week or more in a residential district, or for three weeks or more in any other district, shall be deemed to be a junkyard.

§ 85-2. Use prohibited.

Junkyards shall be a prohibited use within the Town of Concord.

§ 85-3. Existing junkyards.

Existing junkyards may not be expanded, enlarged, improved or otherwise altered except when required by law. Normal maintenance and repair of an existing structure or accessory occupied by a junkyard use is permitted if it does not extend the useful life of said use.

§ 85-4. Penalties for offenses.

Any person, firm, corporation or other entity violating the provisions of this chapter shall be subject to a penalty not exceeding \$250 or imprisonment for a term not exceeding 15 days, or both, for each day such violation continues and, in addition, shall be guilty of a misdemeanor.

§ 85-5. Permit fees. ¹ [Added 6-9-2005 by L.L. No. 2-2005]

Permit fees are due each year by January 31. If not paid by due date, a late fee of \$50 will be charged.

1. Editor's Note: See also Ch. 162, Fee Schedule.

Chapter 93
(RESERVED)

[Former Chapter 93, Manufactured Homes, as adopted 11-13-1995, as amended 6-9-2005 by L.L. No. 2-2005, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I.)]

Chapter 94

MOBILE HOMES

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| § 94-1. Legislative intent. | § 94-9. General application and variance. |
| § 94-2. Definitions and word usage. | § 94-10. Design standards, utilities and refuse disposal. |
| § 94-3. Authorized location of mobile homes. | § 94-11. Fire protection. |
| § 94-4. License requirements and exceptions. | § 94-12. Management of mobile home courts. |
| § 94-5. Temporary licensing; emergency parking; storage. | § 94-13. Supplemental regulations. |
| § 94-6. Existing mobile homes. | § 94-14. Inspections; certificate of occupancy; revocation of license. |
| § 94-7. Licensing procedures for new mobile home courts. | § 94-15. Penalties for offenses. |
| § 94-8. License terms, transfers and renewals. | § 94-16. Administration, enforcement and fees. |

[HISTORY: Adopted by the Town Board of the Town of Concord 9-9-1991 by L.L. No. 2-1991. Amendments noted where applicable.]

§ 94-1. Legislative intent.

The purpose of this chapter is to promote and protect the public health, welfare, safety, order, conduct, comfort, convenience and prosperity and the well-being of persons and property in the Town of Concord, including those occupying mobile homes or operating mobile home courts, by providing that mobile home courts shall be established and maintained in accord with plans and specifications and in a uniform manner approved by the Town Board after review and recommendation by the Planning Board; by providing that mobile homes shall be located in duly licensed mobile home courts; by making provisions for the parking, storage or temporary licensing of mobile homes outside mobile home courts; and by requiring that all mobile home courts shall be duly licensed and periodically inspected.

§ 94-2. Definitions and word usage.

- A. When not inconsistent with the context, words used in the present tense include the future tense, and plural and singular connotations are interchangeable.
- B. Unless clearly indicated otherwise by context, the following terms, words and phrases, when used in this chapter, for the purposes of this chapter, shall have the meanings respectively ascribed to them in this subsection:

ALL-WEATHER HARD SURFACE — Macadam or stone/concrete.

APPROVE — Found to be conforming to the provisions of this chapter.

CODE ENFORCEMENT OFFICER — The person duly appointed by the Town Board to enforce the provisions of this chapter. Unless otherwise designated by the Town Board, the Code Enforcement Officer shall be the enforcement officer. [Amended 9-13-1995 by L.L. No. 3-1995; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

COURT SITE PLAN — The plan required of an applicant to be filed for a license to establish, maintain and operate or enlarge, alter or change a mobile home court in the Town of Concord pursuant to the provisions of this chapter, showing in sufficient detail and otherwise documented as to be conforming to the provisions of this chapter.

COURT STREET — A private way which affords principal means of access to individual court units or auxiliary buildings and to a public thoroughfare.

DRIVEWAY — A minor private way used by vehicles and pedestrians on a mobile home court unit. This area may constitute off-court-street parking.

FIRE COMPANY — Refers to the organization, public or private, authorized by the Town or by state law to provide fire prevention and fire protection services to any or all areas of the Town of Concord.

LICENSE — A written certification duly issued by the Town authorizing and permitting the operation or alteration and extension of a mobile home court or the temporary location of a mobile home under the provisions of this chapter.

MOBILE HOME — A transportable, factory-built home, designed to be used as a year-round, single-family dwelling, built prior to June 15, 1976, the effective date of the Federal Manufactured Housing Construction and Safety Standards Act of 1974. "Mobile home" does not include a recreational vehicle.¹

MOBILE HOME COURT — A parcel of land which has been designated and improved for the placement of mobile homes for nontransient use and which cannot be plotted and filed as a subdivision with the Erie County Clerk, as provided herein.

MOBILE HOME SITE — A designated lot or space for rent or lease only in any mobile home court which shall be designed for and assigned to occupancy by one mobile home, either single or double width.

MOBILE HOME STAND — That part or area of an individual mobile home unit which has been reserved for the placement of a mobile home exclusive of any appurtenances.

PATIO — Refers to a surfaced outdoor living space designed and intended to supplement the interior mobile home living area on a seasonal, warm-weather basis.

PERSON — An individual, firm, partnership, corporation or other legal entity, whether tenant, owner, lessee, lessor, licensee, agent, employee, heir or assignee.

SERVICE BUILDING — A structure housing sanitary, operational, office, recreational, maintenance or other facilities built to conform to required standards of this chapter.

SHALL — Mandatory and required at all times.

1. Editor's Note: A second definition of "mobile home," which immediately followed this definition, was deleted 9-13-1995 by L.L. No. 3-1995.

TOWN BOARD — The duly elected Town Board of the Town of Concord.

TOWN CLERK — The duly elected Town Clerk of the Town of Concord.

§ 94-3. Authorized location of mobile homes.

No mobile home shall be placed, parked, situated, stored located, installed, displayed, occupied or otherwise used on any land situated in the Town of Concord, outside the incorporated Village of Springville, New York, unless otherwise provided herein or permitted by Chapter 150, Zoning, except on a mobile home stand in a mobile home unit of a duly licensed mobile home court.

§ 94-4. License requirements and exceptions.

- A. All mobile home courts hereinafter operated or located in the Town of Concord shall be duly licensed and periodically inspected as hereinafter provided.
- B. No license shall be required for a mobile home located and installed with all utility services connected thereto and otherwise in full compliance with the provisions of this chapter on a designated mobile home stand in a mobile home unit of a mobile home court for which a license as hereinafter provided shall have been duly issued and in full effect.

§ 94-5. Temporary licensing; emergency parking; storage.

- A. The Town Clerk of the Town of Concord, upon written application and upon payment of the required fee as established by the Town Board, shall issue a temporary license to park or to display for sale one mobile home subject to the following terms and conditions: A license to park, but not to occupy, or a license to offer or display for sale, but not to occupy, one mobile home in any residential or business district of the Town, as defined by Chapter 150, Zoning, may be issued for a period not to exceed six months, provided that the mobile home is so located as to be inconspicuous from any public highway and at least 100 feet from any dwelling on any adjacent lot, with setbacks as specified for the zoning district. **[Amended 9-13-1995 by L.L. No. 3-1995]**
- B. An application for a temporary license shall be accompanied by an accurate diagram or drawing showing the precise location proposed at the site at which such mobile home is to be parked, the zoning district of such site and the distance therefrom to the nearest public highway and to the nearest dwelling on any adjacent lot. Before issuing a temporary license, the Town Clerk shall cause the proposed site to be viewed by the Code Enforcement Officer to ensure that such site is so located as to be inconspicuous from any public highway. The term of a temporary license may be once renewed for a period not to exceed three months.
- C. Temporary emergency parking for a period not to exceed 14 days of a mobile home on a premises, public or private, in the Town of Concord while awaiting repairs shall not require a license nor be considered in violation of this chapter but shall be subject to any other restrictions imposed by law, ordinance or parking regulation.

- D. No temporary license shall be required for the storage or parking of an unoccupied mobile home wholly within a garage or other completely enclosed structure.
- E. A temporary license for one mobile home to be occupied during the construction of a permanent single-family dwelling in an R-AG District shall be issued for a period of two years, renewable for a period of one year, upon application to the Town Board. The mobile home must then be removed. **[Amended 9-13-1995 by L.L. No. 3-1995]**

§ 94-6. Existing mobile homes. [Amended 6-9-2005 by L.L. No. 2-2005]

The licensing provisions of this chapter shall not apply to a legally existing mobile home which was lawfully located on any land in the Town of Concord as a legal and permitted land use prior to the effective date of September 15, 1995.

§ 94-7. Licensing procedures for new mobile home courts.

- A. The original application for a mobile home court license shall be filed with the Town Clerk. Such application shall be accompanied by or contain the following: **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (1) Ten copies of an appropriate mobile home court site plan as hereinafter provided, drawn to scale, prepared under the seal of a professional engineer or land surveyor duly licensed by the State of New York.
 - (2) A certificate or certificates attesting that such site plan has been duly approved by the Erie County Health Department.
 - (3) A certificate of zoning compliance issued by the Code Enforcement Officer pursuant to Chapter 150, Zoning.
 - (4) Ten copies of all other information and documents required to establish compliance with §§ 94-10 and 94-13 of this chapter.
 - (5) Ten copies of the uniform terms of lease form and uniform court rules and regulations proposed for utilization in the rental, use, occupancy and operation of the mobile home court, as hereinafter provided.
 - (6) The appropriate filing fee.
- B. One copy of the application with all the supporting documents shall be distributed by the Town Clerk to the Planning Board for study and recommendations and also to the Town Assessor, the Code Enforcement Officer and the Town Superintendent of Highways. Upon receipt of the original application and the proper filing fee, as established by the Town Board, and upon completion of its review, the Planning Board shall, in turn, refer the application to the Town Board. Following the recommendation of the Planning Board to the Town Board, the Town Board may approve the plan as filed or modified. **[Amended 9-13-1995 by L.L. No. 3-1995]**
- C. The Town Clerk shall thereafter issue a license to the applicant for such mobile home court upon completion of the plan as finally filed and the granting of a certificate of completion by the Code Enforcement Officer as hereinafter provided.

§ 94-8. License terms, transfers and renewals. [Amended 9-13-1995 by L.L. No. 3-1995; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- A. All mobile home court licenses shall expire on the 31st day of May following the date of issuance but may be renewed, subject to the provisions of this chapter, for additional periods of one year each. If the initial license does not coincide with the June 1 date, the fee for such initial license shall be prorated.
- B. A mobile home court license shall not be transferred without approval of the Town Board.
- C. Application for a license renewal shall be filed with the Town Clerk by April 30 preceding the license expiration, who shall issue, after inspection by the Code Enforcement Officer and approval of the Town Board, such renewal license for the prescribed fee subject to the provisions of § 94-14D of this chapter.

§ 94-9. General application and variance.

Unless otherwise provided in this chapter, the standards, rules and regulations herein provided shall apply to the establishment, maintenance and operation of all mobile home courts, to all original applications for a mobile home court license, to all applications for renewal of a mobile home court license and to all applications for any transfer thereof. No exceptions shall be granted by the Town Board except upon finding that because of the unusual circumstances of the shape of the premises, the topography of the premises or other existing conditions, an extraordinary hardship would result from strict compliance therewith, in which event the Board may vary the applicability thereof so that substantial justice is done and the public interest served. No variance shall be granted that permits or requires less than substantial compliance with the provisions of this chapter or which shall have the effect of nullifying the intent or purpose thereof or of the requirements of any applicable state, county or Town agency or of Chapter 150, Zoning.

§ 94-10. Design standards, utilities and refuse disposal.

- A. Mobile home court site plan. A mobile home court site plan shall cover a single tract or parcel of land containing not less than 20 contiguous acres in area and shall show or otherwise document:
 - (1) The location, boundaries, dimensions and topography of the tract of land proposed to be used for the mobile home court.
 - (2) The number, location and size of all spaces designated or reserved for independent mobile home units to be licensed thereunder and all service outlets and connections therefor.
 - (3) The location of each mobile home stand within each mobile home unit to be licensed thereunder.
 - (4) The boundaries of and facilities to be included in all recreation areas.
 - (5) The location, site and electric lighting plan for all roads, walks and outdoor areas.

- (6) The location of all service buildings and all other proposed structures.
 - (7) The location, type and capacity of water supply, distribution and storage, sewage treatment and disposal and stormwater drainage facilities to be provided.
 - (8) Plans and specifications for all service buildings and other improvements to be constructed within the mobile home court, as required for the building permit.
 - (9) Suitable plans and specifications shall be furnished for landscaping to be performed within and around all areas of the mobile home court.
 - (10) The location proposed for the storage of any and all unoccupied mobile homes and the exact dimensions thereof, including a statement certifying as to the maximum number of mobile homes to be stored or parked therein at any given time.
 - (11) Such other information, in such detail, as may be reasonably required by Town or other lawful reviewing authorities.
- B. Mobile home court design standards. Each mobile home court unit containing a single-width mobile home shown on said plan shall be at least 60 feet wide and contain in area a minimum of 6,000 square feet. Each mobile home unit containing a double-width mobile home shown on said plan shall contain in area a minimum of 7,800 square feet. Each mobile home unit shall abut on a court street with access to a public highway.
- (1) Each unit shall be clearly defined, and mobile homes shall be parked or otherwise located within the area of such unit so that no mobile home shall be:
 - (a) Less than 20 feet from any other mobile home.
 - (b) Less than 10 feet from any sideline of any mobile home court unit.
 - (c) Less than 55 feet from edge of any public right-of-way. The Planning Board of the Town may, however, for stated reasons, recommend a greater setback as approved by the Town Board, which area shall not be used for accessory uses or for recreation or vehicular parking. If such setback area is part of the mobile home court premises, such setback area shall be satisfactorily landscaped as shown on the mobile home court site plan and maintained in a mowed condition.
 - (d) Less than 25 feet from any property line or property abutting the mobile home court site.
 - (e) Less than 15 feet from any court street.
 - (f) Less than 15 feet from the rear line of any mobile home court unit.
 - (2) Each access between a public right-of-way and a mobile home court shall be not less than 70 feet in width at the public right-of-way (see Exhibit A).²

2. Editor's Note: Exhibit A is on file in the Town Clerk's office.

- (3) Suitable vehicular access shall be provided to each mobile home court unit. Each court street shall be well marked and continuous and shall connect with a street or highway at a ninety-degree angle, and at least a twenty-foot width shall be improved and maintained with an all-weather hard surface on a suitable base. All court streets shall be illuminated as per standards required for residential subdivisions in the Town. The maintenance of all court streets and snow removal therefrom shall be the responsibility of the mobile home court owner.
 - (4) The mobile home court owner shall provide a driveway for each mobile home unit. Each driveway shall connect to a court street. The driveway shall not be less than eight feet in width and shall be improved and maintained with an all-weather hard surface on a suitable base, shall provide for two cars and shall be of a design as approved by the Planning Board.
 - (5) An area or areas restricted to recreational uses shall be provided and maintained by the court owner in each mobile home court. A minimum of 500 square feet per mobile home court unit shall be made available in one or more places within the court for this use, provided that at least one such area restricted to recreational usage shall not be less than 1/2 acre in area. The Planning Board of the Town may require suitable fencing and landscaping of such area for screening purposes.
- C. Utilities in mobile home parks.
- (1) No mobile home court license shall be issued unless and until the water system thereof is connected to and serviced by a water supply and distribution system approved by the Erie County Health Department and until the water system, sewer system and all utilities of the mobile home court have been connected and completed to each mobile home stand and to each building. This requirement may be met through a phased development plan that has been approved as such by the Erie County Health Department and the Town Board. Drinking water facilities shall not be placed in any toilet room or water closet compartment.
 - (2) All plumbing in a mobile home court shall be constructed and maintained in accordance with standards approved by the Erie County Health Department and with all applicable state and local laws and regulations.
 - (3) All waste from showers, tubs, toilets, laundries, faucets, sinks and lavatories shall be washed into a public sewer system or a private sanitary disposal system whose design, capacity, construction, operation and use are approved by the Erie County Health Department.
 - (4) An electrical outlet shall be provided for each mobile home stand. The installation of said outlet shall comply with standards approved by the American Insurance Association or its successors and with all applicable state, county and Town laws and regulations. The use of coal or coke for heating, lighting or cooking shall be prohibited in all mobile homes and in any service building.
- D. Refuse disposal in mobile home courts. The storage, collection and disposal of refuse in a mobile home court shall be so managed as to create no health or accident hazards, rodent harborage, insect breeding areas or pollution of air or water.

§ 94-11. Fire protection.

Each mobile home court shall be subject to the fire prevention rules and regulations applicable to the Town of Concord.

§ 94-12. Management of mobile home courts.

- A. Each mobile home court owner or operator shall maintain a register containing a permanent written record of all mobile homes and occupants using the mobile home court, which shall be made available to any authorized person inspecting the mobile home court, be preserved for a period required by the Code Enforcement Officer and contain the following:
- (1) The names and addresses of all mobile home occupants residing in the court.
 - (2) The make, model and license number and the name and address of the owner of each motor vehicle registered to or operated by an occupant in the court, if available.
 - (3) The manufacturer's serial number, model designation, name of the manufacturer, date of manufacture and the New York State seal serial number of each mobile home parked in the court and the name and address of the owner, if available.
 - (4) The dates of arrival of each mobile home owner.
- B. In every mobile home court there shall at all times be a building in which shall be located the office of the operator or persons in charge of said court. A mobile home may be approved by the Town Board to serve as said office instead of a separate building but must be conspicuously identified as the office. A copy of the mobile home court license and a copy of this chapter and all subsequent amendments thereto, as may be made from time to time, shall be posted in said office.
- C. It shall be the duty of every attendant or person in charge, together with the owner or licensee, to:
- (1) Keep the court register.
 - (2) Maintain the court in a clean, orderly and sanitary condition at all times.
 - (3) Comply with and make such inspections as may be necessary to ensure that there are no violations of this chapter and be liable for and pay to the Town Clerk any mobile home court occupancy fees as may now or hereafter be required by law.

§ 94-13. Supplemental regulations.

- A. The living or storage space of any mobile home licensed hereunder or located in a duly licensed mobile home court shall not be increased without first obtaining a permit from the Code Enforcement Officer. Unless prohibited by the owner or operator of the mobile home court, the following temporary appurtenances may be permitted within a mobile home court unit: a freestanding, completely enclosed storage shed not to exceed the dimensions of 10 feet wide, 10 feet long and 10 feet from the ground level in

height; awnings or canopies attached to mobile homes; and screened or open patios and a seasonal storm shelter, provided that no storage is afforded in such shelter or patio. Any permit for the aforesaid appurtenances shall be approved by the Town Board. None of the aforesaid appurtenances shall be located closer than 10 feet from any mobile home court unit line.

- B. No occupied mobile home shall be located in a mobile home court in any area other than upon a mobile home court unit.
- C. Mobile home courts shall at all times be maintained in a clean and sanitary manner in accordance with the provisions of this chapter and with any other requirements imposed as a condition of granting a license or any renewal thereof. Nothing in this chapter shall be construed to abrogate any of the provisions of the public health rules and regulations of the Erie County Health Department or of the public health laws of the State of New York. In the event of inconsistencies existing between the provisions of this chapter and said county or state code or law, said code or law shall govern.
- D. A licensed mobile home court may not be altered, extended or otherwise changed and the number of mobile home units for which a certificate of completion has been issued may not be altered, extended or otherwise changed without the approval of the Town Board pursuant to the filing and approval of an amended site plan covering such alterations, extensions or other changes.
- E. Each mobile home shall be secured to its mobile home stand by properly installed tie-downs.
- F. Each mobile home shall be fully skirted on all sides with a material similar in appearance to the home it skirts.
- G. The owner or operator of each mobile home court shall establish uniform court rules and regulations and uniform lease forms in the rental, use, occupancy and operation of the mobile home court, true and complete copies of which and all amendments thereto shall be filed with the Town Board and be subject to Town Board approval. A copy of the court rules and regulations and all amendments thereto, as approved by the Town Board, shall be posted in the court office.

§ 94-14. Inspections; certificate of occupancy; revocation of license.

- A. Before a mobile home court commences operation, the Code Enforcement Officer shall make an inspection of the premises to determine that the site plan has been completed and that all of the requirements of this chapter have been complied with before he or she grants and issues a certificate of completion.
- B. No mobile home in a mobile home court shall be occupied except upon the prior inspection of the Code Enforcement Officer and issuance of a certificate of occupancy. A certificate of occupancy shall not be issued until the mobile home has been properly placed on a mobile home unit with all service connections and utilities completed.
- C. The Code Enforcement Officer shall inspect all licensed mobile home courts as often as may be necessary and also upon the filing of any applications for a transfer of license.

A renewal or transfer of license shall not be issued until all violations found to exist have been remedied.

- D. If the Code Enforcement Officer shall find upon any inspection that a mobile home court is not being maintained in a clean, orderly and sanitary condition or that such mobile home court is not being operated in accordance with the provisions of this chapter or is being operated in violation thereof, the Code Enforcement Officer shall serve upon the licensee or the licensee's agent or employee an order, in writing, directing that the condition or conditions therein specified be remedied within 10 days after service of such order. A failure to remedy such condition or conditions within a ten-day period shall constitute a violation of this chapter. Each week's continued violation shall be deemed and constitute a separate and additional violation of this chapter and shall be punishable hereunder.
- E. The Town Board may, after notice and proper hearing, revoke a mobile home court license or any other certificate, license or permit issued pursuant to the terms of this chapter for a violation of any of the provisions hereof. Upon any such revocation, the premises affected shall forthwith cease to be used for the purpose of a mobile home court or site for a mobile home, as the case may be, and all mobile homes covered thereby shall forthwith be removed.

§ 94-15. Penalties for offenses.

- A. No person may interfere, obstruct or hinder the Code Enforcement Officer or any other authorized person proceeding in the discharge of his or her duties with respect to or in the enforcement of the provisions of this chapter.
- B. Failure to comply with any of the provisions of this chapter is hereby declared to be an offense. Every person convicted of an offense for a violation of any of the provisions of this chapter shall be punishable by a fine of not more than \$250 or by imprisonment for not more than 15 days, or by both such fine and imprisonment. **[Amended 9-13-1995 by L.L. No. 3-1995]**
- C. The prosecution or conviction for any violation of a provision of this chapter or the imposition of any fine or term of imprisonment shall not excuse such violation or permit the same to continue unremedied or prevent the revocation of any license, certificate or permit issued pursuant to this chapter.
- D. In addition to other remedies, the Town of Concord may institute any appropriate action or proceeding, legal or equitable, as may now or hereafter be provided or authorized by law to enforce this chapter or prevent or restrain a violation thereof.

§ 94-16. Administration, enforcement and fees.

- A. Unless otherwise provided by action of the Town Board, the Code Enforcement Officer of the Town of Concord shall be the enforcement officer of this chapter. It shall be the duty and responsibility of the Code Enforcement Officer to perform all tasks assigned to the enforcement officer by the provisions of this chapter.

- B. The Town Clerk shall collect, record and turn over to the appropriate Town officers all moneys received for license applications, renewals or transfers thereof, permits, occupancy fees and other certifications as provided for in this chapter or required by the Town Board.
- C. Fees for licenses, applications, renewals, transfers, permits and such other authorizations by the Town as provided for in this chapter or in any subsequent amendments thereto shall be established by the Town Board as to type and amount.

Chapter 101
(RESERVED)

[Former Ch. 101, Parks and Recreation Areas, as adopted 5-10-1993 by L.L. No. 1-1993, as amended 9-13-1995 by L.L. No. 3-1995 and 6-9-2005 by L.L. No. 2-2005, was repealed 4-8-2010 by L.L. No. 1-2010.]

Chapter 103

PEDDLING AND SOLICITING

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| § 103-1. Definitions. | § 103-6. Exhibition of licenses. |
| § 103-2. Permit and license required. | § 103-7. Enforcement. |
| § 103-3. Application for permit and license; fee. | § 103-8. Exemptions. |
| § 103-4. Investigation; issuance of permit and license. | § 103-9. Revocation of permits and licenses; hearing. |
| § 103-5. License fee; duration. | § 103-10. Hours. |
| | § 103-11. Penalties for offenses. |

[HISTORY: Adopted by the Town Board of the Town of Concord 9-13-1995 by L.L. No. 3-1995. Amendments noted where applicable.]

§ 103-1. Definitions.

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

FOOD VENDOR — Any person who sells to the public any food product.

ICE CREAM VENDOR — Any person who sells to the public any ice cream product.

ITINERANT VENDOR, ITINERANT MERCHANT or TRANSIENT MERCHANT — Any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the Town or not, who or which engages in a temporary or transient business, either in one location or traveling from place to place, selling and delivering goods, wares and merchandise within the Town of Concord and who or which, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, boat, public room in a hotel, lodging house, apartment or shop or any street, alley or other place within the Town for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm or corporation who or which, while occupying such temporary location, does not sell from stock but exhibits samples only for the purpose of securing orders for future delivery only. Said person, firm or corporation shall not be relieved from complying with this chapter merely by associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer. Food vendors and ice cream vendors, as hereinbefore defined, shall be considered as "itinerant vendors, itinerant merchants or transient merchants" for purposes of this chapter.

LICENSE — That which allows an individual and/or his or her employees to operate said business as identified by the permit.

PERMIT — That which identifies the business and allows it to exist.

RESIDENTIAL NEIGHBORHOOD — Any area made up predominantly of one- and two-family residences or apartment complexes and condominium complexes.

SOLICITOR or CANVASSER — Any individual, not a resident of the Town of Concord, traveling either by wagon, automobile, motor truck or any other type of conveyance from place to place, from house to house or from street to street soliciting for money.

TEMPORARY OR TRANSIENT BUSINESS — Any exhibition and sale of goods, wares and/or merchandise which is carried on in any building, structure, motor vehicle, tent, railroad boxcar, boat, public room in a hotel, lodging house, apartment or shop or any alley or street, unless said business shall be open for business during usual business hours for a period of at least 10 months of the year. **[Amended 6-9-2005 by L.L. No. 2-2005]**

§ 103-2. Permit and license required.

It shall be unlawful for a transient merchant, itinerant merchant, itinerant vendor, food vendor, ice cream vendor, solicitor, canvasser or permanent merchant selling away from his or her established place of business, as defined in § 103-1 of this chapter, to engage in any such business within the Town of Concord without first obtaining a permit and license therefor in compliance with the provisions of this chapter.

§ 103-3. Application for permit and license; fee.

- A. Any person, firm or corporation applying for a permit and license under this chapter shall make application under oath to the Town of Concord Clerk in writing or on a form to be furnished by the Clerk, which application shall contain the following information:
- (1) The name and description of the applicant.
 - (2) The permanent home address and full local address of the applicant.
 - (3) A brief description of the nature of the business and goods to be sold or a brief description of the purpose or use for the moneys to be solicited.
 - (4) If employed, the name and address of the employer, together with the credentials establishing the exact relationship.
 - (5) The length of time for which the right to do business or solicit is desired.
 - (6) The place where the goods or property proposed to be sold or orders taken for the sale thereof is manufactured or produced, where such goods or products are located at the time said application is filed and the proposed method of delivery.
 - (7) A statement as to whether or not the applicant or each and every employee or person to be engaged in said business has been convicted of a crime, felony, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment assessed.
 - (8) A state tax registration number.
 - (9) Any other federal, state or local license or approval that is required for the applicant's business.
- B. Fees. **[Amended 6-9-2005 by L.L. No. 2-2005]**

- (1) There shall be an application fee as set by the Town Board from time to time to cover the costs of an investigation of the facts therein.
- (2) An additional fee as set by the Town Board from time to time shall be paid for each and every employee or person who will be engaged in said business of the applicant.

§ 103-4. Investigation; issuance of permit and license.

- A. Upon receipt of such application, the Code Enforcement Officer shall cause such investigation of the applicant's business and moral character to be made as the Code Enforcement Officer deems necessary for the protection of the public good.
- B. If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Code Enforcement Officer shall endorse on such application his or her disapproval and his or her reasons for the same and shall notify the applicant that the application is disapproved and that no permit and license will be issued.
- C. If, as a result of such investigation, the character or business responsibility of one or more of the applicant's employees or persons to be engaged in said business is found to be unsatisfactory, the Code Enforcement Officer shall so inform the applicant. The applicant may then either delete said person or persons from the application or submit an amended application listing other persons to be employees or persons engaged in said business. The Code Enforcement Officer shall then cause such inspection of the new persons listed as the Code Enforcement Officer deems necessary. The applicant shall only pay such fees as are necessary for the additional investigation [in an amount as set by the Town Board from time to time, for each new person listed] pursuant to § 103-3B(2). **[Amended 6-9-2005 by L.L. No. 2-2005]**
- D. If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Code Enforcement Officer shall endorse on the application his or her approval, execute a permit addressed to the applicant for the carrying on of the business applied for and shall, upon payment of the described license fee, deliver to the applicant the permit and issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of the licensee, the class of license issued and the kinds of good to be sold thereunder, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such business. The Code Enforcement Officer shall keep a permanent record of all licenses issued.

§ 103-5. License fee; duration.

- A. The permit/license fee which shall be charged by the Code Enforcement Officer for such license shall be as set by the Town Board from time to time. **[Amended 6-9-2005 by L.L. No. 2-2005]**
- B. Each such license, no matter when issued, shall be valid for a one-year period beginning on March 1 and expiring on the last day of February.

- C. The permit/license fee shall be reduced to an amount as set by the Town Board from time to time for each license issued after October 1, but the application fee shall remain the same. **[Amended 6-9-2005 by L.L. No. 2-2005]**

§ 103-6. Exhibition of licenses.

Any person licensed under this chapter is required to exhibit his or her license at all times.

§ 103-7. Enforcement.

It shall be the duty of the Code Enforcement Officer of the Town of Concord to require any person seen doing business as a transient merchant, itinerant merchant, itinerant vendor, food vendor, ice cream vendor, solicitor or canvasser and who is not known by such officer to be duly licensed to produce his or her license, and it shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter against any person found to be violating the same.

§ 103-8. Exemptions.

The following shall be exempt from the provisions of this chapter:

- A. Any person delivering newspapers, fuel, dairy products, vegetables or bakery goods to regular customers on established routes.
- B. Any person selling goods to retail or wholesale stores for resale.
- C. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- D. Any incorporated agricultural society during the continuance of any annual fair held by such society.
- E. Any general sale, fair, auction or bazaar held or sponsored by a local ecclesiastical society or church corporation.
- F. Any local charitable organization, local veterans organization or local service organization conducting such business by its own membership or in conjunction with other similar organizations.
- G. Any general sale conducted by local students with prior authorization of the Concord Town Board.
- H. Any tag sales or garage sales on local premises devoted to residential use or nonprofit organization.
- I. Any local charitable organizations, local ecclesiastical societies or church corporations, local veterans organizations, local service organizations and other similar local organizations soliciting or canvassing door-to-door for contributions.
- J. Any person selling produce grown by that person on his or her premises.

- K. Any permanent merchant selling the same goods in front of his or her established place of business, provided that said permanent merchant complies with all other state statutes and Town ordinances, i.e., sidewalk sales.
- L. Any person selling agricultural goods at a regularly scheduled farmers market.
- M. Any person engaged in the delivery of goods, wares or merchandise or other articles or things, in the regular course of business, to the premises of persons who had previously ordered the same or were entitled to receive the same by reason of a prior agreement.

§ 103-9. Revocation of permits and licenses; hearing.

- A. Permits and licenses issued under the provisions of chapter may be revoked by the Town of Concord for any of the following causes:
 - (1) Fraud, misrepresentation or false statement contained in the application for license.
 - (2) Fraud, misrepresentation or false statement made in the course of carrying on said business.
 - (3) Any violation of this chapter.
 - (4) Conviction of any crime or misdemeanor involving moral turpitude.
 - (5) Conducting said business in an unlawful manner or in such manner as to constitute a breach of the peace or constitute a menace to the health, safety or general welfare of the public.
- B. Upon a written complaint's being filed with the Code Enforcement Officer alleging any of the items listed in Subsection A(1) through (5) above, the Town Board shall hold a hearing within 14 days to determine if said permit and license shall be revoked. The Town Board shall notify the individual, at least 48 hours prior to the hearing date, of the time and place set for the hearing, such notice to be sent to the address given by the individual on his or her application or to be served personally on the individual, appraising the individual of the charges against him or her.

§ 103-10. Hours.

- A. No food vendor, ice cream vendor, itinerant vendor, itinerant merchant, transient merchant, solicitor or canvasser as defined in § 103-1 shall solicit, canvass or sell door-to-door in a residential neighborhood within the Town of Concord before the hour of 9:00 a.m. or after the hour of 7:00 p.m. daylight saving time (DST) or after the hour of 5:00 p.m. Eastern standard time (EST), whichever is applicable.
- B. No food vendor, itinerant vendor, itinerant merchant, transient merchant, solicitor or canvasser shall sell or attempt to sell, solicit or canvass from any vehicle in a residential neighborhood before the hour of 9:00 a.m. or after the hour of 7:00 p.m. daylight saving time (DST) or after the hour of 5:00 p.m. Eastern standard time (EST), whichever is applicable.

- C. No ice cream vendor shall sell or attempt to sell from any vehicle in a residential neighborhood before the hour of 9:00 a.m. or after the hour of 9:00 p.m.
- D. No food vendor, ice cream vendor, itinerant vendor, itinerant merchant, transient merchant, solicitor or canvasser shall sell, attempt to sell, solicit or canvass in any nonresidential area of the Town at such time as would cause public annoyance or disturbance of residents within their homes.
- E. Upon complaint being received by the Code Enforcement Officer of a violation of Subsections A through D above, said vendor, after an investigation of said complaint, if a violation is found, shall be issued a warning. Upon the receipt of three such warnings within the license period, a hearing shall be held in accordance with the provisions of § 103-9B of this chapter.
- F. Upon a finding that the violations did occur, the Town Board may revoke said license.

§ 103-11. Penalties for offenses.

Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine not to exceed \$250 for each violation deemed a separate offense or by imprisonment not to exceed 15 days, or by both such fine and imprisonment.

Chapter 106

RECORDS

ARTICLE I Public Access

- § 106-1. Purpose and scope.
- § 106-2. Designation of Records Access Officer.
- § 106-3. Location.
- § 106-4. Hours for public inspection.
- § 106-5. Requests for public access to records.
- § 106-6. Subject matter list.

- § 106-7. Denial of access to records.
- § 106-8. Fees.
- § 106-9. Public notice.
- § 106-10. Severability.

ARTICLE II Records Retention

- § 106-11. Schedule.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Public Access

[Adopted 11-4-1974; amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

§ 106-1. Purpose and scope.

- A. The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy of confidentiality.
- B. These regulations provide information concerning the procedures by which records may be obtained.
- C. Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.
- D. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

§ 106-2. Designation of Records Access Officer.

- A. The Town of Concord is responsible for insuring compliance with the regulations herein, and designates the following person as records access officer: Town Clerk 86 Franklin Street, PO Box 368 Springville, NY 14141, Phone: (716) 592-4948.

- B. The Records Access Officer is responsible for insuring appropriate agency response to public requests for access to records. The designation of a records access officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so. The Records Access Officer shall insure that agency personnel:
- (1) Maintain an up-to-date subject matter list.
 - (2) Assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records.
 - (3) Contact persons seeking records when a request is voluminous or when locating the records involves substantial effort, so that personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of records requested.
 - (4) Upon locating the records, take one of the following actions:
 - (a) Make records available for inspection; or
 - (b) Deny access to the records in whole or in part and explain in writing the reasons therefor.
 - (5) Upon request for copies of records:
 - (a) Make a copy available upon payment or offer to pay established fees, if any, in accordance with § 106-8; or
 - (b) Permit the requester to copy those records.
 - (6) Upon request, certify that a record is a true copy; and
 - (7) Upon failure to locate records, certify that:
 - (a) Town of Concord is not the custodian for such records; or
 - (b) The records of which Town of Concord is a custodian cannot be found after diligent search.

§ 106-3. Location.

Records shall be available for public inspection and copying at: Town Clerk 86 Franklin Street Springville, New York 14141, Phone: (716) 592-4948.

§ 106-4. Hours for public inspection.

Requests for public access to records shall be accepted and records produced during all hours regularly open for business.

§ 106-5. Requests for public access to records.

- A. A written request may be required, but oral requests may be accepted when records are readily available.
- B. If records are maintained on the internet, the requester shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.
- C. A response shall be given within five business days of receipt of a request by:
 - (1) Informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;
 - (2) Granting or denying access to records in whole or in part;
 - (3) Acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than 20 business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within 20 business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or
 - (4) If the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within 20 business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within 20 business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.
- D. In determining a reasonable time for granting or denying a request under the circumstances of a request, personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.
- E. A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an officer or employee:
 - (1) Fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five business days of the receipt of a request;
 - (2) Acknowledges the receipt of a request within five business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;

- (3) Furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;
- (4) Fails to respond to a request within a reasonable time after the approximate date given or within 20 business days after the date of the acknowledgment of the receipt of a request;
- (5) Determines to grant a request in whole or in part within 20 business days of the acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;
- (6) Does not grant a request in whole or in part within 20 business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part; or
- (7) Responds to a request, stating that more than 20 business days are needed to grant or deny the request in whole or in part and provides a date certain within which that will be accomplished, but such date is unreasonable under the circumstances of the request.

§ 106-6. Subject matter list.

- A. The Records Access Officer shall maintain a reasonably detailed current list by subject matter of all records in its possession, whether or not records are available pursuant to Subdivision 2 of § 87 of the Public Officers Law.
- B. The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.
- C. The subject matter list shall be updated annually. The most recent update shall appear on the first page of the subject matter list.

§ 106-7. Denial of access to records.

- A. Denial of access to records shall be in writing stating the reason therefor and advising the requester of the right to appeal to the individual or body established to determine appeals, who or which shall be identified by name, title, business address and business phone number.
- B. If requested records are not provided promptly, as required in § 106-5 of this chapter, such failure shall also be deemed a denial of access.
- C. The following person or persons or body shall determine appeals regarding denial of access to records under the Freedom of Information Law: Town Clerk 86 Franklin Street, PO Box 368 Springville, NY 14141, Phone: (716) 592-4948.
- D. Any person denied access to records may appeal within 30 days of a denial.

- E. The time for deciding an appeal by the individual or body designated to determine appeals shall commence upon receipt of a written appeal identifying:
- (1) The date and location of requests for records;
 - (2) A description, to the extent possible, of the records that were denied; and
 - (3) The name and return address of the person denied access.
- F. A failure to determine an appeal within 10 business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.
- G. The person or body designated to determine appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to: Committee on Open Government Department of State One Commerce Plaza 99 Washington Avenue, Suite 650 Albany, NY 12231.
- H. The person or body designated to determine appeals shall inform the appellant and the Committee on Open Government of its determination in writing within 10 business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth in Subsection G of this section.

§ 106-8. Fees.

- A. There shall be no fee charged for:
- (1) Inspection of records;
 - (2) Search for records; or
 - (3) Any certification pursuant to this part.
- B. Copies may be provided without charging a fee.
- C. Fees for copies may be charged, provided that:
- (1) The fee for copying records shall not exceed 25 cents per page for photocopies not exceeding 9 by 14 inches. This section shall not be construed to mandate the raising of fees where agencies or municipalities in the past have charged less than 25 cents for such copies;
 - (2) The fee for photocopies of records in excess of 9 by 14 inches shall not exceed the actual cost of reproduction; or
 - (3) An agency has the authority to redact portions of a paper record and does so prior to disclosure of the record by making a photocopy from which the proper redactions are made.
- D. The fee an agency may charge for a copy of any other record is based on the actual cost of reproduction and may include only the following:

- (1) An amount equal to the hourly salary attributed to the lowest paid employee who has the necessary skill required to prepare a copy of the requested record, but only when more than two hours of the employee's time is necessary to do so; and
 - (2) The actual cost of the storage devices or media provided to the person making the request in complying with such request; or
 - (3) The actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, and if such service is used to prepare the copy.
- E. When an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, or when doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the agency shall be required to retrieve or extract such record or data electronically. In such case, the agency may charge a fee in accordance with Subsection D(1) and (2) above.
- F. An agency shall inform a person requesting a record of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.
- G. An agency may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.
- H. An agency may waive a fee in whole or in part when making copies of records available.

§ 106-9. Public notice.

A notice containing the title or name and business address of the Records Access Officers and appeals person or body and the location where records can be seen or copies shall be posted in a conspicuous location wherever records are kept and/or published in a local newspaper of general circulation.

§ 106-10. Severability.

If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this article or the application thereof to other persons and circumstances.

ARTICLE II

Records Retention

[Adopted 12-8-1980; amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

§ 106-11. Schedule.

The Town passed a resolution to adopt the retention and disposition schedule for New York Local Government Records. ¹²

1. Editor's Note: Resolution No. 9 passed on September 10, 2020.

2. Former Article III, Data File Requests, adopted 12-29-1993 by L.L. No. 3-1993, of the 2005 Code, which immediately followed this section, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Chapter 109
RECYCLING

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| <p>§ 109-1. Title.</p> <p>§ 109-2. Purpose; establishment of recycling.</p> <p>§ 109-3. Definitions.</p> <p>§ 109-4. Duties of owners and occupants.</p> <p>§ 109-5. Source separation of recyclable materials.</p> <p>§ 109-6. Collection of recyclable materials placed at curbside.</p> | <p>§ 109-7. Authorized collectors; license required.</p> <p>§ 109-8. Approval, denial, suspension or revocation of license; noncompliance.</p> <p>§ 109-9. Enforcement, inspections and appearance tickets.</p> <p>§ 109-10. Penalties for offenses.</p> |
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[HISTORY: Adopted by the Town Board of the Town of Concord 8-10-1992 by L.L. No. 1-1992. Amendments noted where applicable.]

§ 109-1. Title.

This chapter shall be known as the "Mandatory Recycling Law" of the Town of Concord.

§ 109-2. Purpose; establishment of recycling.

- A. The reduction, reuse and recycling of solid waste are important public concerns and will aid in the protection and preservation of the environment.
- B. The Solid Waste Management Act of 1988 mandates passage of a source-separation ordinance or law to be passed by each local municipality within New York State by September 1, 1992, to require that solid waste which has been left for collection or which is delivered by the generator of such waste to a solid waste management facility shall be separated into recyclable, reusable or other components for which economic markets for alternate uses exist.
- C. The Town of Concord establishes mandatory recycling within this municipality, effective on September 1, 1992.

§ 109-3. Definitions.

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

AUTHORIZED COLLECTOR — A person, individual, partnership or corporation or employer or agent thereof authorized by contract or license with the municipality to collect solid waste from residential, commercial and institutional properties, as herein defined, under the terms and conditions of this chapter.

BULKIES — Large items such as sofas, upholstered chairs, mattresses and box springs, but excluding large appliances (white goods) such as refrigerators, stoves, dishwashers, washers, dryers, etc., which are considered recyclable.

COLLECTOR — The person, firm, agency or public body or employee or agent thereof who or which is engaged in the collection and/or transportation of solid waste.

COMMERCIAL OPERATIONS — All properties used for industrial or commercial purposes, including but not limited to retail and wholesale establishments, apartments with four or more units, trailer courts, offices, garages, gas stations, manufacturing and repair establishments, banks, motels, restaurants and other similar and related facilities.

CONTAINER — A can, bin, box, bag or other unit used for storage of recyclable materials.

FACILITY — Any solid waste management-resource recovery facility employed beyond the initial solid waste collection process which is to be used, occupied or employed for or is incidental to the receiving, transporting, storage or processing or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom, including recycling centers, transfer stations, processing systems, resource recovery facilities, sanitary landfills, plants and facilities for composting or landspreading of solid wastes, secure land burial facilities, reprocessing and recycling facilities, surface impoundments and waste oil storage, incinerators and other solid waste disposal, reduction or conversion facilities.

HAZARDOUS WASTE — Solid waste that is especially harmful or potentially harmful to public health. This shall include, but not be limited to, explosives, toxic materials and medical waste. For purposes of this chapter, "hazardous waste" does not include small quantities of such waste available on a retail basis to the homeowner (e.g., aerosol cans, pesticides, fertilizers, etc.).

INSTITUTION — An organization or establishment devoted to the promotion of a particular object or cause, including schools, nursing homes and retirement homes, health facilities, governmental facilities, libraries, fire halls, etc.

MUNICIPAL SOLID WASTE (MSW) — All putrescible and nonputrescible materials, including garbage, refuse and other discarded solid materials, including but not limited to solid waste materials resulting from industrial, commercial and agricultural operations and from community activities. Liquids, semisolids and contained gaseous materials are hereby defined as "solid waste." It shall not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. In addition, it shall not include hazardous waste.

PERSON — Any individual, firm, partnership, association, corporation, institution or other entity.

PRIVATE COLLECTOR — A person, firm, corporation or legal entity providing for the collection of MSW and/or recyclable materials. To operate in the Town of Concord, the private collector shall be required to obtain a license from the Town and shall be subject to the rules and regulations of the Town.

PRIVATE SUBSCRIPTION — The collection of MSW and recyclable materials where the resident contracts directly with the private collector of the subscriber's choice.

RECYCLABLE MATERIALS — Those materials specified by the municipality for separate collection in accordance with recycling regulations. The below materials will be reviewed quarterly and will be modified as the need arises by the Town of Concord Consulting Engineer or other designated person. Such materials may include, but are not limited to:

- A. **ALUMINUM** — Aluminum products and containers fabricated primarily of aluminum and commonly used for soda, beer, beverages or other food or drink.
- B. **METAL CANS** — Containers fabricated primarily of steel and tin or bimetal cans of steel, tin and/or aluminum, but not including aluminum cans.
- C. **GLASS FOOD AND BEVERAGE CONTAINERS** — New and used glass food and beverage containers which have been rinsed and are free of food contamination, including clear (flint), green and brown (amber) colored glass bottles and jars. "Glass" shall not include ceramics, plate glass, auto glass, Pyrex, leaded glass, mirrored glass or flat glass.
- D. **PLASTIC FOOD AND BEVERAGE CONTAINERS** — Includes high-density polyethylene (HDPE) and polyethylene terephthalate (PET), designated respectively as No. 2 and No. 1 on the recycling code located on the containers.
- E. **NEWSPRINT** — Common, inexpensive machine-finished paper made chiefly from woodpulp and used for newspapers.
- F. **CORRUGATED** — Woodpulp-based material which is usually smooth on both sides with a corrugated center, commonly used for boxes, and excluding material with a wax coating.
- G. **HIGH-GRADE PAPER** — White and colored office bond, duplicating paper, computer paper and other high-quality paper.
- H. **MAGAZINES** — Magazines, glossy catalogs and other glossy paper.
- I. **LARGE APPLIANCES** — Stoves, refrigerators, dishwashers, dryers, washing machines, water heaters and other large appliances and scrap metal, but excluding air conditioners, microwaves and televisions.

RECYCLING — The separation, collection, processing, recovery and sale or reuse of metals, glass, paper, plastics and other materials which would otherwise be disposed of as solid waste.

RESIDENT — Any person residing within the Town of Concord on a temporary or permanent basis, but excluding persons residing in hotels or motels.

RESIDENTIAL PROPERTY — Properties used as dwellings, including buildings having up to four dwelling units in one building. Multiple-dwelling residential buildings containing more than four dwelling units, for purposes of this chapter, shall be treated as commercial properties.

SOLID WASTE MANAGEMENT — The purposeful, systematic control of the storage, collection, transportation, processing and disposal of solid waste.

SOURCE-SEPARATE — To separate the recyclable materials from the MSW stream at the point of waste generation.

WASTE GENERATOR — Any person or legal entity who or which produces waste requiring off-site disposal.

YARD WASTE — Organic yard and garden waste, leaves, grass clippings and brush.

§ 109-4. Duties of owners and occupants.

- A. No person shall permit any municipal solid waste to accumulate for a period of longer than seven days upon property owned or occupied by said person in the municipality.
- B. Owners and occupiers of residential property are hereby required to make accumulated municipal solid waste available for collection as scheduled under the terms hereof.
- C. Subsections A and B do not apply to owners, occupiers and tenants of farm property.
- D. All municipal solid waste accumulated on any residential property in the municipality shall be collected, conveyed and disposed of by a licensed private collector under private subscription and in accordance with the provisions of this chapter.
- E. All municipal solid waste accumulated on commercial and institutional properties shall be collected, conveyed and disposed of by authorized collectors licensed by the Town of Concord. In such a case where a commercial or institutional establishment contracts directly with a collector, the fee or payment shall be a matter of private agreement between the owners or occupiers and the collector. When approved by the municipality, owners of nonresidential properties may collect, convey and dispose of privately generated municipal solid waste by their own containers and/or trucks, provided that they comply with the provisions of this chapter applicable thereto and New York State Department of Environmental Conservation regulations.
- F. It shall be unlawful for any person to collect and dispose of any municipal solid waste within the Town of Concord except as provided in this chapter.

§ 109-5. Source separation of recyclable materials.

- A. Municipal solid waste generated or originated within the Town of Concord which has been left for collection or which is delivered by the generator of such waste to a facility shall be handled in the following manner:
 - (1) Prior to initial collection or transport, source separation shall be required of each and every person or party discarding municipal solid waste and/or recyclable materials.
 - (2) Recyclable materials shall not be commingled with other solid waste during collection, transportation or storage following collection.
- B. Collectors collecting residential, commercial and/or institutional MSW generated within the Town of Concord shall refuse to collect MSW from any person or party who or which has clearly failed to source-separate the recyclable materials and/or who or which has not properly prepared the recyclable materials to the specifications of the collector. A written explanation shall be provided to the person or party of the reason for the refusal of collection of the materials by the collector.

§ 109-6. Collection of recyclable materials placed at curbside.

- A. Only authorized collectors who are acting under authority of the Town of Concord shall collect, pick up, remove or cause to be collected, picked up or removed any solid waste recyclable materials so placed for collection; each such unauthorized collection, pickup or removal shall constitute a separate violation of this chapter; provided, however, that where the authorized collector has refused to collect certain recyclable materials because they have not been separated, placed or treated in accord with the provisions of this chapter, the person responsible for initially placing those materials for collection may and shall remove those materials from any curb, sidewalk or street side.
- B. Nothing herein shall prevent any person from making arrangements for the private collection, sale or donation of recyclable materials prior to placement at the curbside.

§ 109-7. Authorized collectors; license required.

- A. All authorized collectors must obtain a solid waste collection license from the Town of Concord. A fee for such license shall be set by the governing body on an annual basis, and all licenses shall be issued for the calendar year or such portion thereof. There shall be no reduction in the fee for a license issued after the beginning of any calendar year. **[Amended 6-9-2005 by L.L. No. 2-2005]**
- B. An authorized collector sticker shall be prominently displayed on each vehicle operated by or on behalf of the authorized collector.
- C. Authorized collector applications may be denied if the applicant or licensee has been adjudged or administratively determined to have committed one or more violations of this chapter during the preceding calendar year.
- D. All authorized collectors licensed by the Town of Concord shall indemnify and hold harmless the Town of Concord for any pending, threatened or actual claims, liability or expenses arising from waste disposal by the authorized collector in violation of this chapter.
- E. Authorized collectors shall offer collection services for all recyclable materials to all residential customers for whom they provide MSW collection services at the same times and on the same days as services are provided to their customers for solid waste collection.
- F. Each collector who shall apply for a license under this section shall state the manner of collection and the place and method of disposal of the MSW and recyclable materials from the collector's residential, commercial, industrial and institutional customers. Each collector shall maintain separate monthly records of solid waste and recyclable materials collected, transported or disposed of by the authorized collector which include the following information:
 - (1) The municipality or geographical area and number of units in which the solid waste or recyclable material was generated.
 - (2) The quantity, by ton, of solid waste and of each type of recyclable material collected.

- (3) The quantity, by ton, of recycled material delivered to a recycling facility(ies) and the location of the recycling facility(ies).
 - (4) The quantity, by ton, of solid waste delivered to each facility.
- G. Reports containing the information required as stated above shall be compiled and delivered to the Town Clerk or other designated individual for each reporting period as designated by the regulations, but which shall be no more frequently than quarterly.
- H. Authorized collectors shall not accept for collection MSW which has not been source-separated in conformity with this chapter.

§ 109-8. Approval, denial, suspension or revocation of license; noncompliance.

- A. When the Code Enforcement Officer determines that a failure to comply with this chapter may have occurred, she/he shall recommend to the municipality that the authorized collector application or the license be denied, suspended or revoked or its holder subjected to a reprimand or fine or that the generator or originator of the solid waste or recyclable materials be subject to sanctions, fines or penalties as described herein. Notice and an opportunity to be heard shall be provided prior to the denial, suspension or revocation of a solid waste license or authorized collector permit or the issuance of a sanction, fine or penalty. **[Amended 6-9-2005 by L.L. No. 2-2005]**
- B. Notice.
- (1) The Code Enforcement Officer shall notify the affected generator, applicant or licensee of the alleged failure in writing. The notice shall include the following: **[Amended 6-9-2005 by L.L. No. 2-2005]**
 - (a) A statement of the condition allegedly violated, referring to the pertinent ordinance, law, rule or regulation.
 - (b) A short and plain statement of the alleged misconduct.
 - (c) A statement of the time, place and nature of the hearing.
 - (2) The notice shall be personally served or sent by registered mail to the generator's, applicant's or licensee's last known address at least 10 days before the hearing date, with a copy to the administrator.
- C. Hearing.
- (1) Hearings shall be held before the Town Justice within a reasonable period, which shall be at least 10 days after service of notice.
 - (2) The generator, applicant or licensee may be represented by counsel at the hearing and may offer evidence and cross-examine witnesses.
 - (3) Within 20 days after the close of the hearing, the Town of Concord Justice shall:
 - (a) Determine whether the alleged failure to comply with this chapter has occurred; and

- (b) If the Town Justice determines that such a failure has occurred, decide whether the generator or applicant shall be subject to fine or penalty, the application shall be denied or an existing solid waste license or authorized collector status shall be suspended or revoked or its holder subjected to a reprimand and issue an order carrying out this decision.

D. Determinations, decisions and orders.

- (1) Disposition may be made by stipulation, agreed settlements, consent order, default or other informal method.
- (2) The Town Justice shall promptly notify the applicant or licensee, in writing, of the final determination, decision or order.

§ 109-9. Enforcement, inspections and appearance tickets.

- A. All portions of vehicles and containers used to haul, transport or dispose of recyclable materials, including such containers placed outside residences, shall be subject to inspection to ascertain compliance with this chapter by any police officer, peace officer, code officer and any other public official designated by the Town of Concord.
- B. Police officers, peace officers, code officers and the specified public servants are hereby authorized and directed to issue appearance tickets for violations of this chapter.

§ 109-10. Penalties for offenses.

During any 12 consecutive months, a person engaged in the business of collecting MSW and/or recyclable materials or rendering solid waste and/or recycling services who is not authorized by the Town of Concord or who collects, picks up, removes or causes to be collected, picked up or removed MSW or recyclable materials in a manner not in compliance with this chapter shall be guilty of a violation, punishable by a fine of not less than \$200 and not exceeding the sum of \$1,000 or by imprisonment for a term not exceeding 15 days, or both. Each day that such violation occurs or continues shall constitute a separate offense.¹

1. Editor's Note: Former Subsections B, C and D, establishing additional penalty provisions, were deleted 6-9-2005 by L.L. No. 2-2005.

Chapter 111

REFUSE DISPOSAL

- | | |
|--|---|
| § 111-1. Title. | § 111-6. General prohibition against littering. |
| § 111-2. Declaration of purpose. | § 111-7. Penalties for offenses. |
| § 111-3. Definitions. | § 111-8. Enforcement of law. |
| § 111-4. Storage receptacles required. | |
| § 111-5. Accumulation. | |

[HISTORY: Adopted by the Town Board of the Town of Concord 4-14-1997 by L.L. No. 5-1997. Amendments noted where applicable.]

§ 111-1. Title.

This chapter shall be known as the "Refuse Disposal and Anti-Littering Law" of the Town of Concord.

§ 111-2. Declaration of purpose.

This chapter is adopted for the purpose of promoting the health, safety and general welfare of the people of the Town of Concord; including the protection and preservation of property of the Town and its inhabitants in all matters related thereto by controlling the storage, collection and disposal of refuse and by prohibiting littering within the Town of Concord. In reference to agricultural operations, please refer to the New York State Agricultural and Markets Law, Article 25AA.

§ 111-3. Definitions.

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

GARBAGE — All unwanted or useless materials that have been accumulated on, or removed from, all public and private establishments and properties, including residential, but not excluding recognizable industrial by-products, discarded lumber or similar materials.

LITTERING — Same as "refuse."

PERSON — Any individual, firm, partnership, company, corporations, associations, society or group.

REFUSE — Includes garbage, rubbish and trash, as defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to the public health, safety and welfare or create unsightliness. **[Amended 6-9-2005 by L.L. No. 2-2005]**

RUBBISH — General dry material produced routinely by household, commercial or industrial establishments such as paper, cans, bottles and other containers and ashes and any other similar materials.

TRASH — Includes waste materials, bulky objects, such as discarded household appliances, furniture, building demolition and construction wastes.

§ 111-4. Storage receptacles required.

Every owner, lessee or occupant of any building, premises or place of business within the Town of Concord shall provide or cause to be provided at all times suitable and sufficient receptacles for receiving and containing garbage, rubbish or refuse that may accumulate or be used upon said premises. No receptacle shall exceed 30 gallons in capacity or 50 pounds in weight when filled, except in cases of mechanically operated containers furnished by the collector. Manure in the R-E, R-1, R-2, R-AG and R-RB Districts may be stockpiled and disposed of with proper handling.

§ 111-5. Accumulation.

The owner or occupant of the real property shall be responsible for the regular collection and disposal of all refuse which may accumulate on the property owned or occupied by him. No person shall accumulate or permit the accumulation of refuse on any premises owned by him within the Town of Concord, except for the purpose of collection by an authorized licensed vendor.¹

§ 111-6. General prohibition against littering.

- A. No person shall throw or deposit litter on any property within the Town of Concord, resulting in a danger to the public health, safety and welfare, whether owned by such person or not, except that the owner or person in control of private property may maintain private receptacles for collection, as authorized by this chapter. Litter shall be prevented from being carried or deposited by the elements from any such occupied private property to the street, sidewalk or other public place or upon any private property.
- B. No person shall throw or deposit litter on any open or vacant private property within the Town of Concord, whether owned by such person or not.
- C. Littering from vehicles. No person, while a driver or passenger in a vehicle within the Town, shall throw or deposit litter upon any street or other public place or upon private property.

1. Editor's Note: Former Subsection B, regarding compost or mulch piles, which immediately followed this section, was repealed 6-9-2005 by L.L. No. 2-2005.

- D. Leaking or spilling loads. No person shall drive or move any truck or other vehicle within the Town unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any roadway.²

§ 111-7. Penalties for offenses.

- A. Maximum penalty. For violation of any provision of this chapter, the maximum penalty shall, upon conviction, be a fine not exceeding \$250 or a term of imprisonment not exceeding 15 days, or both, in the discretion of the court. **[Amended 6-9-2005 by L.L. No. 2-2005]**
- B. Separate violations. Except as otherwise provided, each and every day in which a violation of any provision of this chapter exists shall constitute a separate violation.

§ 111-8. Enforcement of law.

It shall be the responsibility of the Code Enforcement Officer or his duly authorized representative to enforce the provisions of this chapter.

2. Editor's Note: Former Subsection E, regarding littering in parks, which immediately followed this subsection, was repealed 6-9-2005 by L.L. No. 2-2005.

Chapter 114

SEWERS

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[HISTORY: Adopted by the Town Board of the Town of Concord 8-9-1993 by L.L. No. 2-1993. Amendments noted where applicable.]

ARTICLE I
Title and Purpose

§ 114-1. Short title.

For brevity and ease of communication, this chapter may be cited as the "Town Sewer Use Law."

§ 114-2. General purpose.

The general purpose of this chapter is the following: to provide for efficient, economic, environmentally safe and legal operation of the Town's publicly owned treatment works (POTW).

§ 114-3. Specific purposes.

The specific purposes of this chapter are the following:

- A. To prevent the introduction of substances into the POTW that will:
- (1) Interfere with the POTW in any way.
 - (2) Pass through the POTW to the state's waters and cause contravention of standards for those waters or cause violation of the POTW's State Pollutant Discharge Elimination System (SPDES) permit.

- (3) Increase the cost or otherwise hamper the disposal of POTW sludge and/or residuals.
 - (4) Endanger municipal employees.
 - (5) Cause air pollution or groundwater pollution, directly or indirectly.
 - (6) Cause, directly or indirectly, any public nuisance condition.
- B. To prevent new sources of infiltration and inflow and, as much as possible, eliminate existing sources of infiltration and inflow.
 - C. To assure that new sewers and connections are properly constructed.
 - D. To provide for equitable distribution to all users of the POTW of all costs associated with sewage transmission, treatment and residuals disposal and to provide for the collection of such costs.

§ 114-4. Repealer; applicability.

Any previous sewer law duly enacted by previous Town governments shall be repealed and replaced by this chapter. Articles I through XII, inclusive, are enacted as the current Sewer Law of the Town of Concord. Currently there are two sewer districts in the Town of Concord, namely Craneridge District 1 and Kissing Bridge District 2, and this chapter shall apply to these districts and any future districts that may be formed.

ARTICLE II

Definitions and Word Usage

§ 114-5. Terms defined; word usage.

- A. When not inconsistent with the context, the present tense shall include the future, and words used in the plural shall include the singular and vice versa. "Shall" is mandatory; "may" is permissive. **[Amended 9-13-1995 by L.L. No. 3-1995]**
- B. Unless otherwise stated in the section where the term is used in this chapter, the meanings of terms used in this chapter shall be as stated below:

ABNORMAL SEWAGE — Sewage whose concentration of one or more characteristics of normal sewage exceeds the maximum concentrations of the characteristics of normal sewage. See "normal sewage."

ACT or THE ACT — The Federal Water Pollution Control Act, also known as the "Clean Water Act," as amended, 33 U.S.C. § 1251 et seq., as may be amended.

ADMINISTRATOR — The Regional Administrator of the United States Environmental Protection Agency (USEPA), Region 2.

AMMONIA — The result obtained when using an approved laboratory procedure to determine the quantity of ammonia in a sample, expressed as milligrams of nitrogen per liter.

APPLICANT — That person who makes application for any permit. The applicant may be an owner, new or old, or his or her agent.

APPROVAL AUTHORITY — The USEPA or the New York State Department of Environmental Conservation (NYSDEC), in the event that the NYSDEC is delegated approval authority responsibility by the USEPA.

APPROVED LABORATORY PROCEDURE — The procedures defined as "standard methods" in this article, or other procedures approved by the Superintendent, for flow measurement or determination of the concentration of pollutants or their surrogates in waters, wastewaters and/or sludges.

ASTM (denoting "American Society for Testing and Materials") — The latest edition of any ASTM specification, when stipulated in this chapter.

AUTHORIZED REPRESENTATIVE OF THE INDUSTRIAL USER — May be:

- (1) A principal executive officer of at least the level of Vice President, if the industrial user is a corporation.
- (2) A general partner or proprietor, if the industrial user is a partnership or proprietorship, respectively.
- (3) A duly authorized representative of the individual designated above, if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

BOD (denoting "biochemical oxygen demand") — The result obtained when using an approved laboratory procedure to determine the quantity of oxygen utilized in the aerobic biochemical oxidation of organic matter or in a sample, expressed in milligrams per liter.

BUILDER — Any person who undertakes to construct a building or any part of a building, either under contract or for resale.

BUILDING DRAIN — That part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste and other drainage pipes inside the building walls and conveys it to the building lateral, which begins five feet outside the inner face of the building wall.

CHLORINE DEMAND — The result obtained when using an approved laboratory procedure to determine the difference between the amount of chlorine added to a sample and the amount of chlorine remaining in the sample at the end of a specified contact time at room temperature, expressed in milligrams per liter.

COD (denoting "chemical oxygen demand") — The result obtained when using an approved laboratory procedure to measure the oxygen requirement of that portion of matter in a sample that is susceptible to oxidation by a specific chemical oxidant, expressed in milligrams per liter.

COLOR — The optical density at the visual wavelength of maximum absorption, relative to distilled water. One-hundred-percent transmittance is equivalent to 0.0 optical density.

COMPOSITE SAMPLE — The sample resulting from the combination of individual samples of wastewater taken at selected intervals for a specified time period. The individual samples may have equal volumes or the individual volumes may be proportioned to the flow at the time of sampling.

CONNECTION — Attachment of one user to a sewer. (See "extension.")

CONNECTION CHARGE (TAP FEE) — The one-time application fee to offset Town of Concord expenses to process an application for a connection of a building/street lateral to the public sewer. The fee also covers plan review, permit issuance, street repair cost and inspection costs. The fee may be scaled to the amount of work involved or to the size of the public sewer involved.

COUNTY — The County of Erie.

DEVELOPER — Any person who subdivides land for the purpose of constructing, or causing to be constructed, buildings for which wastewater disposal facilities are required.

DIRECT DISCHARGE — The discharge of treated or untreated wastewater directly to the waters of the State of New York. (For reference, see "indirect discharge.")

DOMESTIC WASTES — See "sewage, domestic."

DRY SEWER — The sanitary sewer installed in anticipation of future connection to a POTW but which is not used, in the meantime, for transport of storm or sanitary sewage.

EASEMENT — An acquired legal right for the specific use of land owned by others.

END OF PIPE — For the purpose of determining compliance with limitations prescribed by Article IX, "end of pipe" shall mean the control manhole, provided that the samples collected from the control manhole are representative of the discharge to the POTW.

END-OF-PIPE CONCENTRATION — The concentration of a substance in a sample of wastewater at end of pipe.

END-OF-PROCESS CONCENTRATION — See "National Categorical Pretreatment Standard."

EPA, USEPA or UNITED STATES ENVIRONMENTAL PROTECTION AGENCY — The agency of the federal government charged with the administration and enforcement of federal environmental laws, rules and regulations, and also may be used as a designation for the Administrator or other duly authorized official of this Agency.

EXTENSION — Attachment of a sewer line, with more than one user, to an existing sewer line.

FACILITY — All buildings, other structures, grounds and contiguous property at any locations related to or connected with this user at this location.

FLOATABLE OIL — Oil, grease or fat in a physical state such that it will separate by gravity from wastewater by treatment in a wastewater treatment facility. Also referred to as "fats, oils, and grease (FOG)." **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

FLOW RATE — The quantity of liquid or waste that flows in a certain period of time.

GARBAGE — The solid wastes from the preparation, cooking and dispensing of food, from the handling, storage and sale of produce and from the packaging and canning of food.

GRAB SAMPLE — A single sample of wastewater representing the physical, chemical and biological characteristics of the wastewater at one point and time.

ICS FORM — The form used by the NYSDEC to survey industries to perform and update the Industrial Chemical Survey.

INDIRECT DISCHARGE — The introduction of wastewater into a POTW for treatment and ultimate discharge of the treated effluent to the state's waters. (For reference, see "direct discharge.")

INDUSTRIAL — Meaning or pertaining to industry, manufacturing, commerce, trade, business or institution, and is distinguished from domestic or residential.

INDUSTRIAL CHEMICAL SURVEY (ICS) — The survey of industries in New York State, initiated by the NYSDEC, to determine chemical usage and storage by those industries.

INDUSTRIAL USER — See "user, industrial."

INDUSTRIAL WASTES — The liquid or liquid-carried solid, liquid and/or gaseous wastes from industrial manufacturing processes, trade, service, utility or business, as distinct from sanitary sewage.

INFILTRATION — Water, other than wastewater, that enters a sewer system (excluding building drains) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow. Infiltration is inadvertent, that is, not purposely designed or built into the sewer or drain.

INFLOW — Water, other than wastewater, that enters a sewer system (including building drains) from sources such as, but not limited to, roof leaders, cellar drains, footer drains (gravity and pumped), area drains, drains from springs and swampy areas, manhole covers, cross-connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwaters, foundation drains, swimming pools, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration. Inflow is purposely designed and/or built into the sewer or drain. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

INTERFERENCE — A discharge which, alone or in conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal and therefore is a cause of a violation of any requirement of the Town of Concord POTW's SPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations):

(1) Section 405 of the Clean Water Act.

- (2) The Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the "Resource Conservation and Recovery Act - RCRA") and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA.
- (3) The Clean Air Act.
- (4) The Toxic Substance Control Act.
- (5) The Marine Protection Research and Sanctuaries Act.

LATERAL, BUILDING — The sewer extension from the building drain to the street lateral or other place of wastewater disposal.

LATERAL, STREET — The sewer extension from the public sewer to the property line.

NATIONAL CATEGORICAL PRETREATMENT STANDARD or CATEGORICAL STANDARD — Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(B) and (C) of the Act (33 U.S.C. § 1317) which applies to a specific category of industrial users. These standards apply at the end of the categorical process ("end of process"). **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT — A permit issued pursuant to Section 402 of the Act (33 U.S.C. § 1342).

NATIONAL PROHIBITIVE DISCHARGE STANDARD or PROHIBITIVE DISCHARGE STANDARD — Any regulation developed under the authority of Section 307(B) of the Act and 40 CFR 403.5.

NATURAL OUTLET — Any outlet, including storm sewers and combined sewer overflows, to the state's waters.

NEW OWNER — That individual or entity who or which purchased property within the service area of the Town after the effective date of this chapter.

NEW SOURCE — Any source, the construction of which is commenced after the publication of the proposed regulation prescribing a Section 307(C) (33 U.S.C. § 1317) Categorical Pretreatment Standard which will be applicable to such source, if such standard is thereafter promulgated.

NEW USER — A discharger to the POTW who commences discharge after the effective date of this chapter.

NORMAL SEWAGE — See "sewage, normal."

NUISANCE — The use or lack of use of the POTW in such a manner so as to endanger life or health, give offense to the senses or obstruct or otherwise interfere with the reasonable use or maintenance of the POTW.

OIL AND GREASE — The result obtained when using an approved laboratory procedure to determine the quantity of fats, wax, grease and oil in a sample, expressed in milligrams per liter.

OLD OWNER — That individual or entity who or which owns or owned a property within the service area of the POTW purchased prior to the effective date of this chapter or who inherited the property at any time and intends to sell the property or has sold the property to a new owner, and also the agent of the old owner. **[Amended 9-13-1995 by L.L. No. 3-1995]**

OTHER WASTES — Garbage (shredded or unshredded), refuse, wood, eggshells, coffee grounds, sawdust, shavings, bark, sand, lime, ashes and all other discarded matter not normally present in sewage or industrial wastes. **[Amended 9-13-1995 by L.L. No. 3-1995]**

PASS-THROUGH — The discharge which exits the Town POTW into waters of the state in quantities which, alone or in conjunction with discharges from other sources, is a cause of a violation of any requirement of the POTW's SPDES permit (including an increase in the magnitude or duration of a violation).

PERMIT — A temporary revocable written document allowing use of the POTW for specified wastes over a limited period of time, containing sampling locations and reporting frequencies and requiring other actions as authorized by this chapter.

PERSON — Any individual, public or private corporation, political subdivision, federal, state or local agency or entity, association, trust, estate or any other legal entity whatsoever.

pH — The logarithm (base 10) of the reciprocal of the weight of hydrogen ions, in gram moles per liter of solution. A pH value of 7.0, the pH scale midpoint, represents neutrality. Values above 7.0 represent alkaline conditions. Values below 7.0 represent acid conditions.

PHOSPHORUS, TOTAL — See "total phosphorus."

POLLUTANT — Any material placed into or onto the state's waters, lands and/or airs which interferes with the beneficial use of that water, land and/or air by any living thing at any time.

POLLUTION — The man-made or man-induced alteration of the chemical, physical, biological and/or radiological integrity of the state's waters, lands and/or airs resulting from the introduction of a pollutant into these media.

POTW TREATMENT PLANT — That portion of the POTW designed to provide treatment to wastewater and to treat sludge and residuals derived from such treatment.

PRETREATMENT REQUIREMENT — Any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard imposed on an industrial user.

PRETREATMENT STANDARD or NATIONAL PRETREATMENT STANDARD — Any categorical standard or prohibitive discharge standard.

PRETREATMENT (TREATMENT) — The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be achieved by

physical, chemical or biological process, process changes or by other means, except as prohibited by 40 CFR 403.6(D).

PRIORITY POLLUTANTS — The most recently revised or updated list developed by the EPA in accordance with the Act.

PROHIBITIVE DISCHARGE STANDARD — See "National Prohibitive Discharge Standard."

PROPERLY SHREDDED GARBAGE — The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, and with no particle greater than 1/2 inch in any dimension. **[Amended 9-13-1995 by L.L. No. 3-1995]**

PUBLICLY OWNED TREATMENT WORKS (POTW) — A treatment works, as defined by Section 212 of the Act (33 U.S.C. § 1292), which is owned, in this instance, by the Town. This definition includes any sewers and appurtenances that transport wastewater to the POTW treatment plant but does not include pipes, sewers or other conveyances not connected directly or indirectly to a facility providing treatment.

RECEIVING WATERS — A natural watercourse or body of water (usually waters of the state) into which treated or untreated sewage is discharged.

RECORDS — Includes, but is not limited to, any printed, typewritten, handwritten or otherwise recorded matter of whatever character (including paper or electronic media), including but limited to letters, files, memoranda, directives, notes and notebooks, correspondence, descriptions, telephone call slips, photographs, permits, applications, reports, compilations, films, graphs and inspection reports. For the purposes of this chapter, "records" shall mean records of and relating to waste generation, reuse and disposal and shall include records on usage of raw materials.

ROOF DRAIN — A drain installed to receive water collecting on the surface of a roof for disposal.

SEPTAGE — All liquids and solids in and removed from septic tanks, holding tanks, cesspools or approved type of chemical toilets, including but not limited to those serving private residences, commercial establishments, institutions and industries, and also sludge from small sewage treatment plants. Septage shall not have been contaminated with substances of concern or priority pollutants.

SEPTIC TANK — A private domestic sewage treatment system consisting of an underground tank (with suitable baffling) constructed in accordance with any and/or all local and state requirements.

SERVICE AREA OF THE POTW — The legally defined bounds of real property from which wastewater may be discharged into the POTW. The bounds shall be established, altered, changed, modified, reduced, enlarged, combined or consolidated by action of the Town Board.

SEWAGE — A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, and such ground-, surface, and storm water as may be inadvertently present. The admixture of sewage, as defined above, with

industrial wastes and other wastes shall also be considered sewage within the meaning of this definition.

SEWAGE, DOMESTIC (DOMESTIC WASTES) — Liquid wastes from the noncommercial preparation, cooking and handling of food, liquid wastes containing human excrement and similar matter from the sanitary conveniences in dwellings, commercial buildings, industrial buildings and institutions or liquid wastes from clothes washing and/or floor/wall washing. Therefore, domestic sewage includes both black water and grey water. (See "sewage, sanitary.")

SEWAGE, NORMAL — Sewage, industrial wastes or other wastes which show, by analysis, the following characteristics. In spite of satisfying one or more of these characteristics, if the sewage also contains substances of concern, it may not be considered normal sewage.

- (1) BOD (five-day): 2,090 pounds per million gallons (250 milligrams per liter) or less.
- (2) Suspended solids: 2,500 pounds per million gallons (300 milligrams per liter) or less.
- (3) Phosphorus: 125 pounds per million gallons (15 milligrams per liter) or less.
- (4) Ammonia: 250 pounds per million gallons (30 milligrams per liter) or less.
- (5) Total kjeldahl nitrogen: 417 pounds per million gallons (50 milligrams per liter) or less.
- (6) Chlorine demand: 209 pounds per million gallons (25 milligrams per liter) or less.
- (7) Chemical oxygen demand: 2,920 pounds per million gallons (350 milligrams per liter) or less.
- (8) Oil and grease: 830 pounds per million gallons (100 milligrams per liter) or less.

SEWAGE, SANITARY — Liquid wastes from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories or institutions and free from stormwater, surface water and industrial and other wastes. (See "domestic wastes.")

SEWAGE TREATMENT PLANT (WATER POLLUTION CONTROL PLANT) — See "POTW treatment plant."

SEWAGE, UNUSUAL STRENGTH OR CHARACTER — Sewage which has characteristics greater than those of normal sewage and/or which contains substances of concern.

SEWER — A pipe or conduit for carrying or transporting sewage.

SEWERAGE SURCHARGE — The demand payment for the use of a public sewer and/or sewage treatment plant for the handling of any sewage, industrial wastes or other wastes accepted for admission thereto in which the characteristics thereof exceed the maximum values of such characteristics in normal sewage. (See "volume charge.")

SEWERAGE SYSTEM (also POTW) — All facilities for collecting, regulating, pumping and transporting wastewater to and away from the POTW treatment plant.

SEWER, COMBINED — A sewer designed to receive and transport both surface runoff and sewage.

SEWER, PUBLIC — A sewer in which all abutting property owners have equal rights and the use of which is controlled by the Town.

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

SEWER, STORM (STORM DRAIN) — A sewer which carries storm- and surface waters and drainage but excludes sewage and industrial wastewaters, other than cooling waters and other unpolluted waters.

SIGNIFICANT INDUSTRIAL USER — See "user, significant industrial."

SIGNIFICANT NONCOMPLIANCE (SNC) — A user is in significant noncompliance if the user's violation(s) meet(s) one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those, in 66% or more of all of the measurements taken during a six-month period, which exceed (by any magnitude) the daily maximum limit or average limit for the same pollutant parameter.
- (2) Technical review criteria (TRC) violations, defined here as those, in 33% or more of all of the measurements for each pollutant parameter taken during a six-month period, which equal or exceed the product of the daily maximum limits multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease, and TRC equals 1.2 for all other pollutants).
- (3) Any other violation of a pretreatment effluent limit (daily maximum or long-term average) that the Superintendent determines has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of POTW personnel or the general public).
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Superintendent's exercise of his or her emergency authority under Article X of this chapter.
[Amended 9-13-1995 by L.L. No. 3-1995]
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance.
- (6) Failure to provide, within 30 days after the due date, required reports, such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules.
- (7) Failure to report accurately any noncompliance.

- (8) Any other violation which the Superintendent determines will adversely affect the implementation or operation of the local pretreatment program.

SLUG — A substantial deviation from normal rates of discharge or constituent concentration (see normal sewage) sufficient to cause interference. In any event, a discharge which, in concentration of any constituent or in quantity of flow, exceeds, for any period of duration longer than 15 minutes, more than five times the average twenty-four-hour concentration or flow during normal user operations shall constitute a slug.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) — A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, and subsequent revisions.

STANDARD METHODS — Procedures contained in the latest edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association, procedures established by the Administrator pursuant to Section 304(G) of the Act and contained in 40 CFR 136, and amendments thereto (if 40 CFR 136 does not include a sampling or analytical technique for the pollutant in question, then procedures set forth in the EPA publication Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April 1977, and amendments thereto, shall be used), any other procedure approved by the Administrator or any other procedure approved by the Superintendent, whichever is the most conservative.

STATE — The State of New York.

STATE'S WATERS — See "waters of the state."

STORMWATER — Any flow occurring during or following any form of natural precipitation, and also the flow resulting therefrom.

SUBSTANCES OF CONCERN — Those compounds which the New York State Department of Environmental Conservation has determined may be harmful to man or the environment.

SUMP PUMP — A mechanism used for removing water from a sump or wet well.

SUPERINTENDENT — That individual nominated by the Town Supervisor and confirmed by the Town Board as the Superintendent of Water and Wastewater.

SUSPENDED SOLIDS — The result obtained, using an approved laboratory procedure, to determine the dry weight of solids in a sample that either float on the surface of or are in suspension or are settleable and can be removed from the sample by filtration, expressed in milligrams per liter.

TECHNICAL SPECIFICATIONS — The latest revision to the "Town of Concord Water and Sewer Technical Specifications," incorporated by reference and which may be changed from time to time by Board resolution. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

TOTAL KJELDAHL NITROGEN (TKN) — The result obtained, using an approved laboratory procedure, to determine the quantity of ammonia in a sample and released

during the acid digestion of organic nitrogen compounds, expressed as milligrams of nitrogen per liter.

TOTAL PHOSPHORUS — The result obtained, using an approved laboratory procedure, to determine the total quantity of orthophosphate in a sample of wastewater, following the hydrolysis of phosphorus compounds, expressed as milligrams of phosphorus per liter of sample.

TOWN — The Town of Concord, as incorporated in 1821.

TOWN CONSULTING ENGINEER — That individual designated by the Town Board as the Town Consulting Engineer, who shall be duly licensed as a professional engineer in the State of New York.

TOXIC SUBSTANCE

- (1) Any substance, whether gaseous, liquid or solid, that when discharged to a public sewer in sufficient quantities may be hazardous to POTW operation and maintenance personnel or tend to interfere with any biological sewage treatment process or to constitute a hazard to recreation in the receiving waters due to the effluent from a sewage treatment plant or overflow point.
- (2) Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA under provisions of Section 307(A) of the Clean Water Act or other acts.

USER — Any person who contributes, causes or permits the contribution of wastewater into the POTW.

USER, EXISTING — A discharger to the POTW who is discharging on or before the effective date of this chapter.

USER, INDUSTRIAL — A discharger to the POTW who discharges nondomestic wastewaters.

USER, NEW — A discharger to the POTW who initiates discharge after the effective date of this chapter.

USER, SIGNIFICANT INDUSTRIAL (SIU)

- (1) An industrial user of the Town POTW who is:
 - (a) Subject to National Categorical Pretreatment Standards promulgated by the EPA.
 - (b) Having substantial impact, either singly or in combination with other industries, on the operation of the treatment works.
 - (c) Using, on an annual basis, more than 10,000 pounds or 1,000 gallons of raw material containing priority pollutants and/or substances of concern and discharging a measurable quantity of these pollutants to the sewer system.
 - (d) Discharging more than 5% of the flow or load of conventional pollutants received by the POTW treatment plant.

- (2) A user discharging a measurable quantity of a pollutant may be classified as nonsignificant if, at the influent to the POTW treatment plant, the pollutant is not detectable.

VOLUME CHARGE (USER CHARGE) — The demand sewer use charge which is based, in part or wholly, on the volume of normal sewage discharged into the POTW (there may be surcharges, as provided for in Article XI). The volume charge shall be based on a specific cost per 100 cubic feet or per 1,000 gallons. The specific charge shall be subject to approval by the Town Board. The moneys so obtained shall be used for current operation and maintenance, for retirement of bonded indebtedness and for funding of capital projects of the POTW. The basis of volume charge calculations shall be made available to the public, on demand, as provided in Article XII. The volume charge shall be recalculated annually, as well as the surcharge rates. **[Amended 9-13-1995 by L.L. No. 3-1995]**

WASTEWATER — The liquid and water-carried industrial or domestic wastewaters from dwellings, commercial establishments, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

WASTEWATER DISCHARGE PERMIT — A permit as set forth in Article IX of this chapter. **[Amended 9-13-1995 by L.L. No. 3-1995]**

WASTEWATER, UNUSUAL STRENGTH OR CHARACTER — See "sewage, unusual strength or character."

WATERS OF THE STATE (STATE'S WATERS) — All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

§ 114-6. Abbreviations. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The following abbreviations shall have the designated meanings:

ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials (ASTM International)
AWWA	American Water Works Association
BOD	Biochemical oxygen demand
CFR	Code of Federal Regulations
COD	Chemical oxygen demand
CPLR	Code of Public Law and Rules
EPA	Environmental Protection Agency
L	Liter
Mg	Milligram
Mg/l	Milligrams per liter

NCPI	National Clay Pipe Institute
NPDES	National Pollutant Discharge Elimination System
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOT	New York State Department of Transportation
P	Total phosphorus
POTW	Publicly owned treatment works
PPM	Parts per million, weight basis
PSI	Pounds per square inch
SIC	Standard Industrial Classification
SPDES	State Pollutant Discharge Elimination System
SWDA	Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.
TSS	Total suspended solids
U.S.C.	United States Code of Laws
USEPA	United States Environmental Protection Agency

§ 114-7. Undefined terms.

Terms not defined in this article, or terms found to be ambiguous or improperly defined in this article, shall be defined by the Act or regulations adopted pursuant thereto.

ARTICLE III

Use of Public Sewers Required

§ 114-8. Unlawful waste disposal.

It shall be unlawful for any person to place, deposit or permit to be deposited, in any unsanitary manner, on public or private property within the Town or in any area under the jurisdiction of said municipality any human garbage or objectionable waste. Also, no person shall discharge domestic sewage onto the surface of the ground or discharge it in a way that permits it to come to the surface of the ground.

§ 114-9. Connecting private sewage system to storm sewer prohibited.

No person shall connect a private sewage system so that sewage flows into a storm sewer or into a drain intended exclusively for stormwater.

§ 114-10. Discharge of sewage into well prohibited.

No person shall discharge sewage into a well.

§ 114-11. Unlawful wastewater discharge.

It shall be unlawful to discharge to any natural outlet within the Town or in any area under the jurisdiction of said municipality any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.

§ 114-12. Conditions for issuance of building permit.

No property owner, builder or developer shall be issued a building permit for a new dwelling or structure requiring sanitary facilities unless a suitable and approved method of wastewater disposal, conforming to this chapter, is available.

§ 114-13. Private wastewater disposal.

Private on-site wastewater disposal shall be permitted within the Town when the facility design and construction are approved by the Erie County Health Department in accordance with Article IV.

§ 114-14. Connection to public sewer required.

The owner(s) of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the Town and abutting on any street, alley or right-of-way in which there is now located or may, in the future, be located a public sewer is hereby required, at the owner's expense, to install suitable sanitary facilities therein and to connect such facilities directly with the proper public sewer, in accordance with the provisions of this chapter, within 90 days after official notice to do so, provided that said public sewer is within 100 feet (30.5 meters) of the property line.

§ 114-15. Limitation on use of public sewers.

The use of the Town public sewers shall be strictly limited and restricted, except as provided in § 114-14, to receive and accept the discharge of sewage and other wastes, including industrial wastes, generated on or discharged from real property within the bounds of the service area of the POTW.

§ 114-16. Wastewater from outside service area; intermunicipal agreements.

- A. The Town Board, on the recommendation of the Superintendent, shall have the authority to enter into agreements to accept sewage and other wastes, including industrial wastes, generated by or discharged from persons outside the service area of the POTW.
- B. If the person is a municipality, that municipality shall have enacted a sewer use law as restrictive on the acceptance of sewage and other wastes as the restrictions contained in this chapter.

- C. If the person is not a municipality, the acceptance shall be made only with the express written consent of the Superintendent (the issuance of a permit) setting forth the terms and conditions of such a discharge.

§ 114-17. Moratorium.

- A. At the recommendation of the Superintendent, who determines the following, the Town Board shall have the authority to limit or deny new connections to the POTW until the conditions leading to the moratorium are corrected:
- (1) One or more segments of the POTW are exceeding their hydraulic capacity at any time.
 - (2) Any specific purpose of this chapter is being violated.
- B. Such correction may be by:
- (1) Construction of new facilities.
 - (2) Enlarging existing facilities.
 - (3) Correction of inflow and infiltration.
 - (4) Cleaning and repairing of existing facilities.

§ 114-18. Basis of sewer use requirement.

All requirements, directives and orders calling for mandatory use of the sewers within the service area of the POTW for the proper discharge of sewage and other wastes, including industrial wastes, shall be established and given by the Town Board, NYSDEC, USEPA and/or other such state or federal agencies which have enforcement powers.

ARTICLE IV

Private Wastewater Disposal

§ 114-19. Where required.

Where a public sewer is not available, under the provisions of § 114-11, the building lateral shall be connected to a private wastewater disposal system complying with the provisions of the rules and regulations of the NYSDOH, to be enforced by the Erie County Health Department.

§ 114-20. Connection of separate buildings to same facilities prohibited.

No two separate permanent buildings, where the intended use for either is for a distinct and separate business or a dwelling place for a private family or families, shall be connected to the same individual septic tank and tile absorption field.

§ 114-21. Sanitary operation required.

The owner shall operate and maintain the private wastewater disposal system in a satisfactory manner at all times, at the owner's expense.

§ 114-22. Direct connection to new public sewers required.

At such time that a public sewer becomes available to a property, a direct connection shall be made to the public sewer, in compliance with this chapter, and any cesspool, septic tank and similar wastewater disposal facilities shall be cleaned of septage by a licensed septage hauler and finally either filled with clean sand, bank-run gravel or dirt or removed and properly disposed. When the connection is made to the public sewer, the connection to the private wastewater disposal facility shall be broken and both ends of the break shall be plugged, as appropriate. Alternatively, with prior approval of the Town Board, the septic tank effluent may be piped or pumped to the sewer. The owner shall provide an easement to the septic tank for septage removal.

§ 114-23. Additional requirements.

No statement in this article shall be construed to prevent or interfere with any additional requirements that may be deemed necessary by the Superintendent to protect public health and public welfare.

ARTICLE V

New Sewers or Sewer Extensions**§ 114-24. Proper design required.**

- A. New sanitary sewers and all extensions to sanitary sewers owned and operated by the Town shall be designed by a professional licensed to practice sewer design in the state in accordance with the Recommended Standards for Wastewater Facilities (latest edition), as adopted by the Great Lakes - Upper Mississippi River Board of State Engineers and Provincial Public Health and Environmental Managers (Ten State Standards), and in strict conformance with all requirements of the NYSDEC. Plans and specifications shall be submitted to, and written approval shall be obtained from, the Superintendent, the Erie County Health Department and the NYSDEC or its designated representative before initiating any construction. The design shall anticipate and allow for flows from all possible future extensions or developments within the immediate drainage area. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D)]**
- B. If, however, there is inadequate capacity in any sewer which would convey the wastewater or if there is insufficient capacity in the POTW to treat the wastewater properly, the application shall be denied. Sewer line and POTW capacity shall be defined as the present use and that use which has been committed, by resolution, to other users by the Town Board.

§ 114-25. Approval, fees, inspection and testing.

- A. When a property owner, builder or developer proposes to construct sanitary sewers or extensions to sanitary sewers in an area proposed for subdivision, the plans, specifications and method of installation shall be subject to the approval of the Town Consulting Engineer, the Erie County Health Department and the NYSDEC, in accordance with § 114-24.
- B. Said property owner, builder or developer shall pay for the entire installation, including a proportionate share of the treatment plant, intercepting or trunk sewers, pumping stations, force mains and all other Town expenses, including reasonable costs for plan review by the Town Consulting Engineer and reasonable attorney's fees incidental thereto.
- C. Each street lateral shall be installed and inspected pursuant to Article VI, and inspection fees shall be paid by the applicant prior to initiating construction. Design and installation of sewers shall be as specified by the Town Consulting Engineer and in conformance with the Technical Specifications. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- D. The installation of the sewer shall be subject to shop drawing review and periodic inspection by the Town Consulting Engineer. The Town Consulting Engineer or Superintendent shall determine whether the work is proceeding in accordance with the approved plans and specifications and whether the completed work will conform to the approved plans and specifications. The sewer, as constructed, must pass all required testing before any building lateral is connected thereto. The Superintendent shall be notified 30 days in advance of the start of any construction actions so that such inspection frequencies and procedures as may be necessary or required may be established. No new sanitary sewers will be accepted by the Town Board until such construction inspections have been made so as to assure the Town Board of compliance with this chapter and any amendments or additions thereto. The Town Consulting Engineer has the authority to require such excavation as necessary to inspect any installed facilities if the facilities were covered or otherwise backfilled before they were inspected so as to permit inspection of the construction. The Town Consulting Engineer shall report all findings of inspections and tests to the Town Board. All inspection fees of the Town Consulting Engineer shall be reimbursed to the Town Board by the applicant. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

ARTICLE VI

Building Laterals, Street Laterals and Connections**§ 114-26. Permit required.**

No unauthorized person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.

§ 114-27. Prohibited discharges to sanitary sewer.

No person shall discharge or cause to be discharged any storm cooling water or unpolluted industrial waters to any sanitary sewer. Swimming pool drains shall not be connected to any sanitary sewer.

§ 114-28. Sewer lateral permits.

- A. There shall be two classes of sewer lateral permits:
- (1) For residential, commercial and institutional service.
 - (2) For service to establishments producing industrial wastes.
- B. In either case, a permit application shall be submitted to the Superintendent. The permit application shall be supplemented by any plans, specifications or other information considered pertinent, in the judgment of the Superintendent. A fee for residential, commercial, institutional and industrial users, as established by the Town Board, shall accompany the application.¹

§ 114-29. New building laterals.

- A. A separate and independent building lateral shall be provided for every building requiring sanitary facilities. When, however, there is a building behind a front building, the second building may use the front building's building lateral if there is no other way to provide sanitary service to the back building.
- B. New street laterals and/or building laterals shall not go under building basements. In like fashion, a building shall not be constructed over an existing lateral; the lateral shall be relocated after the Superintendent has approved plans showing the relocation. If relocation is not physically possible, then the lateral shall be:
- (1) Exposed and totally encapsulated in not less than three inches of concrete; or
 - (2) Exposed and walled and the building rooms above positively ventilated outdoors.
- C. All existing manholes in or under the basement shall be sealed airtight in a manner acceptable to the Superintendent. No new manholes shall be constructed on the portion of the lateral under the building.

§ 114-30. Laterals serving several buildings.

When building laterals are to serve multiple dwelling structures, the building lateral shall be sized in accordance with the metered water use and with sound professional engineering judgment.

1. Editor's Note: A list of current fees is on file in the Town Clerk's office.

§ 114-31. Laterals serving complexes. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

When any street lateral is to serve a school, hospital or similar institution or public housing or is to serve a complex of industrial or commercial buildings or, in the opinion of the Superintendent, will receive wastewater or industrial wastes of such volume or character that frequent maintenance of said building or street lateral is anticipated, then such street lateral shall be connected to the public sewer through a manhole. The Superintendent shall determine if and where this type of connection to the public sewer is required. Connections to existing manholes shall be made as directed by the Superintendent. If required, a new manhole shall be installed in the public sewer, the lateral connection made thereto, and tested as directed by the Superintendent. Plans and specifications shall be prepared and submitted to the Town Engineer for approval pursuant to this chapter.

§ 114-32. Dry sewers.

Dry sewers shall be designed and installed in accordance with this chapter.

§ 114-33. Existing building laterals.

Existing building laterals may be used in connection with new buildings only when they are found, on examination by the Superintendent, to meet all requirements of this chapter.

§ 114-34. Lateral pipe materials. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Building and street lateral pipe materials shall be in accordance with the Technical Specifications, unless otherwise approved by the Superintendent and Town Engineer.

§ 114-35. Connection of street lateral to public sewer.

At the point of connection of a street lateral to a main sewer, a standard wye fitting and sufficient one-eighth-bend (forty-five-degree-bend) fittings shall be used. The wye fittings shall be installed so that flow in the arm shall transition smoothly into the flow in the public sewer. No lateral connection shall be made to the public sewer which permits the flow into the public sewer from the lateral to enter at right angles. The inside diameter of the fittings shall be the same diameter as the street lateral inside diameter. The wye branch shall be in the ten-o'clock or two-o'clock position.

§ 114-36. Future connection locations; as-built drawings. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The street lateral, including the wye and eighth-bend fittings, shall be connected to the main sewer at the time of constructing the main sewer for each proposed lot for either immediate or future development. Laterals installed for future development shall be fitted with a standard plug approved for use by the Superintendent. All sewer connections made after construction of the main sewer shall be via a properly installed saddle on the main sewer

pipe. No portion of the lateral pipe shall protrude into the main sewer pipe. The location of all lateral connections shall be field marked with a two-by-six-inch corrosion- and rot-resistant board. The marker board shall extend from the depth of the lateral to a minimum of two feet above grade, and the above-grade portion shall be painted green and marked "sewer." The location of all lateral connections shall be indicated on a drawing, with a minimum of three tie lines indicated. Four physical copies and one electronic copy of this drawing, showing the as-built location of these connections, shall be furnished to the Superintendent. No sanitary sewer shall be accepted by the Town until the required copies of the record drawing have been so filed with the Superintendent and the Superintendent has approved the submitted drawings.

§ 114-37. Low-pressure sewers. [Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Low-pressure sewers shall generally involve the use of wastewater pumps and pressurized sewer mains for transport of wastewater to the point of discharge/treatment. Wastewater pumps may involve solids-handling, septic tank effluent, and grinder pump systems. Low-pressure sewers shall be designed by a licensed professional engineer and shall meet the requirements of 10 State Standards and the Technical Specifications. All plans and specifications for construction a low-pressure system shall be submitted to the Superintendent for review, prior to construction. At the point of connection of a street lateral to a low-pressure sewer main, a standard tapping saddle shall be used, in accordance with the Technical Specifications. Alternate methods of connection are not permitted without prior written approval from the Superintendent.

§ 114-38. Laterals at and near buildings.

Whenever possible, the building lateral shall be brought to the building at an elevation 10 inches above the basement floor. Building laterals laid parallel to a bearing wall shall not be installed closer than three feet to such wall. The building lateral shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings. Changes of direction of 90° or greater shall be made with a cleanout which extends to grade, terminating in a terminal box set in concrete. In building laterals, said cleanouts shall be provided such that the maximum distance between cleanouts is 75 feet. The ends of all building or street laterals which are not connected to the interior plumbing of the building for any reason shall be sealed against infiltration by a suitable stopper, plug or by other approved means.

§ 114-39. Sewage lifting.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such drain shall be lifted by mechanical means and discharged to the building lateral, on approval of the Superintendent.

§ 114-40. Lateral pipe installation. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

All excavations required for the installation of a building or street lateral shall be open trench work unless otherwise approved by the Superintendent. Pipe laying and backfilling, regardless of pipe material used, shall be performed in general accordance with the Technical Specifications. No backfill shall be placed until the work has been inspected by the Superintendent or their designated representative. The depth of cover over the pipe shall be sufficient to afford protection from frost, but in no case shall such depth be less than four feet. The depth may be reduced to a minimum of two feet and the pipe shall be insulated, as approved by the Superintendent.

§ 114-41. Watertight joints.

All joints and connections shall be made watertight.

§ 114-42. Cast-iron push joints. [Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Cast iron pipe and fittings shall only be allowed for use in sewer systems with the express, written permission of the Superintendent.

§ 114-43. PVC push joints. [Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Joints for PVC sewer pipe shall conform to the Technical Specifications.

§ 114-44. Connection of building lateral to street lateral.

- A. The connection of the building lateral to an existing street lateral shall be made at the property line. Except as provided under § 114-25, if a street lateral has not previously been provided, the street lateral will be constructed from the existing public sewer to the property line by a qualified plumber, at the owner's expense. The street lateral shall be installed with a properly sealed and covered cleanout to grade located at the property line. The cleanout shall terminate in a metal box imbedded in concrete.
- B. The cost of constructing the street lateral from the existing public sewer to the property line shall be at the property owner's expense; all subsequent costs and expense incidental to the installation and connection of the building lateral shall also be borne by the owner.
- C. The property owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building lateral.
- D. It shall be the responsibility of the property owner to maintain, repair or replace the building lateral, as needed.
- E. The method of connection of the building lateral to the street lateral will be dependent upon the type of sewer pipe material and, in all cases, shall be approved by the

Superintendent. After installation of the street lateral has been approved by the Superintendent, the new street lateral shall become the property of the Town. Any subsequent repairs to the new street laterals shall be made by the Town at the Town's expense.

§ 114-45. Cleanout repair and replacement.

If, in the judgment of the Superintendent, it is determined that a building lateral without a property line cleanout needs repair or replacement, the Town may install a cleanout at the property line, at the property owner's expense, such that the street lateral can be maintained independently of the building lateral.

§ 114-46. Street lateral replacement; ownership.

Any existing street lateral which, upon examination by the Superintendent, is determined to be in need of replacement will be replaced with a new street lateral with a property line cleanout. The cost of constructing the replacement street lateral and cleanout shall be at the property owner's expense. Once the replacement street lateral and cleanout have been constructed and approved by the Superintendent, the new street lateral shall become the property of the Town. Any repairs to new street laterals shall be made by the Town at the Town's expense.

§ 114-47. Testing. [Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The street lateral, building lateral or the combined lateral shall be tested for infiltration/exfiltration by an approved method, as indicated in the Technical Specifications.

§ 114-48. Connection inspection.

- A. The applicant for the building lateral permit shall notify the Superintendent when the building lateral is ready for inspection and connection is to be made to the street lateral. The connection shall be made under the supervision of the Superintendent.
- B. The applicant for the street lateral permit shall notify the Superintendent when the street lateral is ready for inspection and connection is to be made to the main sewer. The connection shall be made under the supervision of the Superintendent.

§ 114-49. Trench inspections.

When trenches are excavated for the laying of building lateral pipes or for laying of street lateral pipes, such trenches shall be inspected by the Superintendent. Before the trenches are backfilled, the person performing such work shall notify the Superintendent when the laying of the building lateral is completed, and no backfilling of trenches shall begin until approval is obtained from the Superintendent.

§ 114-50. Public safety provisions required; restoration of disturbed areas.

All excavations for constructing building laterals shall be adequately protected with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Superintendent. When installation requires disturbance of paved public roads and shoulders, restoration shall involve backfilling to road grade. Shortly thereafter, the Town Highway Department shall complete road and shoulder restoration to the Town standards. The cost for such final road and shoulder restoration by the Town Highway Department shall be included with the fees paid with the application for the permit required in § 114-28.

§ 114-51. Interior cleanout.

An interior cleanout fitting shall be provided for each building lateral at a readily accessible location, preferably just inside the basement wall. The fitting shall contain a forty-five-degree branch with removable plug or test tee and so positioned that sewer cleaning equipment can be inserted therein to clean the building lateral. The cleanout diameter shall be no less than the building lateral diameter.

§ 114-52. Costs to be borne by owner; indemnification of Town.

All costs associated with the provisions of this article shall be borne by the property owner unless specifically stated or agreed to be a cost borne by the Town. The property owner shall indemnify the Town from any loss or damage that may be directly or indirectly occasioned by the installation of the building and street laterals and connections and appurtenances.

ARTICLE VII

Inflow**§ 114-53. New inflow sources prohibited.**

No connections shall be made to a sanitary or to a combined sewer which connections are intended to discharge inflow. Such prohibited connections include, but are not limited to, footing drains, roof leaders, roof drains, cellar drains, sump pumps, catch basins, uncontaminated cooling water discharges or other sources of inflow.

§ 114-54. Disconnection of existing inflow sources.

For properties where separate storm sewers are available within 100 feet of the property line or where, in the judgment of the Superintendent or the Town Consulting Engineer, sufficient natural drainage is available, connections which contribute inflow to the sanitary sewers must be disconnected in a fashion approved by the Superintendent or Town Consulting Engineer within 90 days of notification by the Town.

§ 114-55. Disconnection upon sale of property. [Amended 9-13-1995 by L.L. No. 3-1995]

Upon notice from the Town Assessor, the Superintendent shall inspect any newly sold property for the purpose of determining if storm sewers or natural drainage is available and, if so, if all connections which contribute inflow have been disconnected. All such connections shall be terminated per § 114-54.

§ 114-56. Reconnection of inflow source prohibited.

It shall be a willful violation of this chapter for any person to reconnect any inflow source which has been disconnected pursuant to this article.

§ 114-57. Charges for inflow.

The Superintendent is enabled to take whatever action is necessary to determine the amount of inflow, including the requirement for installation of a control manhole. The property from which the inflow originated shall be billed for inflow according to Article XI; however, the Town Board may cause a surcharge at a rate not to exceed five times that for normal sewage volume charge.

ARTICLE VIII

Trucked or Hauled Waste**§ 114-58. Licenses and application. [Amended 9-13-1995 by L.L. No. 3-1995]**

- A. The discharge of trucked or hauled wastes into the Town sewer system and public sewers tributary thereto will be permitted only with the written approval (license) of the Superintendent. Applicants for such license shall apply on a form provided by the Superintendent. These forms may require information such as vehicle specifications, vehicle license number, vehicle color, NYSDEC permits issued under 6 NYCRR 364, approximate annual septage volume expected, service area and any other information that the Superintendent may require to determine whether the trucked or hauled wastes could adversely impact the POTW. The application shall be accompanied by a fee prescribed by the Town Board. **[Amended 6-9-2005 by L.L. No. 2-2005]**
- B. The licensee for trucked or hauled wastes will also be charged a fee for each dumping, in accordance with Article XI, § 114-97. The dumping fee shall be paid prior to dumping.

§ 114-59. Concurrent requirements.

The applicant for a license to truck or haul wastes shall be the owner of the vehicle or vehicles to be used for such discharge. Any false or misleading statement in any license application shall be grounds for invalidating the license. All licenses issued by the Superintendent for this purpose shall be for one year. The licensee shall also be duly permitted by the NYSDEC under 6 NYCRR 364 ("364 permit"). If for any reason the 364 permit is revoked or the 364 permit lapses or becomes invalid, then the license issued under this article shall become invalid immediately. All acts performed in connection with the

license shall be subject to the inspections and regulations, as established by the Superintendent, the terms and conditions of the license and all local and general laws, ordinances and regulations which are now or may come into effect, and such license may be suspended or revoked at any time by the Superintendent for willful, continued or persistent violation thereof.

§ 114-60. Dumping locations and times.

The Superintendent may require discharging at only certain locations within the POTW and only at certain times and on only certain days of the week or seasons of the year as shall be stated on said license or as may be relocated by the Superintendent, after appropriate notice. The time and conditions for permissible discharge shall be as set forth on the license or as may be revised by the Superintendent, after appropriate notice.

§ 114-61. Notification of dumping.

Each discharge of trucked or hauled wastes shall be made only with the approval of the Superintendent. The Superintendent may require inspection, sampling and analysis of each load prior to the discharge of a load. Any extra costs associated with such inspection, sampling and analysis shall be paid by the licensee.

ARTICLE IX

Discharge Restrictions

§ 114-62. Pretreatment standards.

All users of the Town POTW will comply with all standards and requirements of the Act and standards and requirements promulgated pursuant to the Act, including but not limited to 40 CFR 400 through 40 CFR 471.

§ 114-63. General prohibitions.

- A. No user shall contribute or cause to be contributed, in any manner or fashion, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of a POTW, whether or not the user is subject to National Categorical Pretreatment Standards or any other national, state or local pretreatment standards or requirements.
- B. Without limiting the generality of the foregoing, a user may not contribute the following substances to the POTW:
 - (1) Any solids, liquids or gases which, by reason of their nature or quantity, are or may be sufficient, either alone or by interaction with other substances, to cause a fire or an explosion or to be injurious, in any way, to the POTW or to the operation of the POTW. At no time shall both of two successive readings on a flame-type explosion hazard meter at the point of discharge into the system (or at any other point in the system) be more than 25% nor any single reading be more

than 40% of the lower explosive limit (LEL) of the meter. Unless explicitly allowable by a written permit, prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, carbides, hydrides and sulfides and any other substance which the Town, the state or the EPA has determined to be a fire hazard or a hazard to the POTW.

- (2) Solid or viscous substances which may cause obstruction to the flow in a sewer or otherwise interfere with the operation of the wastewater treatment facilities. Unless explicitly allowable by a written permit, such substances include, but are not limited to, grease, garbage with particles greater than 1/2 inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar asphalt residues, residues from refining or processing fuel or lubricating oil, mud or glass or stone grinding or polishing wastes.
- (3) Any wastewater having a pH less than 5.0 or greater than 10.0, unless the POTW was specifically designed to manage such wastewater, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment and/or POTW personnel.
- (4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants (including heat), to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW or exceed the limitation set forth in a Categorical Pretreatment Standard. A "toxic pollutant" shall include, but not be limited to, any pollutant identified pursuant to Section 307(A) of the Act.
- (5) Any noxious or malodorous solids, liquids or gases which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life or are sufficient to prevent entry into the sewers for their maintenance or repair.
- (6) Oils and grease. Any commercial, institutional or industrial wastes containing fats, waxes, grease or oils which become visible solids when the wastes are cooled to 10° C. (50° F.) or any petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in excess of 100 mg/l or in amounts that will cause interference or pass-through.
- (7) Any wastewater which will cause interference or pass-through.
- (8) Any wastewater with objectionable color which is not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (9) Any solid, liquid, vapor or gas having a temperature higher than 65° C. (150° F.); however, such materials shall not cause the POTW treatment plant influent temperature to be greater than 40° C. (104° F.). The Superintendent reserves the right, in certain instances, to prohibit or limit the discharge of wastes whose maximum temperatures are lower than 65° C.

- (10) Unusual flow rate or concentration of wastes, constituting slugs, except by industrial wastewater permit.
- (11) Any wastewater containing any radioactive wastes, except as approved by the Superintendent and in compliance with applicable state and federal regulations.
- (12) Any wastewater which causes a hazard to human life or which creates a public nuisance, either by itself or in combination, in any way, with other wastes.
- (13) Any wastewater with a closed-cup flashpoint of less than 140° F. or 60° C. using the test methods specified in 40 CFR 261.21.
- (14) Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

§ 114-64. Concentration-based limitations. [Amended 9-13-1995 by L.L. No. 3-1995]

- A. No person shall discharge, directly or indirectly, into the POTW wastewater containing any of the following substances in concentrations exceeding those specified below on either a daily or an instantaneous basis, except by permit or as provided for in § 114-65. Concentration limits are applicable to wastewater effluents at the point just prior to discharge into the POTW (end-of-pipe concentrations), as determined on a composite sample taken from the user's daily discharge over a typical operational and/or production day.

Substance	Limit (mg/l)
Arsenic	0.05
Cadmium	0.07
Total chromium	0.05
Copper	1.80
Cyanide	0.03
Lead	0.03
Mercury	0.02
Nickel	1.00
Silver	0.24
Zinc	1.50

Parameter	Limit (mg/l)
Total solids	900

Parameter	Limit (mg/l)
Total dissolved solids	600
Total suspended solids	300
Settleable solids	200
BOD	250
COD	700
Phosphorus	15
Ammonia	30
TKN	50

B. Other substances which may be limited are:

- (1) Antibiotics.
- (2) Chemical compounds which, upon acidification, alkalization, oxidation or reduction, in the discharge or after admixture with wastewater and its components in the POTW, produce toxic, flammable or explosive compounds.
- (3) Pesticides, including algicides, fungicides, herbicides, insecticides and rodenticides.
- (4) Polyaromatic hydrocarbons.
- (5) Viable pathogenic organisms from industrial processes or hospital procedures.

§ 114-65. Modification of limitations.

A. Limitations on wastewater strength or mass discharge contained in this chapter may be supplemented with more stringent limitations when, in the opinion of the Superintendent:

- (1) The limitations in this chapter are not sufficient to protect the POTW;
- (2) The limitations in this chapter are not sufficient to enable the POTW treatment plant to comply with applicable water quality standards or the effluent limitations specified in the POTW's SPDES permit;
- (3) The POTW sludge will be rendered unacceptable for disposal or reuse as the Town desires as a result of discharge of wastewaters at the above-prescribed concentration limitations;
- (4) Municipal employees or the public will be endangered; or
- (5) Air pollution and/or groundwater pollution will be caused.

- B. The Superintendent shall determine the total allowable influent load of each substance from significant industrial users. In determining the total load of each substance that significant industrial users shall be allowed to discharge, the Superintendent shall consider:
- (1) The quantities of each substance that are uncontrollable because they occur naturally in wastewater.
 - (2) The quantities of each substance that are anthropogenic but are nonetheless uncontrollable.
 - (3) Historical discharge trends.
 - (4) Past pollution control efforts of each significant industrial user as compared to other significant industrial dischargers of the same substance.
 - (5) Potential for growth in the POTW service area.
 - (6) Potential for more restrictive regulatory requirements to be placed on the POTW discharge or sludge disposal or sludge reuse method.
 - (7) Treatability of the substance. The Superintendent shall apply a minimum fifteen-percent safety factor to be protective of the POTW.
- C. To assure that the total loads so calculated for each substance are not violated, the Superintendent shall issue permits to significant industrial users limiting discharge loads.
- D. Permits issued in accordance with this section may allow for discharges in excess of limitations set forth under § 114-64.

§ 114-66. Dilution.

- A. Except where expressly authorized to do so by an applicable pretreatment standard, no user shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard.
- B. Dilution flow shall be considered to be inflow.

§ 114-67. Grease, oil and sand interceptors.

Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand or other harmful substances, except that such interceptors shall not be required for private living quarters or living units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the owner, at the expense of the owner.

§ 114-68. Solid waste grinders.

Solid waste grinders at or serving commercial establishments, institutions or industries shall not discharge into the Town POTW if there is a combined sewer overflow (CSO) on the sewer lines conveying the waste to the POTW treatment plant.

§ 114-69. Rejection of wastewater.

The Town Board may reject a user's wastewater on recommendation of the Superintendent when it has been determined that the wastewater contains substances or possesses characteristics which have a deleterious effect on the POTW and its processes or on the receiving water or which constitute a public nuisance or hazard (see § 114-85).

ARTICLE X

Enforcement and Penalties**§ 114-70. Notification of violation.**

Whenever the Superintendent finds that any user has violated or is violating this chapter or any wastewater discharge permit, order, prohibition, limitation or requirement permitted by this chapter, the Superintendent may serve upon such person a written notice stating the nature of the violation. Within 10 calendar days of the date the Superintendent mails the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof shall be submitted to the Superintendent by the user. The correction and prevention plan shall include specific actions. Submission of this plan in no way relieves the user of liability for any violations caused by the user before or after receipt of the notice of violation.

§ 114-71. Consent orders.

The Superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance or other similar documents establishing an agreement with the user responsible for the noncompliance. Such orders shall include specific action to be taken by the user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order.

§ 114-72. Administrative orders.

- A. When the Superintendent finds that a user has violated or continues to violate this chapter or a permit or administrative order issued thereunder, he or she may issue an administrative order to the user responsible for the discharge directing that, following a specified time period, sewer service shall be discontinued, severed and abated unless the violation is corrected and there is no reoccurrence of the violation. Administrative orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring and management practices.

- B. The user may, within 15 calendar days of receipt of such order, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
- (1) Reject any frivolous petitions;
 - (2) Modify or suspend the order; or
 - (3) Order the petitioner to show cause in accordance with § 114-77 and may, as part of the show-cause notice, request the user to supply additional information.
[Amended 9-13-1995 by L.L. No. 3-1995]

§ 114-73. Administrative fines. [Amended 9-13-1995 by L.L. No. 3-1995]

- A. Notwithstanding any other section of this chapter, any user who is found to have violated any provision of this chapter or a wastewater discharge permit or administrative order issued hereunder shall be fined in an amount as set forth in § 114-83. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.
- B. The user may, within 15 calendar days of notification of the Superintendent's notice of such fine, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
- (1) Reject any frivolous petitions;
 - (2) Modify or suspend the fine; or
 - (3) Order the petitioner to show cause in accordance with § 114-77 and may, as part of the show-cause notice, request the user to supply additional information.

§ 114-74. Cease-and-desist orders.

- A. When the Superintendent finds that a user has violated or continues to violate this chapter or any permit or administrative order issued hereunder, the Superintendent may issue an administrative order to cease and desist all such violations and direct those persons in noncompliance to:
- (1) Comply forthwith.
 - (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge.
- B. The user may, within 15 calendar days of the date the Superintendent mails notification of such order, petition the Superintendent to modify or suspend the order. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
- (1) Reject any frivolous petitions;

- (2) Modify or suspend the order; or
- (3) Order the petitioner to show cause in accordance with § 114-77 and may, as part of the show-cause notice, request the user to supply additional information.
[Amended 9-13-1995 by L.L. No. 3-1995]

§ 114-75. Termination of permit.

- A. Any user who violates the following conditions of this chapter or a wastewater discharge permit or administrative order or any applicable or state and federal law is subject to permit termination:
 - (1) Violation of permit conditions.
 - (2) Failure to accurately report the wastewater constituents and characteristics of the user's discharge.
 - (3) Failure to report significant changes in operations or wastewater constituents and characteristics.
 - (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.
- B. Noncompliant industrial users will be notified, by registered mail, of the proposed termination of their wastewater permit.
- C. The user may, within 15 calendar days of the date the Superintendent mails such notification, petition the Superintendent to permit continued use of the POTW by the user. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
 - (1) Reject any frivolous petitions; or
 - (2) Order the petitioner to show cause in accordance with § 114-77 and may, as part of the show-cause notice, request the user to supply additional information.
[Amended 9-13-1995 by L.L. No. 3-1995]

§ 114-76. Water supply severance.

- A. Whenever a user has violated or continues to violate the provisions of this chapter or an order or permit issued hereunder, water service to the user may be severed, and service will only recommence, at the user's expense, after the user has satisfactorily demonstrated the user's ability to comply.
- B. The user may, within 15 calendar days of severance, petition the Superintendent to reconnect water supply service. Such petition shall be in written form and shall be transmitted to the Superintendent by registered mail. The Superintendent shall then:
 - (1) Reject any frivolous petitions;
 - (2) Reconnect the water supply; or

- (3) Order the petitioner to show cause in accordance with § 114-77 and may, as part of the show-cause notice, request the user to supply additional information.
[Amended 9-13-1995 by L.L. No. 3-1995]

§ 114-77. Show-cause hearing.

- A. The Superintendent may order any user appealing administrative remedies for violations of this chapter to show cause, before the Town Board, why an enforcement action initiated by the Superintendent should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the Town Board regarding the violation, the reasons why the action is to be taken and the proposed enforcement action and directing the user to show cause before the Town Board why the proposed enforcement action should not be taken. The notice of the hearing shall be served at least 10 calendar days before the hearing in accordance with § 114-79 of this article. Service shall be made on any principal or executive officer of a user's establishment or on any partner in a user's establishment.
- B. The Town Board may itself conduct the hearing or may designate any of its members or any officer or employee of the Town to conduct the hearing and to:
 - (1) Issue, in the name of the Town Board, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings.
 - (2) Take the evidence.
 - (3) Take sworn testimony.
 - (4) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations, to the Town Board for action thereon.
- C. After the Town Board has reviewed the evidence and testimony, it may order the user to comply with the Superintendent's order or fine, modify the Superintendent's order or fine or vacate the Superintendent's order or fine.

§ 114-78. Failure to petition Superintendent.

In the event that the Superintendent issues any administrative order, terminates the user's permit or makes any fine as set forth in this article and the user fails, within the designated period of time set forth, to petition the Superintendent, as provided in appropriate sections of this article, the user shall be deemed in default, and the user's rights to contest the administrative order or fine shall be deemed waived.

§ 114-79. Notice.

The notices, orders, petitions or other notification which the user or Superintendent shall desire or be required to give pursuant to any sections of this chapter shall be in writing and shall be served personally or sent by certified mail or registered mail, return receipt requested, postage prepaid, and the notice, order, petition or other communication shall be deemed given upon its mailing as provided herein. Any notice, administrative order or

communication mailed to the user pursuant to the sections of this chapter shall be mailed to the user where the user's effluent is discharged into transmission lines to the Town's POTW. Any notice, petition or other communication mailed to the Superintendent shall be addressed and mailed to the Town Hall.

§ 114-80. Right to choose multiple remedies.

The Superintendent shall have the right, within the Superintendent's sole discretion, to utilize any one or more appropriate administrative remedies set forth in this article. The Superintendent may utilize more than one administrative remedy established pursuant to this article, and the Superintendent may hold one show-cause hearing combining more than one enforcement action.

§ 114-81. Civil penalties.

- A. Any person who violates any of the provisions of or who fails to perform any duty imposed by this chapter or any administrative order or determination of the Superintendent promulgated under this chapter or the terms of any permit issued hereunder shall be liable to the Town for a civil penalty not to exceed \$1,000 for each such violation, to be assessed after a hearing (unless the user waives the right to a hearing) held in conformance with the procedures set forth in this article. Each violation shall be separate and distinct violation, and, in the case of continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. Such penalty may be recovered in an action brought by the Town Attorney or his or her designated attorney, at the request of the Superintendent, in the name of the Town, in any court of competent jurisdiction, giving preference to courts local to the Town. In addition to the above-described penalty, the Superintendent may recover all damages incurred by the Town from any persons or users who violate any provisions of this chapter or who fail to perform any duties imposed by this chapter or any administrative order or determination of the Superintendent promulgated under this chapter or the terms of any permit issued hereunder. In addition to the above-described damages, the Superintendent may recover all reasonable attorney's fees incurred by the Town in enforcing the provisions of this article, including reasonable attorney's fees incurred in any action to recover penalties and damages, and the Superintendent may also recover court costs and other expenses associated with the enforcement activities, including sampling and monitoring expenses. **[Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. In determining the amount of civil penalty, the court shall take into account all relative circumstances, including but not limited to the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user and any other relative factors as justice may require.
- C. Such civil penalty may be released or compromised by the Superintendent before the matter has been referred to the Town Attorney, and, where such matter has been referred to the Town Attorney, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Town Attorney, with the consent of the Superintendent.

§ 114-82. Court orders.

- A. In addition to the power to assess penalties as set forth in this article, the Superintendent shall have the power, following the hearing held in conformance with the procedures set forth in this article, to seek an order:
- (1) Suspending, revoking or modifying the violator's wastewater discharge permit; or
 - (2) Enjoining the violator from continuing the violation.
- B. Any such court order shall be sought in an action brought by the Town Attorney, at the request of the Superintendent, in the name of the Town, in any court of competent jurisdiction, giving precedence to courts local to the Town.
- C. The Town Attorney, at the request of the Superintendent, shall petition the court to impose, assess and recover such sums imposed according to this article. In determining the amount of liability, the court shall take into account all relevant circumstances, including but not limited to the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user and any other factors as justice requires.

§ 114-83. Criminal penalties.

- A. Any person who willfully violates any provision of this chapter or any final determination or administrative order of the Superintendent made in accordance with this article shall be guilty of a Class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment not to exceed one year, or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.
- B. Any user who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or a wastewater permit or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter shall be guilty of a Class A misdemeanor and, upon conviction, shall be punished by a fine of not more than \$3,000 per violation per day or by imprisonment for not more than one year, or both. **[Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. D)]**
- C. No prosecution under this section shall be instituted until after final disposition of a show-cause hearing, if any was instituted.

§ 114-84. Additional injunctive relief.

Whenever a user has violated or continues to violate the provisions of this chapter or a permit or order issued hereunder, the Superintendent, through counsel, may petition the court of competent jurisdiction, in the name of the Town, for the issuance of a preliminary or

permanent injunction, or both (as may be appropriate), which restrains the violation of or compels the compliance with any order or determination thereunder by the Superintendent.

§ 114-85. Emergencies; summary abatement.

- A. Notwithstanding any inconsistent provisions of this chapter, whenever the Superintendent finds, after investigation, that any user is causing, engaging in or maintaining a condition or activity which, in the judgment of the Superintendent, presents an imminent danger to the public health, safety or welfare or to the environment or is likely to result in severe damage to the POTW or the environment and it therefore appears to be prejudicial to the public interest to allow the condition or activity to go unabated until notice and an opportunity for a hearing can be provided, the Superintendent may, without prior hearing, order such user by notice, in writing wherever practicable or in such other form as practices are intended to be proscribed, to discontinue, abate or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate or alleviate such condition or activity, or, where the giving of notice is impracticable or in the event of a user's failure to comply voluntarily with an emergency order, the Superintendent may take all appropriate action to abate the violating condition. As promptly as possible thereafter, not to exceed 15 calendar days, the Superintendent shall provide the user an opportunity to be heard, in accordance with the provisions of this article.
- B. If the user is not within the geographic boundaries of the Town, the right of summary abatement to discontinue, abate or alleviate conditions or activities shall be those prescribed in the intermunicipal agreement.
- C. The Superintendent, acting upon the belief that an emergency exists, shall be indemnified against any personal liability that may arise in the performance of his or her duties to protect the public health, safety or welfare or to preserve the POTW or the environment.

§ 114-86. Delinquent payments.

- A. If there shall be any payments which are due to the Town or any department thereof pursuant to any article or section of this chapter which shall remain due and unpaid, in whole or in part, for a period of 30 calendar days from the date of billing by the Town, the same shall constitute a default, and there shall be added to the entire amount of the original bill a penalty equal to 10% of the original bill, and interest shall accrue on the unpaid balance at the rate of 2% per month, retroactive to the date of the original billing.
- B. In the event that there are any sewer taxes, assessments or other service charges which shall have been delinquent for a period of at least 60 calendar days as of November 15 of any year, the Superintendent shall report the names of the defaulting persons to the Supervisor, the Town Clerk and the Town Assessor on or before November 15 of the same year. The Town Assessor is hereby directed to add the entire amount of the sewer tax, assessment or other service charge which shall be in default, plus penalty and interest, as provided for in this chapter, to the real property taxes due and owing to the Town in the next succeeding year, and the Town Assessor is directed to collect the

same in the same manner as real property taxes due and owing to the Town are collected. [Amended 9-13-1995 by L.L. No. 3-1995]

- C. Where charges are delinquent and the violator is not a resident of the Town or is located outside the geographical boundaries of the Town, then the Town Attorney is authorized to seek recovery of charges, including punitive damages, in a court of competent jurisdiction or make arrangements with the appropriate county where the user is located to add the amount of the sewer assessment or other charges which shall be in default, plus penalty and interest, as provided for in this chapter, to the real property taxes due to the county in the next ensuing year.

§ 114-87. Performance bond.

The Superintendent may decline to reissue a permit to any user who has failed to comply with the provisions of this chapter or any order or previous permit issued hereunder unless such user first files with the Superintendent a satisfactory bond, payable to the POTW, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

§ 114-88. Liability insurance.

The Superintendent may decline to reissue a permit to any user who has failed to comply with the provisions of this chapter or any order or previous permit issued hereunder, unless the user first submits proof that the user has obtained financial assurances sufficient to restore or repair POTW damage caused by the user's discharge.

§ 114-89. Public notification.

The Superintendent shall provide public notification in the daily newspaper with the largest circulation in the Town of users who were in significant noncompliance with local or federal pretreatment standards or requirements since the last such notice. The frequency of such notices shall be at least once per year.

§ 114-90. Contractor listings.

- A. Users who have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award or the sale of goods or services to the Town.
- B. Existing contracts for the sale of goods or services to the Town held by a user found to be in significant violation of pretreatment standards may be terminated at the discretion of the Town Board.

ARTICLE XI

Charges

§ 114-91. Normal sewer service charges.

All persons discharging or depositing wastes into the public sewers shall pay a sewer service charge proportional to the liquid volume of waste so deposited, which charge shall be collected as a sewer rent.

§ 114-92. Surcharge for abnormal sewage.

All persons discharging or depositing wastes with concentrations in excess of the pollutant concentrations in normal sewage shall pay a surcharge.

§ 114-93. Total sewer service charge.

The total sewer service charge (which shall be called the "user charge") is comprised of two parts, as follows:

$$UC(t) = UC(n) + UC(an)$$

Where:

UC(t) = Total user charge for POTW operation and maintenance.

UC(n) = User charge associated with normal sewage.

UC(an) = User charge associated with abnormal sewage.

$$UC(n) = OM \times (OQ/100) \times (QIA/QA)$$

Where:

OM = Total annual POTW operation and maintenance costs.

OQ = Percentage of OM attributable to flow (Q).

QIA = Average daily flow rate (gallons per day) from discharger.

QA = Average daily flow rate (gallons per day) at the POTW treatment plant.

UC(an) = To be determined on a case-by-case basis by the Town Board.

§ 114-94. Segmenting the POTW service area.

The service area of the POTW may be segmented to assist in a fair distribution of user charges, especially if there is a pump station serving a segment.

§ 114-95. Measurement of flow.

- A. The volume of flow to be used in computing sewer service charges and abnormal sewage surcharges shall be based upon metered water consumption as shown on the records of meter readings maintained by the Town Water District. **[Amended 6-9-2005 by L.L. No. 2-2005]**

- B. In the event that a person discharging wastes into the POTW produces evidence to the Superintendent demonstrating that a substantial portion of the total amount of metered water does not reach the POTW, then the Superintendent shall either establish a percentage of the total metered water to be used as a basis for such computations or direct the installation of appropriate flow-measuring (and totalizing) devices to measure and record the actual amount of flow into the POTW.
- C. In the event that a person discharging wastes into the POTW procures all or part of his or her water supply from unmetered sources, the Superintendent shall either direct the installation of water meters on the other sources of water supply or direct the installation of appropriate flow-measuring devices to measure and record the actual amount of flow into the POTW.
- D. Any water meters and/or flow-measuring devices installed pursuant to this section shall be of a type and design acceptable to the Superintendent and shall be installed, maintained and periodically tested as required by the Superintendent, at the owner's expense. All such meters and/or flow-measuring devices shall be subject to periodic inspection, testing and reading by the Superintendent. Any person discharging wastes into the POTW may install a flow-measuring device, at his or her option, of the type, design, installation and maintenance standards of the Superintendent, at the owner's expense.

§ 114-96. Billing period.

The billing period shall be monthly for industrial users and annually for nonindustrial users.

§ 114-97. Charges for trucked or hauled wastes.

The charge for dumping trucked or hauled waste into the POTW shall be as established by the Town Board. The manner of determining the volume dumped shall be at the discretion of the Superintendent.

§ 114-98. Capital recovery.

The Town may institute an equitable procedure for recovering the costs of any capital improvements of those parts of the POTW which collect, pump, treat and dispose of industrial wastewaters from those persons discharging such wastewaters into the POTW.

§ 114-99. Collection of charges. [Amended 9-13-1995 by L.L. No. 3-1995]

The provisions of Article X of this chapter relating to the collection of penalties shall apply to the collection of sewer service charges and abnormal sewage service surcharges, unless where otherwise provided by application of the Sewer Rent Law² by the Town.

2. Editor's Note: See Article 14-F of the General Municipal Law.

§ 114-100. Fiscal year of POTW.

The POTW shall be operated on the basis of a fiscal year commencing on the first day of January and ending on the 31st day of December.

§ 114-101. Impact fees.

The Town Board shall have the authority to impose impact fees on new development, which development may:

- A. Cause enlargement of the service area of the POTW.
- B. Cause increased hydraulic and/or treatment demands on the POTW.

§ 114-102. Use of revenues.

Revenues derived from user charges and associated penalties and impact fees shall be credited to a special fund. Moneys in this fund shall be used exclusively for the following functions:

- A. For the payment of the administration, operation and maintenance, including repair and replacement costs, of the Town POTW.
- B. For the discovery and correction of inflow and infiltration.
- C. For the payment of interest on and the amortization of or payment of indebtedness which has been or shall be incurred for the construction or extension of the Town POTW.
- D. For the extension, enlargement, replacement of and/or additions to the Town POTW, including any necessary appurtenances.

§ 114-103. Records and accounts.

- A. The Town shall maintain and keep proper books of records and accounts for the POTW, separate from all other records and accounts, in which shall be made full and correct entries of all transactions relating to the POTW. The Town will cause an annual audit of such books of record and account for the preceding fiscal year to be made by a recognized independent certified public accountant and will supply such audit report to authorized officials and the public, on request.
- B. In conjunction with the audit, there shall be an annual review of the sewer charge system to determine if it is adequate to meet expenditures for all programs for the coming year.
- C. Classification of old and new industrial users should also be reviewed annually.
- D. The Town shall maintain and carry insurance on all physical properties of the POTW of the kinds and in the amounts normally carried by public utility companies and municipalities engaged in the operation of sewage disposal systems. All moneys

received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damaged or destroyed.

ARTICLE XII

Public Disclosure of POTW Operations

§ 114-104. POTW operations open to the public.

It shall be the policy of the Town Board to conduct all business with full disclosure to the public.

§ 114-105. Procedural requirements available.

The nature and requirements of all formal procedures for applying for a permit and for requesting a permit under this chapter and for requesting a hearing shall be formulated by the Town and be made available to any resident of the Town upon request.

§ 114-106. Validity through public inspection.

The Town shall formulate procedures to make available to the public for inspection such orders, statements of policy and interpretations used by the Town in administration of this chapter. No rule, regulation or civil order shall be valid until it has been available for public inspection.

Chapter 121

SNOWMOBILES

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| <p>§ 121-1. Legislative intent.</p> <p>§ 121-2. Definitions; word usage.</p> <p>§ 121-3. Operation on highways and public ways.</p> | <p>§ 121-4. Conditions and restrictions.</p> <p>§ 121-5. Penalties for offenses.</p> |
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[HISTORY: Adopted by the Town Board of the Town of Concord 12-29-1975 by L.L. No. 1-1975; amended in its entirety 9-13-1995 by L.L. No. 3-1995. Subsequent amendments noted where applicable.]

§ 121-1. Legislative intent.

The purpose of this chapter is to protect the public health, welfare and safety by regulating the operation of snowmobiles on public highways and places in the Town of Concord in a manner which will be compatible with the use of such highways and places for vehicular and pedestrian travel and other uses, which will promote the safe and proper use of snowmobiles for recreation and commerce and which will minimize the detrimental effects of such use on the environment.

§ 121-2. Definitions; word usage.

- A. The terms, words and phrases used in this chapter shall have the same meanings as such terms, words and phrases are defined in Title D of the Parks, Recreation and Historic Preservation Law.
- B. Whenever the word "Town" is used herein it shall mean the Town of Concord.

§ 121-3. Operation on highways and public ways. [Amended 6-9-2005 by L.L. No. 2-2005]

Operation of snowmobiles on highways and public ways of the Town of Concord and of the County of Erie shall be subject to the applicable provisions of Articles 21 through 27 of the Parks, Recreation and Historic Preservation Law, the rules and regulations of the Office of Parks, Recreation and Historic Preservation and the rules, restrictions and conditions set forth in § 121-4 of this chapter. Highways authorized for snowmobile use shall be as provided under county and state law.¹

1. Editor's Note: Former §§ 121-4, Operation on county highways, and 121-5, Amendment of authorized highways, which immediately followed this section, were deleted 6-9-2005 by L.L. No. 2-2005.

§ 121-4. Conditions and restrictions.

Whenever the operation of a snowmobile is permitted on the shoulder, roadway or inside bank of any Town or county street or highway or portion thereof as provided in this chapter, the following conditions and restrictions are hereby imposed on all such snowmobile operations:

- A. **Registration.** No person shall operate a snowmobile on any Town or county street or highway unless such snowmobile has been duly registered and numbered with the state as authorized by § 2222 of the Vehicle and Traffic Law.
- B. **Financial security.** It shall be unlawful for any person to operate a snowmobile on any public lands or places of the Town of Concord unless the owner or operator of such snowmobile has public liability insurance and carries with him or her proof of financial responsibility in the manner prescribed by the Office of Parks, Recreation and Historic Preservation and of the minimum amount as provided in Subdivision 1 of § 25.13 of the Parks, Recreation and Historic Preservation Law. Such proof shall be displayed by the owner or operator of any snowmobile upon the request of any magistrate, any law enforcement officer or any person having authority to enforce the provisions of this chapter or to any person who has suffered or claims to have suffered either personal injury or damage to property as a result of the operation of such snowmobile by any such owner or operator.
- C. **Directions of operation.** No person shall operate a snowmobile within the street or highway right-of-way in the Town except on the right side of such right-of-way and in the same direction as the highway traffic. Operation on other public places shall be only in the direction marked by appropriate route direction markers.
- D. **Obedience to vehicular traffic laws.** Each person operating a snowmobile on any Town or county highway shall observe strictly all vehicular traffic signs and signals and all other rules and regulations applicable to vehicular traffic and shall obey the orders and directions of any state or local police or other law enforcement officer authorized to direct or regulate traffic. **[Amended 6-9-2005 by L.L. No. 2-2005]**

§ 121-5. Penalties for offenses.

A violation of any of the provisions of this chapter shall be punishable as provided in § 27.11 of the Parks, Recreation and Historic Preservation Law.²

2. **Editor's Note:** Former § 121-8, When effective, which immediately followed this section, was deleted 6-9-2005 by L.L. No. 2-2005.

Chapter 125

STREETS AND SIDEWALKS

ARTICLE I Notice of Defects

- § 125-1. Notice required.
- § 125-2. Defective sidewalks; notice required for civil action.
- § 125-3. (Reserved)
- § 125-4. Continuance of existing requirements.

ARTICLE II Road Dedication Specifications

- § 125-5. Regulations to be basic requirements.
- § 125-6. Title; definitions.
- § 125-7. Application procedure.
- § 125-8. Design standards.
- § 125-9. Required improvements.
- § 125-10. Requirements for approval.
- § 125-11. Fees.
- § 125-12. Variances.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Notice of Defects [Adopted 7-13-1981 by L.L. No. 1-1981]

§ 125-1. Notice required. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- A. No civil actions shall be maintained against the Town or Town Superintendent of Highways for damages or injuries to person or property sustained by reason of any highway, bridge, street, sidewalk, crosswalk or culvert being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous, or obstructed condition of such highway, bridge, street, sidewalk, crosswalk or culvert was actually given to the Town Clerk or Town Superintendent of Highways, and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of. No such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, street, sidewalk, crosswalk or culvert, unless written notice thereof, specifying the particular place, was actually given to the Town Clerk or Town Superintendent of Highways and there was failure or neglect to cause such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

- B. The Town Superintendent of Highways shall transmit, in writing, to the Town Clerk within ten days after the receipt thereof all written notices received pursuant to this section.
- C. The Town Clerk of each town shall keep an indexed record, in a separate book, of all written notices received of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice or snow upon any Town highway, bridge, culvert or sidewalk, which record shall state the date of receipt of the notice, the nature and location of the condition stated to exist, and the name and address of the person from whom the notice is received. All such written notices shall be indexed according to the location of the alleged defective, unsafe, dangerous or obstructed condition, or the location of accumulated snow or ice. The record of each notice shall be preserved for a period of five years after the date it is received. The Town Clerk, upon receipt of such written notice, shall immediately and in writing notify the Town Superintendent of Highways of the Town of the receipt of such notice.
- D. It is the intent of the Town Board, pursuant to the Municipal Home Rule Law of the State of New York, to supersede such portions of § 65-a of the Town Law of the State of New York. This section shall supersede in its application.¹

§ 125-2. Defective sidewalks; notice required for civil action.

No civil action shall be maintained against the Town and/or the Town Superintendent of Highways of the Town for damages or injuries to persons or property sustained by reason of any defect in the sidewalks of the Town or in consequence of the existence of snow or ice upon any of its sidewalks unless such sidewalks have been constructed or are maintained by the Town or the Superintendent of Highways of the Town pursuant to statute, nor shall any action be maintained for damages or injuries to person or property sustained by reason of such defect or in consequence of such existence of snow or ice unless written notice thereof, specifying the particular place, was actually given to the Town Clerk of the Town and there was a failure or neglect to cause such defect to be remedied or such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

§ 125-3. (Reserved) ²

§ 125-4. Continuance of existing requirements.

Nothing contained in this article shall be held to repeal or modify or waive any existing requirement or statute of limitations which is applicable to these causes of action, but, on the contrary, the requirements hereof shall be held to be additional requirements to the right to maintain such action, nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence nor to impose upon the Town, its officers and employees and/or any of its improvement districts any greater duty or obligations

1. Editor's Note: See NYS Town Law §65-a, Sections 1, 2 and 3.

2. Editor's Note: Former § 125-3, Record of notices, of the 2005 Code, as amended 9-13-1995 by L.L. No. 3-1995, which immediately followed this section, was repealed 6-9-2005 by L.L. No. 2-2005).

than that it shall keep its streets, sidewalks and public places in a reasonably safe condition for public use and travel.

ARTICLE II
Road Dedication Specifications
[Adopted 11-13-1989]

§ 125-5. Regulations to be basic requirements.

These regulations state the basic requirements to which the Town Board will adhere for the creation of new roads, subject to modifications as individual circumstances may be constructively discussed, pending final acceptance.³

§ 125-6. Title; definitions.

For the purpose of these regulations, which shall be known and may be cited as "Road Regulations," certain words used herein are defined as follows:

BOARD — The Town Board.

DEVELOPER — Any person, group or agency desirous of building and/or improving a road and turning it over to the Town.

ENGINEER — The representative directly contracted by the Town and legally licensed to practice engineering by the State of New York.

OFFICIAL ROAD MAP — The map established by the Town Board showing the streets and highways theretofore laid out, adopted and established by law and any amendments thereto adopted.

ROAD — A way for vehicular traffic, whether designated as a street, highway or thoroughfare, parkway, thruway, road, avenue, boulevard, lane, place or however otherwise designated.

- A. **ARTERIAL STREETS AND HIGHWAYS** — Those used primarily for fast or heavy traffic.
- B. **COLLECTOR STREETS** — Those which carry traffic from minor streets to the major systems of arterial streets and highways, including the principal entrance streets of a residential development and principal streets for circulation within such a development.
- C. **MINOR STREETS** — Those which are used primarily for access to the abutting properties.

3. **Editor's Note:** The authority for these requirements was stated as follows: "At a meeting of the Town Board of the Town of Concord, Erie County, New York, held on November 13, 1989, the following resolution was adopted by the Town Board of the Town of Concord: 'Resolved that the Board adopt the following standards for road developments which are to be improved by others and offered to the Town for incorporation into the Town highway system. This resolution becomes effective immediately, and all previous standards contained in the Subdivision Regulations dated November 13, 1967, together with any other Town standards, are hereby rescinded.'"

- D. **MARGINAL ACCESS STREETS** — Those parallel to and adjacent to the arterial streets and highways and which provide access to abutting properties and protection from through traffic.

STATE SPECIFICATIONS — The current specifications of the New York State Department of Transportation (NYSDOT).

§ 125-7. Application procedure.

- A. **Application.** Whenever a developer proposes to offer a road to the Board for acceptance into the Town highway system, applications shall be made in writing to the Board in order to commence proceedings for such acceptance.
- B. **Procedure for approval of design.**
- (1) The developer shall employ the services of an engineer licensed in the State of New York to prepare and submit three copies of plans and specifications with an engineering report outlining the project and objectives to the Town Clerk, with written application for approval. Such data shall be forwarded to a professional engineer, contracted by the Town, who will review the submittal with the Superintendent of Highways. The submittals will then be forwarded to the Board with recommendations.
 - (2) Following review of the above submittals, the Board shall act thereon as submitted or as modified. If the submittal is satisfactory, the Board shall approve the plan and state the specific conditions of such approval. If the submittal is unsatisfactory, the Board shall state the reasons for its disapproval and return one copy to the developer for redesign and resubmittal.

§ 125-8. Design standards.

- A. The developer shall consider all aspects of good road development and design to ensure proper traffic flow, drainage and public safety.
- B. When street lines deflect from each other at any one point by more than 10°, they shall be connected by a curve with a radius at the center line of not less than 250 feet for minor and collector streets and of such greater radii as the Board shall determine for special cases.
- C. Streets shall be laid out so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at less than 75°. Any change in street alignment to meet this requirement shall occur at least 200 feet from the intersection.
- D. Where required by the Board, property lines at street intersections shall be rounded with a radius of 25 feet, with a greater radius where the Board may deem it necessary. The Board may permit comparable cutoffs or chords in place of rounded corners.
- E. Street right-of-way widths shall be not less than as follows:

Street Type	Right-of-Way Width (feet)
Arterial	80 to 120*
Collector	66 minimum
Minor	50 minimum
Marginal access	50 minimum

*NOTE: Not including right-of-way for marginal access streets, if any.

- F. Half-width roads will be accessible only when the boundary coincides with the boundary of a recorded plat on which a half-width road or alley is presently dedicated.
- G. Dead-end streets, designed to be so permanently, shall be provided at the closed end with a turnaround, as per Figure 2.⁴
- H. No street names shall be used which will duplicate or likely be confused with names of existing streets. Street names shall be subject to the approval of the Board.

§ 125-9. Required improvements.

- A. Drawing standards.
 - (1) The road and drainage plans submitted by the developer shall be complete enough to be used as construction plans for the roads and drainage. Plans shall be approved by the Board prior to the start of the construction. All plans shall be prepared by a professional engineer licensed in New York State.
 - (2) Plans shall be printed on standard sheets (24 inches x 36 inches). The scale shall be one inch equals 50 feet or larger. Where necessary, the plans shall be on several sheets. The plans shall include all necessary information to determine compliance with this regulation and to be used for construction. Data shall include, but not be limited to: **[Amended 9-13-1995 by L.L. No. 3-1995]**
 - (a) Primary control points, approved by the engineer, or description and ties to such control points, to which all dimensions, angles, bearings and similar data on the plan shall be referred.
 - (b) Tract boundary lines and right-of-way lines of existing and proposed streets, easements and other rights-of-way, with accurate dimensions, bearings or deflection angles, and radii, arcs and central angles of all curves.
 - (c) Location and description of monuments, lot corner markers and bench marks.

4. Editor's Note: Figure 2 is on file in the office of the Town Clerk.

- (d) Certification by a licensed professional engineer (including name, address, New York State license number and seal certifying the accuracy of the plan).
- (e) Title, scale, North point and date.
- (f) Plan and profile containing complete horizontal and vertical curve data and all rim and invert elevations, as required.

B. Construction standards. **[Amended 6-9-2005 by L.L. No. 2-2005]**

- (1) Monuments shall be placed at all corners, angle points and points of curves in the road and at intermediate points as required by the Town. Monuments and markers shall be steel rods of three feet minimum length and 1/2 inch minimum diameter or as approved by the engineer.
- (2) Permanent bench marks shall be established to United States Geological Survey (USGS) datum. At least two bench marks will be required. No point in a road shall be more than 500 feet from a permanent bench mark.
- (3) All road construction shall be on the right-of-way center line. The roadway width from outside of shoulder to outside of shoulder shall be 30 feet as per Figure 1.⁵
- (4) The traveled surface width shall be 20 feet. It shall consist of a granular subbase, an aggregate base and an asphalt concrete pavement.
 - (a) The granular base shall be placed as shown on Figure Number 1. It shall meet the following gradation requirements, United States Standard Sieve: **[Amended 9-13-1995 by L.L. No. 3-1995]**
 - [1] One hundred percent passing six inches.
 - [2] Zero-percent to seven-percent loss by washing.
 - (b) All material shall be graded. Pit-run gravel or creek gravel is acceptable.
 - (c) The aggregate base material shall meet NYSDOT Item 304-2.02 Type 4 gradation requirements.
 - (d) The asphalt concrete pavement shall consist of three courses as follows: **[Amended 9-13-1995 by L.L. No. 3-1995]**
 - [1] Binder: A three-inch-thick course of Type 3 binder as defined in the latest NYSDOT specification.
 - [2] Top: A one-and-one-half-inch-thick course of Type 6F top as defined in the latest NYSDOT specification.
 - [3] Shoulder: three-inch aggregate base of No. 2 crusher run with a double bituminous surface treatment as described in § 125-9C(8).

5. Editor's Note: Figure 1 is on file in the office of the Town Clerk.

- (5) Grades in excess of 8% will not be allowed unless the developer can show good reason. Stopping sight distances at crest vertical curves shall exceed 200 feet. In no case shall grade exceed 10%.
- (6) Sidewalks, when called for on plans, shall be no less than four inches thick, except at driveways, where the thickness shall be six inches. Current state specifications shall apply.
- (7) Other items, such as bituminous curb or concrete pavement, not included in these specifications shall be subject to approval by the engineer prior to design completion.
- (8) All roads shall be provided with adequate surface and subsurface drainage as determined by the Superintendent of Highways and engineer.
- (9) If subsurface drainage is deemed necessary by the Board, the developer shall provide for same in a manner acceptable to the engineer.
- (10) Drain pipes under roads or driveways shall be designed to withstand NYSDOT H-20 loadings and carry minimum ten-year storm frequency. Design with calculations is to be approved by the engineer. Drainage pipes shall be of asphalt-coated corrugated metal pipe. All culvert ends are to be equipped for slope protection by means of end sections, beveled sections with grouted riprap or concrete headwalls. Design of structures proposed for use as part of the drainage system shall be approved by the engineer.
- (11) Material requirements:
 - (a) The source and analysis of all intended material (including asphaltic concrete, culverts, gravel, stone, concrete, etc.) shall be filed with the engineer for approval prior to placing the material.
 - (b) The analysis may include an affidavit from the supplier or may be made by a laboratory approved by the engineer, or both, as requested.
- (12) Signs.
 - (a) Road names shall be provided at each road intersection. Letters shall be reflective, meeting all applicable standards as required by the Erie County Department of Public Works for signage.
 - (b) Traffic control signs shall be provided in accordance with the New York State Manual of Uniform Traffic Control Devices.
 - (c) All signs shall meet current Board standards.
- (13) All work not provided for elsewhere in these specifications shall be done in a manner approved by the engineer and the Board.

C. Construction methods.

- (1) All brush, shrubs and roots thereof shall be entirely removed from the right-of-way of all roads and alleys. All trees, including the roots thereof, within the

roadway and ditch lines shall be entirely removed. Trees outside the roadway and ditch lines may not be removed unless approved by the Board.

- (2) All topsoil shall be removed from the affected area before any surfacing material is placed.
- (3) Any deleterious material in the subgrade shall be removed and replaced with material which is approved by the engineer.
- (4) The earth grade shall be brought to the required elevation, smoothed, trimmed, drained and compacted to 95% before any surfacing material is placed. Subgrade shall be crowned to match the finished road surface. **[Amended 9-13-1995 by L.L. No. 3-1995]**
- (5) Soft spots in the earth shall be corrected by removing improper materials and replacing them with materials approved by the engineer.
- (6) The granular subbase and aggregate base courses shall each be thoroughly compacted by used of a ten-ton vibratory roller. Each course shall be crowned to match the finished road surface.
- (7) After the base course has been approved, the Type 3 binder shall be placed with an approved paver and compacted with a self-propelled ten-ton roller. Finished thickness shall be three inches minimum.
- (8) After the binder is approved, the Type 6F top shall be placed in a similar manner. All paving shall be conducted in accordance with NYSDOT specifications.
- (9) After the shoulder aggregate has been placed, the double bituminous surface treatment shall be applied as follows: The first application of asphalt type MC-70 shall be applied at the rate of 0.5 gallon per square yard, immediately followed with Number 1 stone at the rate of 25 pounds per square yard. After the first application has been absorbed and set, a liquid bituminous CRS-2 shall be applied at the rate of 0.4 gallon per square yard, immediately covered with Number 1B stone at the rate of 20 pounds per square yard.
- (10) All construction must be done under the supervision of a New York State licensed engineer or the engineer's representative. All associated costs shall be paid by the developer.

D. Inspection, approval and certification.

- (1) After construction is completed, the developer shall request approval, in writing, of the work. The request shall be accompanied by a sealed certification from the developer's engineer that he or she has supervised and inspected all construction and that all work is in accord with the approved plans and specifications.
- (2) Such certification shall include record drawings and, where revisions in the approved plan were required by conditions encountered during construction, copies of change orders approved by the engineer.
- (3) The Engineer and Superintendent of Highways shall inspect the work as soon as possible after Subsection C is complete. If the work is complete and acceptable,

recommendation shall be given to the Board for acceptance. If the work is not approved, the developer shall be notified as to deficiencies. A reinspection will be required if deficiencies are found.

E. Subsection D shall be repeated as necessary.

§ 125-10. Requirements for approval.

Before final approval of the road, the following items shall be completed and filed with the Town Clerk:

- A. Statement by the engineer that the developer has essentially complied with one of the following alternatives:
 - (1) All improvements have been installed in accord with the requirements of these regulations; or
 - (2) A bond or certified check has been posted which is available to the Board and in sufficient amount to assure such completing of all required improvements. Said amount and time of bond shall be determined by the Board.
- B. Offers of cession by the owner dedicating streets, rights-of-way and any sites for public use and agreements covering the improvement and maintenance of unceded public spaces and the conditions and time limits, if any, applying to site reservations.
- C. Approval by the Town Attorney of all offers of cession and all covenants governing maintenance of unceded public open space and/or sewer and the approval of the form of any bond offered in lieu of the completion of required roadway improvements.

§ 125-11. Fees. [Amended 6-9-2005 by L.L. No. 2-2005]

At the time of submitting a plan for approval, the developer shall submit payment for inspection costs. The payment shall be made with a bank or certified check payable to the Town of Concord in an amount determined by the Town Board from time to time.⁶

§ 125-12. Variances.

Where the Board finds that extraordinary hardships may result from strict compliance with these regulations because of unusual circumstances of shape, topography or other physical features of the subdivision tract or because of the nature of adjacent developments, variations may be granted. However, in no case shall it exceed limitations of grade noted in § 125-9B(5).

6. Editor's Note: A list of current fees is on file in the Town Clerk's office.

Chapter 129

SUBDIVISION OF LAND

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[HISTORY: Adopted by the Town Board of the Town of Concord 2-10-1997 by L.L. No. 1-1997. Amendments noted where applicable.]

§ 129-1. Retention of power; policy; title.

- A. The Town Board of the Town of Concord, through the advice of its Planning Board pursuant to the provisions of Article 16 of the Town Law of the State of New York, does hereby retain the power to review plats showing lots, blocks or sites, with or without streets or highways, to review the development of entirely or partially undeveloped plats already filed in the office of the Clerk of the County of Erie and to approve conditional final plats within the Town of Concord.
- B. It is declared to be the policy of the Town of Concord to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the Town. This means, among other things, that 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 compose a convenient system conforming to the Official Map, if such exists, 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 proper provision shall be made for open spaces for parks and playgrounds. **[Amended 6-9-2005 by L.L. No. 2-2005]**

- C. In order that land subdivision may be made in accordance with this policy, these regulations, which shall be known as and which may be cited as the "Town of Concord Land Subdivision Regulations," have been approved by the Town Board on February 10, 1997.

§ 129-2. Definitions. [Amended 6-9-2005 by L.L. No. 2-2005]

For the purpose of this chapter, certain words and terms used herein are defined as follows:

COMPREHENSIVE PLAN — A composite of the mapped and written proposals recommending the physical development of the Town, prepared by the Planning Board pursuant to § 272-a of the Town Law, which indicates the general locations recommended for various public works and reservations and for the general physical development of the Town, and includes any part of such plan separately adopted and any amendment to such plan or parts thereof.

CONDITIONAL APPROVAL OF A FINAL PLAT — Conditional approval by the Town Board of a final plat subject to conditions set forth by the Town Board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize the issuance of building permits prior to the signing of the plat by the Town Clerk and recording of the plat in the office of the County Clerk or Registrar in accordance with the provisions of this chapter.

CUL-DE-SAC — A short street having but one end open to traffic and the other end being permanently terminated by a vehicular turnaround.

DRAINAGE RIGHT-OF-WAY — The lands required for the installation of stormwater sewers or drainage ditches or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

EASEMENT — The lands created through authorization by a property owner for the use by another and for a specified purpose of any designated part of his property.

FINAL PLAT APPROVAL — The signing of a final plat by the Town Clerk of the Town of Concord after a resolution granting final approval to the plat or after conditions specified in the resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the County Clerk or Registrar in the county in which said plat is located.

LOT — A piece, parcel or plot of land intended as a unit for transfer of ownership or for development which is five acres or less.

OFFICIAL MAP — The map, if any, established by the Town Board under § 270 of the Town Law, showing the streets, highways, parks and drainage systems heretofore laid out, adopted and established by law, and any amendments thereto adopted by the Town Board or additions thereto resulting from the approval of subdivision plats by the Town Board and the subsequent filing of such approved plats as provided for under § 278 of the Town Law.

OFFICIAL SUBMISSION DATE — The date when a subdivision plat shall be considered submitted to the Town Board, as provided in § 276 of the Town Law, and is hereby defined

to be the date of a meeting of the Town Board at which all required surveys, plans and data described in §§ 129-14 through 129-16 are submitted.

PERFORMANCE BOND OR GUARANTY — Any security which may be accepted in lieu of a requirement that certain improvements be made before the Town Board approves a plat, including performance bonds, escrow agreements and other similar collateral or surety agreements.

PLANNING BOARD — The Town of Concord Planning Board as established pursuant to the provisions of Article 16 of the Town Law.

PRELIMINARY PLAT — A drawing prepared in the manner prescribed by this chapter, showing the layout of a proposed subdivision, including but not restricted to road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at a suitable scale and in such detail as may be required.

PRELIMINARY PLAT APPROVAL — Approval by the Town Board of the layout of a proposed subdivision as set forth in the preliminary plat, but subject to approval of the plat in final form in accordance with the provisions of subdivision of this chapter.

RESUBDIVISION — Revision of all or part of an existing filed plat, including consolidation of lots.

STREET — Any street, avenue, boulevard, road, lane, parkway, alley or other way which is an existing state, county or municipal roadway or way shown upon a plat theretofore approved pursuant to law or approved by official action, or a street or way on a plat duly filed and recorded in the office of the County Clerk of Erie County prior to the appointment of a Planning Board and the grant to such Board of the power to review plats, and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, sidewalks, parking area and other areas within the street lines. For the purpose of this chapter, streets shall be classified in accordance with the Erie and Niagara Counties Regional Planning Board Trafficways Plan and as indicated on the Town of Concord Comprehensive Plan.

A. **LOCAL RESIDENTIAL STREET (with parking)** — That which includes the principal entrance street of a residential development and streets for circulation within such a development.

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

STREET WIDTH — The distance between property lines or right-of-way lines.

SUBDIVIDER; DEVELOPER — Any person, firm, corporation, partnership or association who shall lay out, for the purpose of sale or development, any subdivision or part thereof as defined herein, either for himself or others.

SUBDIVISION — Any tract of land which is divided into five or more parcels, effective February 10, 1997, along any existing or proposed street(s), highway(s), easement(s) or right(s)-of-way for sale or for rent as residential lots or residential building plots, regardless of whether the lots or plots to be sold or offered for sale or lease for any period of time are described by metes or bounds or by reference to a map or survey of the property or by any

other method of description and regardless of whether the lots or plots are contiguous. A tract of land shall constitute a subdivision upon sale, rental or offer for sale or lease of the fifth residential lot or residential building plot therefrom within any consecutive three-year period, including the first four parcels, regardless of whether said parcels have been sold, rented or offered for sale either singly or collectively. The word "tract" shall mean any body of land, including contiguous parcels of land, under one ownership or under common control of any group of persons acting in concert as part of a common scheme or plan. "Residential building plot or lot" shall mean any parcel of land five acres or less, any point on the boundary line of which is less than 1/2 mile from any point on the boundary line of another such lot in the same tract, unless any such lot may not legally be used for residential purpose. Without limiting the generality of the foregoing, the term "residential" shall include temporary, seasonal and permanent residential use. "Subdivision" does not include any parcel of land acquired as one parcel for the residential purposes as provided in the New York Public Health Law § 1115-a.

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 Town Board for approval and which, if approved, may be duly filed or recorded by the applicant in the office of the Erie County Clerk.

TOWN CONSULTING ENGINEER — The duly designated Engineer of the Town of Concord.

ZONING ORDINANCE — The officially adopted Zoning Ordinance of the Town of Concord, together with any and all amendments thereto.¹

§ 129-3. Approval required.

Whenever any subdivision of land is proposed to be made and before any contract for the sale of or any offer to sell any lots in such subdivision or any part thereof is made, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or his duly authorized agent shall apply, in writing, for approval of such proposed subdivision in accordance with the procedures set forth in this chapter.

§ 129-4. Sketch plan.

- A. Submission of sketch plan. Any owner of land shall, prior to subdividing or resubdividing land, submit to the Town Clerk of the Town Board, at least 10 days prior to the regular meeting of the Board, two copies of a sketch plan of the proposed subdivision which shall comply with the requirements of this chapter for the purposes of classification and preliminary discussion. The Town Board shall refer said sketch plan to the Planning Board for recommendation.
- B. Discussion of requirements. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the requirements of these regulations for street improvements, drainage, sewerage, water supply, fire protection

1. Editor's Note: See Ch. 150, Zoning.

and similar aspects, as well as the availability of existing services and other pertinent information.

- C. Study of sketch plan. The Planning Board shall determine whether the sketch plan meets the purposes of these regulations and shall, where it deems it necessary, make specific recommendations, in writing, to be incorporated by the application in the next submission to the Planning Board or Town Board.

§ 129-5. Preliminary plat.

- A. Application and fee.
- (1) The subdivider shall submit a preliminary plat of the proposed subdivision, in the form described in § 129-15 hereof, for consideration. The preliminary plat shall, in all respects, comply with the requirements set forth in the provisions of §§ 276 and 277 of the Town Law and § 129-15 of this chapter.
 - (2) The application for conditional approval of the preliminary plat shall be accompanied by a fee as set by the Town Board from time to time. Application fees shall not be refundable. **[Amended 6-9-2005 by L.L. No. 2-2005]**
- B. Number of copies. Twelve copies of the preliminary plat shall be presented to the Secretary of the Planning Board at least 10 days prior to a regular monthly meeting of the Planning Board.
- C. Subdivider to attend Planning Board meeting. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board or Town Board to discuss the preliminary plat.
- D. 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 unsubdivided and the requirements of the Comprehensive Plan, Official Map and Zoning Regulations,² if such exist.
- E. When officially submitted. The time of submission of the preliminary plat shall be considered to be the date of the regular monthly meeting of the Planning Board, at least 10 days prior to which the application for conditional approval of the preliminary plat, complete and accompanied by the required fee and all data required by § 129-16 of this chapter, has been filed with the Secretary of the Planning Board.
- F. Approval. The Town Board shall follow the procedures of Town Law § 276, Subdivision 5, to approve, approve with conditions or disapprove the preliminary plat. **[Amended 6-9-2005 by L.L. No. 2-2005]**

2. Editor's Note: See Ch. 150, Zoning.

§ 129-6. Final plat for a subdivision. [Amended 6-9-2005 by L.L. No. 2-2005]

- A. Application for approval and fee. The subdivider shall, within six months after the conditional approval of the preliminary plat, file with the Town Board an application for approval of the subdivision plat in final form, using the approved application blank available from the Code Enforcement Officer. All applications for plat approval for major subdivisions shall be accompanied by a fee as set by the Town Board from time to time. If the final plat is not submitted within six months after the conditional approval of the preliminary plat, the Town Board may refuse to approve the final plat and require submission of the preliminary plat. The application fee shall not be refundable.
- B. A subdivider intending to submit a proposed subdivision plat for the approval of the Town Board shall provide the Town Clerk with a copy of the application and 12 copies of a plat, one copy in ink on linen or other suitable paper, the original and one true copy of all offers of session, covenants and agreements and two prints of all construction plans at least 10 days in advance of the regular monthly meeting or monthly Town Board meeting in which it is to be officially submitted.
- C. When officially submitted. The time of submission of the subdivision plat shall be considered to be the date of the regular monthly meeting of the Town Board, at least 10 days prior to which the application for approval of the subdivision plat, complete and accompanied by the required fee and all data required by § 129-16 of this chapter, has been filed with the Town Clerk.
- D. Endorsement of state and county agencies. Water and sewer facility proposals contained in the subdivision plat shall be properly endorsed and approved by the Erie County Department of Health. Applications 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 Erie County Department of Health shall be secured by the subdivider before official submission of the subdivision plat.
- E. The Town Board shall follow the procedures of Town Law § 276, Subdivision 6, to approve, approve with conditions or disapprove the subdivision plat.
- F. Submission and approval.
- (1) Notwithstanding the foregoing provisions of this section, the Town Board may extend the time in which a conditionally approved plat in final form must be submitted for signature if, in its opinion, such intention is warranted by the particular circumstances thereof, for additional periods of 90 days each.
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]
 - (2) Prior to granting conditional or final approval of a plat in final form, the Town Board may permit the plat to be subdivided into two or more sections and may, in its resolution granting conditional or final approval, state that such requirements as it deems necessary to ensure the orderly development of the plat be completed before such sections may be signed by the duly authorized officer of the Planning Board. Conditional or final approval of the sections of a final plat, subject to any conditions imposed by the Board, shall be granted concurrently with conditional or final approval of the plat.

(3) The signature of the duly authorized Town Clerk constituting final approval by the Town Board of a plat showing lots, blocks or sites, with or without streets or highways, or the approval by such Board of the development of a plat or plats already filed in the office of the County Clerk or Register of the county in which such plat or plats are located if such plats are entirely or partially undeveloped, or the certificate of the Town as to the date of the submission of the final plat and the failure of the Town Board to take action thereon within the time prescribed, shall expire within 62 days from the date of such approval, or from the date such certificate is issued, unless within such sixty-two-day period, such plat or a section thereof shall have been duly filed or recorded by the owner in the office of the County Clerk or Register. In the event that the owner shall file only a section of such approved plat in the office of the County Clerk or Register, the entire approved plat shall be filed within 30 days of the filing of such section with the Town Clerk in each town in which any portion of the land described in the plat is situated. Such section shall encompass at least 10% of the total number of lots contained in the approved plat, and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of Subdivision 2 of § 265-a of the Town Law.

G. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Board and endorsed, in writing, on the plat. In the event that any subdivision plat, when recorded, contains any such changes, the plat shall be considered null and void, and the Board shall institute proceedings to have said plat stricken from the records of the County Clerk.

H. Signing of plat.

(1) Every subdivision plat submitted to the Board for its approval shall carry the following endorsement:

Approved by resolution of the Town Board of the Town of Concord, New York, on the ____ day of _____, 20____, subject to all requirements and conditions of said resolution. Any change, erasure, modification or revision of this plat, as approved, shall void this approval. Signed this ____ day of _____ 20____, by

Supervisor

Clerk

(2) In the absence of the Supervisor or Clerk, the Acting Supervisor or Acting Clerk, respectively, may sign in his place. If there is a County Official Map, such endorsement shall stipulate that the plat does not conflict with the County Official Map or, in most cases where the plat does front on or have access to or is otherwise related to roads or drainage systems shown on the County Map, that such plat has been approved by the County Planning Board in the manner specified by § 239-f of the General Municipal Law.

§ 129-7. Required improvements and agreements.

- A. Improvements and performance bond. Subsequent to any action by the Town Board approving a subdivision plat and prior to the issuance of any building permit, the applicant shall be required to complete in accordance with the Town Board's decision and to the satisfaction of the appropriate Town departments all the street, sanitary and other improvements specified in the action approving such plat or, as an alternative, to file with the Town Board a performance bond in an amount estimated by the Town Board to secure to the Town the satisfactory construction and installation of the incompleting portion of the required improvements. A period of one year, or such other period as the Town Board may determine appropriate, within which required improvements must be completed, shall be specified by the Town Board and expressed in the bond. Such performance bond shall comply with the requirements of § 277 of the Town Law and shall be satisfactory to the Town Board as to form, sufficiency and manner of execution. The bond shall provide that an amount determined adequate by the Town Board shall be retained for a period of one year after the date of completion of the required improvements to assure their satisfactory condition. All required improvements shall be made by the applicant at his expense without reimbursement by the Town or any district therein. Said improvements shall include the following:
- (1) Streets and street lighting facilities.
 - (2) Street signs.
 - (3) Curbs and gutters.
 - (4) Grass curb strips.
 - (5) Sidewalks.
 - (6) Street shade trees.
 - (7) Monuments.
 - (8) Stormwater runoff system.
 - (9) Sanitary sewage collection system.
 - (10) Water supply system.
 - (11) Park and recreation facilities.
 - (12) Electrical, telephone and utility lines.
 - (13) Plantings and ground cover.
- B. Inspection of improvements. The Town shall employ the Town Consulting Engineer to act as agent of the Town Board for the purpose of assuring the satisfactory completion of improvements required by the Town Board and shall determine an amount sufficient to defray costs of inspection. The applicant shall pay the Town costs of inspection before the subdivision plat is signed for filing. If the Town Board or its agent finds, upon inspection, that any of the required improvements have not been constructed in accordance with Town Board recommendations or the approved construction detail

sheets, the applicant and the bonding company will be severally and jointly liable for the costs of completing said improvements according to specifications.

C. Offers of cession and release.

- (1) The plat shall be endorsed with the necessary agreements in connection with required easements or releases. Offers of cession to the Town shall be presented prior to plat approval.
- (2) Formal offers of cession to the Town of all streets and parks, not marked on the plat with notation to the effect that such cession will not be offered, shall be filed with the Town Board prior to plat approval. If the owner of the land or his agent who files the plat does not add as part of the plat a notation to the effect that no offer of dedication of such streets, highways or parks or any of them is made to the public, the filing of the plat in the office of the County Clerk or Register shall constitute a continuing offer of dedication of the streets, highways or parks or any of them to the public, and said offer of dedication may be accepted by the Town Board at any time prior to the revocation of said offer by the owner of the land or his agent.
- (3) Before final approval of the subdivision plat, the Town Board will require a certificate of approval from the Town Attorney or Deputy Town Attorney as to the legal sufficiency of the offers of cession by the subdivider of the areas for public use, such as parks, streets, playgrounds and other areas.

§ 129-8. Filing of approved plat. [Amended 6-9-2005 by L.L. No. 2-2005]

Upon completion of all requirements set forth in the action approving the subdivision plat and notation to the effect upon the subdivision plat, it shall be deemed to have final approval and shall be properly signed by the appropriate officer of the Town Board and may be filed by the applicant in the office of the Erie County Clerk. Any subdivision plat not so filed and recorded within 62 days of the date upon which said plat is approved or considered approved by reasons of the failure of the Town Board to act shall become null and void. The applicant shall provide the Town Clerk with a copy of the plat, certified by the Erie County Clerk as to being the true and certified copy of said plat on file in the county office.

§ 129-9. Resubdivision.

For a resubdivision, the same procedure, rules and regulations apply as for a subdivision.

§ 129-10. Streets, parks and playgrounds.

The approval by the Town Board of a subdivision plat shall not be deemed to constitute or imply the acceptance by the Town of any street, park, playground or other open space shown on said plat. The Town Board may require said plat to be endorsed with appropriate notes to this effect. If the Town Board determines that a suitable park or parks of adequate size cannot be properly located in any such plat or is otherwise not practical, the Board may require as a condition to approval of any such plat a payment to the Town of a sum to be determined by the Town Board, which sum shall constitute a trust fund to be used by the Town Board

exclusively for neighborhood park, playground or recreation purposes, including the acquisition of property. The Town Board may require the filing of a written agreement between the applicant and the Town Board covering future title, dedication and provision for the cost of grading, development, equipment and maintenance of any park or playground area, as well as a written agreement covering the maintenance and plowing of all streets within the subdivision until such time as they are accepted for public maintenance by the Town Board.

§ 129-11. Time for initiation of land sales and construction.

Upon posting of the performance bond in accordance with § 129-7 and after approval and filing of the subdivision plat, the subdivider may initiate land sales or construction of the subdivision itself.

§ 129-12. Development standards. [Amended 6-9-2005 by L.L. No. 2-2005]

The Planning and Town Boards, in considering an application for the subdivision of land, shall be guided by the following considerations and standards:

A. General.

- (1) 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.
- (2) Conformity to Official Map and Comprehensive Plan. Subdivisions shall conform to the streets and parks shown on the Official Map of the Town as may be adopted and shall be properly related to the Town Comprehensive Plan (currently under revision) as it is developed and adopted by the Town Planning Board.

B. Design standards.

- (1) Streets. The following regulations shall govern the layout of streets:
 - (a) Subdivisions shall be so designed as to provide a street pattern which is curvilinear in design. The design of the street pattern shall be based upon a local residential or minor street pattern connected to a residential collector street system.
 - (b) The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas, or their proper protection where adjoining land is not subdivided, at the same or greater width insofar as such may be deemed necessary for public requirements.
 - (c) All construction is subject to the specifications for streets and highways adopted by the Town Board from time to time, which specifications shall be on file with the Town Clerk and available to developers. The streets shall be designed to promote local residential streets and to discourage through traffic.

- (d) All right-of-way street widths and street pavements shall be measured at right angles or radial to the center line of the street and shall not be less than those specifications adopted by the Town Board from time to time and shall be filed with the Town Clerk.
- (e) Whenever possible, streets should intersect at right angles and not intersect at angles of less than 60° unless approved by the Town Board.
- (f) The grades of streets shall be in accordance with specifications established by the Town Consulting Engineer, and such grades as submitted on subdivision plats shall be approved by him prior to final approval by the Town Board.
- (g) All proposed subdivisions shall be designed to provide access to adjacent properties. When a proposed subdivision abuts an existing subdivision, the subdivider shall make every attempt to design the street system of the proposed subdivision to connect with dead-end or stub streets of existing subdivision.
- (h) The following standards shall apply to cul-de-sac streets:
 - [1] Unless there is the expectation of extending the street through to the adjoining property, a cul-de-sac street should never be brought to the property boundary line but should be placed so that the lots can back on the property line of the subdivision.
 - [2] All culs-de-sac shall have a turnaround at the end of the street which shall conform to the geometric design and construction standards established by the Town Consulting Engineer and Town Superintendent of Highways. Standard drawings showing the standards and specifications for roadways and culs-de-sac are available at the Town Clerk's office.
- (i) If a dead-end street is of temporary nature, a similar turnaround shall be provided and provisions made for future extension of the street through to adjacent property and reversion of the excess right-of-way to the adjoining properties.
- (j) New half or partial streets shall not be permitted, except that, wherever a proposed subdivision borders a half or partial street, the Planning Board may require that the other part of the street be platted in the proposed tract if it is found that such a requirement would increase the effectiveness of the circulation system in the area.
- (k) Multiple intersections involving a junction or more that two streets shall be prohibited.
- (l) Local residential streets and residential collector streets shall not intersect with arterial streets less than 800 feet apart, measured from center line to center line.
- (m) The minimum distance between center line offsets at streets jogs shall be 150 feet.

- (n) No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name.
 - (o) The minimum radius of horizontal curve, minimum length of vertical curves and minimum length of tangents between reverse curves shall be in accordance with specifications established by the Town Consulting Engineer, and said items shall be approved by him prior to final approval of the subdivision plat by the Town Board.
- (2) Lots. The following regulations shall govern the layout of lots.
- (a) The lot size, width, depth, shape, orientation and minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.
 - (b) All lots shown on the subdivision plat must conform to the minimum requirements of the appropriate section of Chapter 150, Zoning, as to area and dimensions for the zone in which the subdivision is located. However, in the event of utilizing § 281 of the Town Law, the Town Board may use its discretion in determining lot sizes.
 - (c) Each lot shall abut on a street built to the Town's specifications.
 - (d) Corner lots shall have extra width sufficient for maintenance of required building lines on both streets as required by Chapter 150, Zoning.
 - (e) Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra width line, and all setbacks shall be measured from such line.
 - (f) The side lines of lots shall be at right angles to straight streets and radial to curved streets whenever possible.
 - (g) Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions or similar circumstances, the Planning Board may, after adequate investigation, require modification of such lots.
 - (h) Block length and width or acreage within bounding roads shall be such as to accommodate the size of lot required in the area by Chapter 150, Zoning, and to provide for convenient access, circulation, control and safety of street traffic.
 - (i) Blocks intended for commercial or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.
- (3) Easements. An easement shall be provided for all natural drainageways and all utility lines when such utility line or lines do not fall within a dedicated right-of-way. All easements shall be plotted on the preliminary plat and subdivision plat. A clause shall be inserted in the deed of each lot affected by an easement indicating that the easement exists and its purpose. Except as further required in

this section, easements shall have a minimum width of 10 feet. Where a subdivision is traversed by a drainageway, channel or stream, a drainageway easement, conforming substantially to the lines of such watercourse, shall be provided. The easement shall be 20 feet wide or such width as will be adequate to preserve natural drainage and provide sufficient width for maintenance. Where it is found that additional easement width is needed, such width shall be determined by the Planning Board in consultation with the Town Consulting Engineer. To the fullest extent possible, easements shall be centered on or adjacent to rear or side lot lines. All utility lines which are primarily intended to provide service to the lots within the subdivision shall be installed underground at a depth and at such locations as will minimize the risk of interruption of services. A five-foot easement running parallel to and contiguous to all street and highway rights-of-way shall be provided to the Town, granting the Town the right to protect, plant, prune, spray, remove, control, regulate and improve shrubbery and shade trees thereon.

- (4) Landscaping and ground cover.
 - (a) All lot areas which are not covered by structures or paving shall be properly seeded by the developer.
 - (b) The developer shall provide a liberal and functional landscaping scheme for the entire subdivision. Each lot shall be provided with a minimum of two trees which shall be in addition to the street shade trees. This requirement may be waived by the Town Board in wooded areas where the subdivider intends to maintain existing trees.
 - (c) Individual homeowners may, by written agreement with the subdivider and builder, seed and landscape their yards independently.
 - (d) When a proposed subdivision borders upon an existing commercial or industrial establishment or any other use which, in the opinion of the Town Board, may be visually detrimental to the tranquility of the future residents of the subdivision, the Town Board may require a landscape screen to buffer the subdivision from the visually noncompatible use.
- (5) Preservation of natural features.
 - (a) Topsoil moved during the course of construction shall be redistributed so as to provide at least six inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting. At no time shall topsoil be removed from the site without written permission from the Town Board.
 - (b) To the fullest extent possible, all existing trees and shrubbery shall be conserved by the subdivider. Special consideration shall be given to the arrangement and ultimate improvement or development of the lots to this end. Precautions shall also be taken to protect existing trees and shrubbery during the process of grading the lots and roads. Where there is a question as to the desirability of removing a group of trees, which serve to add interest and variety to the proposed subdivision, in order to allow for use of the land for a lot or lots, the Planning Board may, after proper investigation, require modification of such lots. Where any land other than

that included in public rights-of-way is to be dedicated to the public use, the developer shall not remove any trees from the site without written permission from the Town Board.

- (c) Where a subdivision is traversed by a natural lake, pond or stream, the boundaries or alignment of said watercourse shall be preserved unless, in the opinion of the Planning Board, a change or realignment will enhance the development and beauty of the subdivision or the utilization of such features by the future residents of the subdivision. All proposed changes in watercourse alignment shall be in accordance with the revised New York State Environmental Conservation Law.
 - (d) Unique physical features such as historic landmarks and sites, rock outcroppings, hilltop lookouts, desirable natural contours and similar features shall be preserved if possible.
 - (e) The subdivider shall not be permitted to leave any surface depressions which will collect pools of water.
 - (f) The subdivider shall not be permitted to leave any hills or mounds of dirt around the tract. All surfaces shall be restored within six months of the time of the completion of the section of the subdivision.
- (6) Floodways and floodplains.
- (a) Mapping. If any portion of the land within the subdivision is subject to inundation or flood hazard by stormwater, such fact and portion shall be clearly indicated on the preliminary plat and the prominent note on each street of such map whereon any such portion shall be shown. Floodways and floodplain areas shall be distinguished.
 - (b) Use. Floodways, as defined by the United States Army Corps of Engineers, and land deemed by the Planning Board to be otherwise 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. Floodplain areas subject to periodic minor flooding may be developed, provided that structures are adequately floodproofed as provided in Chapter 76, Flood Damage Prevention.
- (7) Self-imposed restrictions. The owner may place restrictions on the development greater than those required by Chapter 150, Zoning. Such restrictions, if any, shall be indicated on the final subdivision plat.
- (8) Modification of standards. The Town Board may modify the specified requirements in any individual case where, in the Boards judgment, such modification is in the public interest or will avoid the imposition of unnecessary individual hardship.
- (9) Parks, playgrounds or open space.
- (a) Land shall be preserved for park, playground, open space or other recreational purposes in locations designated on the Comprehensive Plan or elsewhere where the Planning Board deems that such reservations would be

appropriate. Each reservation shall be of an area equal to 10% of the total land within the subdivision, but in no case shall a reservation be less than five acres. The area to be preserved shall possess the suitable topography, general character and adequate road access necessary for its recreational purposes.

- (b) Where a subdivision is too small to establish an adequate recreation area site, where the land in a subdivision is unsuitable in character or where the Town Comprehensive Plan or good planning judgment would not locate a recreation area, or in the case of a minor subdivision, the applicant will be required to provide a lot fee in lieu of recreation area in such an amount as set forth from time to time by the Concord Town Board, deposited with the Town Clerk for the account of the Town of Concord Park, Playground and Open Space Trust Fund, to be used for the acquisition of such areas in suitable locations. Such payments shall not be refundable. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- C. Where the Planning Board requires land to be set aside for parks, playgrounds or other recreational purposes, the Board shall require that the site be graded, loamed and seeded and may require it to be fenced.
- D. When area for park, playground, recreational purposes or open space shall have been required on the subdivision plat, the approval of said subdivision plat shall not constitute an acceptance by the Town of such an area.

§ 129-13. Improvements specifications. [Amended 6-9-2005 by L.L. No. 2-2005]

- A. The developer, before the approval of the subdivision plat, shall complete all improvements to the satisfaction of the Town Consulting Engineer or post a performance bond sufficient to ensure the satisfactory completion of the following required improvements, except where waivers may be requested and the Planning Board may waive, subject to appropriate conditions, such improvements as it considers are not requisite in the interest of public health, safety and general welfare.
- B. Standards.
 - (1) Streets. All streets shall be constructed, graded and paved in accordance with the regulations governing highway construction adopted by the Town Board. (See Chapter 125, Streets and Sidewalks.)
 - (2) Storm drains, culverts, catch basins and other drainage structures shall be installed in accordance with the standards and specifications on file in the Town Clerk's office and in accord with the final map approved by the Town Board. All pipe shall comply with the requirements of the current New York State Highway Department specifications governing construction of these facilities. The location, length, depth, size, grade and type of pipe shall be designated in the plans. If unusual conditions are discovered at the time of construction, which are not provided for on the plans, the Town Consulting Engineer shall determine the type and extent of construction required to overcome such conditions.

- (3) Curbing shall be constructed on both sides of all streets shown on all proposed subdivision plats and in accord with the construction standards on file in the Town Clerk's office.
- (4) Sidewalks shall be required on both sides of the street and constructed in accord with the standards on file in the Town Clerk's office.
- (5) Driveway aprons shall be required between the curbing and the sidewalk and shall be of six-inch concrete meeting the same specifications established for curbing.
- (6) Street signs shall be of metal or other suitable material conforming with state law and shall be installed at the intersection of all streets in conformity with Vehicles and Traffic,³ and Town specifications, at the locations approved by the Town Board.
- (7) Grass strips shall be provided within the portion of the street right-of-way beyond the curblin and shall be properly graded and seeded.
- (8) Street trees shall be planted in every subdivision at intervals from 40 feet to 60 feet along both sides of the street. Existing trees may be taken into consideration when determining the above. Trees shall be at least three feet from any sidewalk and located on the building side of the walk rather than the street side. Where dwelling structures are oriented with their rear on the street, street trees shall be at least six feet from the curblin. Trees should also be at least 10 feet from any line which is directly under utility wires. The average trunk diameter shall be at least two inches, and an average height of six feet above finished grade level is required. Such trees shall be of a species and at locations approved by the Planning Board. No tree shall be planted within 25 feet of an existing or proposed street light or street intersection.
- (9) Shade trees, other than within the right-of-way, may be required when taking into consideration the existing trees on the lots, as the Town Board shall deem it necessary. Such trees shall be in conformance with the standards of size, kind and location limitations prescribed for trees along the street line.
- (10) Streetlighting facilities shall be provided along all streets in the subdivision and along all streets upon which the subdivision abuts. Such lighting facilities shall be in accordance with the Town standards and shall be installed as approved and directed by the Town Consulting Engineer.
- (11) Sanitary sewers and treatment disposal facilities shall be required. Where a public sanitary sewer is reasonably accessible, the subdivider shall connect or provide for connection with such sanitary sewer and shall provide within the subdivision the sanitary sewer system required to make the sewer accessible to each lot in the subdivision. Sewer systems shall be approved by the Town and County Health Official(s) and shall be in accordance with other requirements of law. The construction is subject to the supervision of the Town Consulting Engineer.

3. Editor's Note: See Ch. 142, Vehicles and Traffic.

- (12) Where a public water main is reasonably accessible, the subdivider shall connect to such water main and provide a water connection for each lot in accordance with Town standards, procedures and supervision. Fire hydrants shall be required and shall be installed in the locations approved by the Town Consulting Engineer and in accord with an appropriate inspection person or agency, as determined by the Town. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (13) Permanent monuments shall be set at block corners and at intervals of approximately 500 feet or such other distance as the Town Board may determine appropriate, and their location shall be shown on the subdivision plat. Iron pipes shall not be considered permanent monuments for the purpose of this chapter. Standards for monuments are on file in the Town Clerk's office.

C. Permitted modifications.

- (1) Concrete curbing may be omitted and, in lieu thereof, rolled gutters or other means for controlling stormwaters may be constructed as may be approved by the Town Consulting Engineer and Town Board.
- (2) Sidewalks may be omitted on one or both sides of the street to the extent deemed appropriate by the Town Board.
- (3) Where curbing and/or sidewalks are not provided, adequate provision for the protection of the edge of the road pavement and graded shoulder at all driveway openings and other accessways shall be provided in a manner approved by the Town Consulting Engineer.
- (4) Where sidewalks and curbing are not provided, grass curb strips shall not be required. However, grading and seeding of the area between the pavement edge, shoulder or approved drainage structure and the front property line of the lot shall be provided.
- (5) Individual sewage disposal systems (septic tanks) may be provided in lieu of facilities connected to a public sanitary sewage disposal system. Where such system is not reasonably available, such on-site disposal systems shall not be subject to the provisions of this chapter regarding subdivision control but shall be subject to Chapter 114, Sewers, Article IV, Private Wastewater Disposal, and all other applicable laws and regulations of the Town, county and state. Sewerage lagoons shall be prohibited. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (6) Individual on-site water supply systems may be provided in lieu of providing a water supply connected to a public utility system. Where such a system is not reasonably available, such on-site water supply systems shall not be subject to the provisions of this chapter regarding subdivision approval but shall be subject to all other applicable laws and regulations of the Town, county and state.
- (7) Fire hydrants may be omitted where adequate water mains which are a part of a public utility water system are not either existing or proposed to be available to the subdivision.

§ 129-14. Information required for sketch plan.

- A. The sketch plan initially submitted to the Planning Board shall be based on tax map information or some other similarly accurate base map, at a scale preferably not less than 200 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.
 - (2) All existing structures, wooded areas, streams and other significant physical features within the portion to be subdivided and within 200 feet thereof. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 10 feet.
 - (3) The name of the owner and of all adjoining property owners as disclosed by the most recent municipal tax records.
 - (4) The tax map sheet, block and lot numbers, if available.
 - (5) All the utilities available and all streets which are either proposed, mapped or built.
 - (6) The proposed pattern of lots (including lot width and depth), street layout, recreation areas and systems of drainage, sewerage and water supply [see § 129-15A(6)] within the subdivided area.
 - (7) All existing restrictions on the use of land, including easements, covenants or zoning lines.

§ 129-15. Information required for preliminary plat. [Added 10-13-1997 by L.L. No. 7-1997]

The following documents shall be submitted for conditional approval.

- A. Twelve copies of the preliminary plat prepared at a scale of not more than 100 feet to the inch but preferably not less than 50 feet to the inch, showing:
- (1) The proposed subdivision name, name of town and county in which it is located, date, true North point, scale and name and address of record owner, subdivider and engineer or surveyor, including license number and seal.
 - (2) The name of all subdivisions immediately adjacent thereto and the name of the owners of record of all adjacent property.
 - (3) The zoning district, including exact boundary lines of the district, if more than one district, and any proposed changes in the zoning district line and/or the Chapter 150, Zoning, text applicable to the area to be subdivided.
 - (4) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.

- (5) The locations of existing property lines, easements, buildings, watercourses, marshes, rock outcrops, wooded areas, single trees with a diameter of eight inches or more as measured three feet above the base of the trunk and other significant existing features for the proposed subdivision and adjacent property.
 - (6) The location of existing sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction flow.
 - (7) Contours with intervals of five feet or less as required by the Board, including elevations on existing roads; approximate grading plan if natural contours are to be changed more than two feet.
 - (8) The width and location of any streets or public places shown on the Official Map or the Comprehensive Plan, if such exists, within the areas to be subdivided, and the width, location, grades and street profiles of all streets or public ways proposed by the developer.
 - (9) The approximate location and size of all proposed waterlines, valves, hydrants and sewer lines and fire alarm boxes; connection to existing lines or alternate means of water supply or sewage disposal and treatment as provided in the Public Health Law; profiles of all proposed waterlines and sewer lines.
 - (10) A storm drainage plan indicating the approximate locations and sizes of proposed lines and their profiles; connection to existing lines or alternate means of disposal.
 - (11) Plans and cross sections showing the proposed location and type of sidewalks, streetlighting standards, street trees, curbs, water mains, sanitary sewers and storm drains and the size and type thereof, the character, width and depth of pavements and subbase and the location of manholes, basins and underground conduits.
 - (12) Preliminary designs of any bridges or culverts which may be required.
 - (13) The proposed lot lines, with approximate dimensions and area of each lot.
 - (14) 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 boundaries of proposed permanent easements over or under private property, which permanent easements shall not be less than 20 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 Official Map.
 - (15) 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 the tract shall also be located on the ground and marked by substantial monuments of such size and type as approved by the Town Consulting Engineer, referenced and shown on the plat.
- 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

probable future drainage layout of the entire tract, shall be submitted. The part of the subdivider's entire holdings submitted shall be considered in 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.

§ 129-16. Information required for final plat. [Added 10-13-1997 by L.L. No. 7-1997]

The following documents shall be submitted for plat approval.

- A. The plat to be filed with the Erie County Clerk shall be in accordance with the requirements for filing with the Erie County Clerk. The plat shall be accompanied by the Erie County Health Department certificate of approval, seals and license numbers of the land surveyor and/or engineer and a certificate from the County Treasurer or of an abstract and title company that all taxes which are a lien against the property prior to the filing have been paid. The plat shall be drawn at a scale of no more than 100 feet to the inch and oriented with the North point at the top of the map. When more than one sheet is required, an additional index sheet of the same size shall be filed, showing to scale the entire subdivision, with lot and block numbers clearly legible. The plat shall show:
- (1) The proposed subdivision name or identifying title and the name of the town and county in which the subdivision is located, the name and address of record owner and subdivider and the name, license number and seal of the licensed land surveyor.
 - (2) Street lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.
 - (3) Sufficient data, acceptable to the Town Consulting Engineer, to determine readily the location, bearing and length of every street line, 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 plan coordinates and in any event should be tied to reference points previously established by a public authority.
 - (4) The length and bearing of all straight lines, radii, length of curves 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.
 - (5) The plat shall also show by proper designation thereon all public open spaces 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.
 - (6) All offers of cession and covenants governing the maintenance of unneeded open space shall bear the certificate of approval of the Town Attorney as to their legal sufficiency.

- (7) Lots and blocks within a subdivision shall be numbered and lettered in alphabetical order in accordance with the prevailing Town practice.
 - (8) Permanent reference monuments shall be shown and shall be constructed in accordance with specifications of the Town Consulting Engineer. When referenced to the state system of plan coordinates, they shall also conform to the requirements of the State Department of Public Works. They shall be placed as required by the Town Consulting Engineer and their location noted and referenced upon the plat.
 - (9) All lot corner markers shall be permanently located where appropriate.
 - (10) Monuments of a type approved by the Town Consulting Engineer shall be set at all corners and angle points of the boundaries of the original tract to be subdivided and at all street intersections, angle points in street lines, points of curve and such intermediate points as shall be required by the Town Consulting Engineer.
- B. Construction drawings, including plans, profiles and typical cross sections, as required, shall show the proposed location, size and type of street, sidewalks, streetlighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, pavements and subbase manholes, catch basins and other facilities.

§ 129-17. Variances and waivers.

- A. Where the Town Board finds that extraordinary and unnecessary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan or Chapter 150, Zoning, if such exists.
- B. Where the Town 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.
- C. In granting variances and modifications, the Town Board shall require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

§ 129-18. Penalties for offenses.

A violation of this chapter is an offense punishable by a fine not exceeding \$250 or imprisonment not exceeding 15 days, or both. Each week's continued violation shall constitute a separate offense.

Chapter 134

TAXATION

ARTICLE I Veterans Exemption

§ 134-1. Proportionate increase or decrease in exemption.

ARTICLE II Senior Citizen Tax Exemption

§ 134-2. Exemption granted.

ARTICLE III Alternative Veterans Exemption

§ 134-3. Title; purpose.

§ 134-4. Legislative intent.

§ 134-5. Eligibility requirements.

ARTICLE IV Cold War Veterans Exemption

§ 134-6. Purpose.

§ 134-7. Exemption granted.

ARTICLE V Grievance Day

§ 134-8. Date established.

ARTICLE VI Gold Star Parents Exemption

§ 134-9. Purpose.

§ 134-10. Exemption granted.

ARTICLE VII Volunteer Firefighters and Ambulance Workers Exemption

§ 134-11. Grant of exemption.

§ 134-12. Eligibility requirements.

§ 134-13. Application.

§ 134-14. Certification.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Veterans Exemption

[Adopted 10-28-1985 by L.L. No. 1-1985]

§ 134-1. Proportionate increase or decrease in exemption.

If the ratio between an exemption granted under § 458 of the Real Property Tax Law and the total assessed value of the real property for which such exemption has been granted increases or decreases due only to a full value assessment in the tax district in which such real property is located, the amount of the exemption heretofore or hereafter granted shall be increased or decreased in such subsequent year in the same proportion as the total assessed value has been increased or decreased.

ARTICLE II

**Senior Citizen Tax Exemption
[Adopted 11-8-1993]****§ 134-2. Exemption granted. [Amended 6-9-2005 by L.L. No. 2-2005]**

The Town Board of the Town of Concord, after a public hearing, hereby grants to taxpayers within the Town of Concord over the age of 65 years exemption from real property taxation to the extent of 50% of the assessed valuation of said real property to said taxpayers within the Town of Concord with taxable income as defined by § 467 of the Real Property Tax Law in accordance with the provisions of § 467 of said Real Property Tax Law and in compliance with the requirements therein specified as to the extent and eligibility of said tax exemption.

ARTICLE III

**Alternative Veterans Exemption
[Adopted 3-10-1997 by L.L. No. 3-1997¹]****§ 134-3. Title; purpose. [Amended 6-9-2005 by L.L. No. 2-2005]**

This article entitled "Changes to Town of Concord Alternative Veterans Exemption," adopted pursuant to § 458-a of the Real Property Tax Law provides that the maximum limits of the alternative veterans exemption may be increased.

§ 134-4. Legislative intent.

The Town Board of the Town of Concord desires to create a means to change the maximum exemption limits on the alternative veterans exemption under § 458-a of the Real Property Tax Laws.²

§ 134-5. Eligibility requirements. [Amended 6-9-2005 by L.L. No. 2-2005]

Eligibility requirements for the alternative veteran exemption are set forth in § 458-a of the Real Property Tax Laws. Only those veterans on the current 1996 Assessment Roll with the alternative veteran exemption or any new applications filed under the rules of § 458-a will be affected by the proposed changes.

1. Editor's Note: Section V of this local law provided that it shall take effect 6-1-1997.

2. Editor's Note: Former § 134-7, Exemption recalculated, which immediately followed this section, was repealed 6-9-2005 by L.L. No. 2-2005.

ARTICLE IV

Cold War Veterans Exemption
[Adopted 8-14-2008 by L.L. No. 4-2008]**§ 134-6. Purpose.**

The purpose of this article is to provide a veterans exemption of real property taxation allowable pursuant to § 458-b of the Real Property Tax Law of the State of New York and shall be known as "Cold War Veterans Exemption Local Law."

§ 134-7. Exemption granted.

In accordance with Real Property Tax Law § 458-b:

- A. Qualifying residential real property shall be exempt from taxation to the extent of 15% of the assessed value of such property; provided, however, that such exemption shall not exceed \$12,000 or the product of \$12,000 multiplied by the latest state equalization rate for the Town of Concord, New York.
- B. In addition to the exemption provided by Subsection A of this section, where the Cold War veteran received a compensation rating from the United States Department of Veterans Affairs or from the United States Department of Defense because of service-connected disability, qualifying residential property shall be exempt from taxation to the extent of the product of the assessed valuation of property, multiplied by 50% of the Cold War veteran disability rating; provided, however, that such exemption shall not exceed \$40,000 or the product of \$40,000 multiplied by the latest equalization rate for the Town of Concord, New York.
- C. The exemption provided by Subsection A of this section shall be granted for as long as the veteran owns the qualifying property in accordance with amended § 458-b of the Real Property Tax Law of the State of New York. **[Amended 2-8-2018 by L.L. No. 1-2018]**

ARTICLE V

Grievance Day
[Adopted 3-12-2009 by L.L. No. 1-2009]**§ 134-8. Date established.**

Grievance Day for the Town of Concord is hereby established to be the first Tuesday in June every year, effective June 2009.

ARTICLE VI

Gold Star Parents Exemption**[Adopted 3-14-2013 by L.L. No. 1-2013]****§ 134-9. Purpose.**

The purpose of this article is to provide a veteran's exemption of real property taxation allowable pursuant to § 458-a of the Real Property Tax Law of the State of New York and shall be known as the "Gold Star Parent Exemption Local Law."

§ 134-10. Exemption granted.

In accordance with Real Property Tax Law § 458-a:

- A. A Gold Star parent (i.e., parent of a child who died in the line of duty while serving in the United States' Armed Forces during a period of war) owning qualifying residential real property shall be eligible for exemption to the extent provided by such § 458-a, provided he/she uses such property as his/her primary residence. Such qualifying residential real property shall be entitled to the maximum exemption in Erie County, which is presently set forth in Local Law No. 3-1997,³ unless the maximum exemption as provided by § 458-a shall be changed by a local law adopted subsequent to this article.

ARTICLE VII

Volunteer Firefighters and Ambulance Workers Exemption**[Adopted 3-29-2023 by L.L. No. 1-2023]****§ 134-11. Grant of exemption.**

An exemption of 10% of assessed value of property owned by an enrolled member as set forth below, or such enrolled member and their spouse, is hereby granted from taxation with respect to the real property taxes of the Town of Concord as long as eligibility requirements are met.

§ 134-12. Eligibility requirements.

Such exemption shall be granted to an enrolled member of an incorporated volunteer fire company, fire department, or incorporated voluntary ambulance service, provided that:

- A. The property is owned by the volunteer firefighter or volunteer ambulance worker;
- B. The property is the primary residence of the volunteer firefighter or volunteer ambulance worker;
- C. The property is used exclusively for residential purposes; provided, however, that in the event any portion of such property is not used exclusively for the applicant's residence but is used for other purposes, such portion shall be subject to taxation and the

3. Editor's Note: See Art. III, Alternative Veterans Exemption.

remaining portion only shall be entitled to the exemption provided by this section;
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- D. The volunteer firefighter or volunteer ambulance worker resides in the Town of Concord and the Town of Concord is served by such incorporated volunteer fire company or fire department or incorporated voluntary ambulance service;
- E. The volunteer firefighter or volunteer ambulance worker is certified by the authority having jurisdiction as an enrolled member of such an incorporated volunteer fire company, fire department, or incorporated voluntary ambulance service; and
- F. The volunteer firefighter or volunteer ambulance worker meets the minimum service requirement established by Town of Concord, which is hereby established as two years.

§ 134-13. Application.

A volunteer firefighter or volunteer ambulance worker must annually, on or before the applicable taxable status date, file an application for such property tax exemption with the Assessor responsible for preparing the assessment roll for the Town of Concord on a form as prescribed by the New York State Commissioner of Taxation and Finance. The Town of Concord must maintain written guidelines, available upon request, as to the requirements of an enrolled volunteer member relating to this exemption.

§ 134-14. Certification.

The Board of Trustees must annually file with the Assessor, prior to the applicable taxable status date, a list of the active volunteer members who are certified to meet the minimum service requirement. Such list must provide, as of the applicable taxable status date, the number of years of service served by each such enrolled member and such enrolled member's address of residence.

Chapter 137

TELECOMMUNICATION FACILITIES

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|---|---|
| § 137-1. Definitions. | § 137-7. Special use permit requirements. |
| § 137-2. Where permitted. | § 137-8. Shared use. |
| § 137-3. Application fee. | § 137-9. Design requirements. |
| § 137-4. Site plan. | § 137-10. Application for permits. |
| § 137-5. Conformance with state and federal law required. | § 137-11. Enforcement. |
| § 137-6. Liability insurance. | § 137-12. Penalties for offenses. |

[HISTORY: Adopted by the Town Board of the Town of Concord 4-14-1997 by L.L. No. 6-1997. Amendments noted where applicable.]

§ 137-1. Definitions.

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

TELECOMMUNICATIONS FACILITY — Any commercial equipment used in connection with the provision of wireless communication services, including cellular telephone service, personal communications services, radio and television broadcast services and private radio communications services, which are required by the Federal Communications Act of 1996 and other federal laws. A telecommunication facility shall include antenna(s), principal and accessory telecommunications equipment and supporting masts, monopoles and structures, buildings and appurtenances servicing the same.

§ 137-2. Where permitted.

A telecommunication facility is permitted in the R-AG District only, and a special use permit must be granted by the Town of Concord pursuant to Chapter 150, Zoning, Article XI, § 150-47A(14)(a). The Town Board shall have the right to waive any provision of this section for facilities whose total height above ground does not exceed 35 feet.

§ 137-3. Application fee. [Amended 6-9-2005 by L.L. No. 2-2005]

An application fee as set by the Town Board from time to time will be assessed, with a fee as set by the Town Board from time to time for a coapplicant.¹

§ 137-4. Site plan. [Amended 6-9-2005 by L.L. No. 2-2005]

The site plan for the proposed telecommunication facility shall be reviewed by the Town of Concord Planning Board before a hearing is held by the Town Board of the Town of

1. Editor's Note: A list of current fees is on file in the Town Clerk's office.

Concord. The Planning Board shall submit to the Town Board an analysis of the proposal. A site plan submittal and review under § 150-176 of Chapter 150, Zoning, shall be required.

§ 137-5. Conformance with state and federal law required.

Applicant or coapplicant will conform with applicable state and federal environmental laws and the parties will warrant their compliance and also any compliance with the FCC rules and regulations. Also, it should be the right of the Town Board to receive proof that these environmental rules and regulations, and FCC rules and regulations, have been complied with.

§ 137-6. Liability insurance. [Amended 6-9-2005 by L.L. No. 2-2005]

A minimum of \$1,000,000/\$3,000,000 liability insurance is required and a minimum of \$250,000 property damage insurance is required. An annual verification of policy in effect is to be submitted to the Town.

§ 137-7. Special use permit requirements.

No special use permit or renewal thereof or modification of the conditions of a current special use permit relating to a telecommunication facility shall be authorized by the Town of Concord Town Board unless it finds that such telecommunication facility:

- A. Is necessary to meet current or expected demands for services supported by the telecommunication facility for that applicant's network;
- B. Conforms with all applicable regulations promulgated by the Federal Communications Commission;
- C. Is designed and constructed in a manner which minimizes its visual impact to the extent practical;
- D. Complies with all other requirements of this chapter;
- E. Is the most appropriate site within the technically feasible area for the location of the telecommunication facility.

§ 137-8. Shared use.

- A. The shared use of existing telecommunication facilities or other structure shall be preferred to the construction of new such facilities. Any application for a special use permit or renewal thereof or modification of the conditions of a current special use permit shall include proof that reasonable efforts have been made to collocate with an existing telecommunication facility or upon an existing structure. The application shall include an adequate inventory report specifying existing facility sites and structures of height exceeding 75% of the height of the proposed tower within a one-mile radius from the proposed site if this application is for cellular telephone or personal communications use or a five-mile radius for other services. The inventory report shall

contain an evaluation of opportunities for shared use as an alternative to the proposed location.

- B. The applicant must demonstrate that the proposed telecommunication facility cannot be accommodated on existing facility sites in the inventory due to one or more of the following reasons:
- (1) The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or other structures, considering existing and planned use for those facilities.
 - (2) The planned equipment would cause radio interference with other existing or planned equipment which cannot be reasonably prevented.
 - (3) Existing or approved telecommunication facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
 - (4) The property owner or owner of the existing tower, etc. or other structure refuses to allow such collocation.

§ 137-9. Design requirements.

Each proposed telecommunication facility shall meet the following design requirements:

- A. The facility shall be separated from residential dwellings, schools and designated historical areas by the distance of 500 feet. The Town of Concord Town Board may modify this condition if the facility is attached to an existing structure or for other satisfactory reasons.
- B. The facility shall have the least possible practical visual effect on the environment as determined by the Town Board and shall not be more than 350 feet above ground level. Towers, antenna(s) and masts shall have a low intensity strobe light unless otherwise required by the Federal Aviation Administration or other federal, state or local authority. Towers shall have a galvanized finish or shall be painted gray above the surrounding treeline and gray or green below the treeline. The Town Board may impose reasonable conditions designed to lesson any adverse aesthetic impact.
- C. The facility shall be provided with vegetative and landscape screening of the base area as stipulated by the Town Board.
- D. The facility shall include a fall zone surrounding any support towers, which fall zone must have a radius of at least equal to the height of such support tower and any antenna(s) attached thereto. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, may not contain any structure other than those associated with the telecommunications facilities, except as further allowed in this subsection, and may not be located within the setback area established by this chapter. If the facility is attached to an existing structure, fall zone requirements may be modified by specific permission of the Town Board.

- E. Towers and auxiliary structures shall be surrounded by a fence or wall at least six feet in height of a reasonable design approved by the Town Board, but with limited visual impact. Barbed wire is not to be used in residential areas or on public property unless specifically permitted by the Town Board.
- F. There shall be no permanent climbing pegs within 15 feet of the ground on any tower.

§ 137-10. Application for permits.

Any application for a special use permit or renewal thereof or modification of the conditions of a current special use permit relating to a telecommunication facility shall include:

- A. A safety analysis shall be made of the electromagnetic environment surrounding the proposed site. The safety analysis shall be prepared by a qualified electromagnetic engineering specialist or health professional qualified to produce such analysis. The safety analysis must demonstrate that the general public electromagnetic radiation exposure does not exceed the standards set by federal regulations.
- B. A completed Visual Environmental Assessment Forum (visual EAF) and landscape plan, with particular attention given to the visibility of the facility from key viewpoints identified in the visual EAF, existing treelines and proposed elevations. The Town Board, upon its review, may request additional visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, line-of-site drawings and/or visual simulations. The visual impact analysis shall be prepared by a landscape architect registered in the State of New York. The Town, at the expense of the applicant, may employ consulting assistance to review the findings and conclusions of the visual impact analysis.
- C. A report, prepared by a New York State licensed professional engineer, which, in the case of a tower, describes its height and design, including a cross section of the structure; demonstrates the tower's compliance with applicable structural standards; and describes the tower's capacity, including the number and type of antennas it can accommodate. In the case of an antenna(s) mounted on an existing structure, the report shall indicate the existing structure's suitability to accept the antenna and proposed method of affixing the antenna(s) to the structure. Complete details of all fixtures and couplings and the point of attachment shall be indicated on a design plan.
- D. The applicant at the time of obtaining a building permit must provide a financial security bond for removal of the telecommunication facility with the Town of Concord as assignee in an amount approved by the Town Board, but not less than \$50,000.
- E. The applicant must submit a letter of intent stating whether the applicant intends to lease excess space on the facility to other potential users at reasonable rental rates and on reasonable terms. The applicant shall cooperate with the Town of Concord by providing the services, without cost, for emergency services such as but not limited to 911, police, fire and ambulance. The letter shall require the facility owner and successors in interest to do the following:
 - (1) Respond in a timely, comprehensive manner to the request for information.
 - (2) Negotiate in good faith for shared use by third parties.

- (3) Allowed share use if an applicant agrees in writing to pay reasonable rental charges or other consideration and to pay the costs of adapting the facility or existing users' equipment to accommodate a shared user without causing uneconomically correctable electromagnetic interference or causing electromagnetic radiation in excess of levels set by the federal regulations and can otherwise agree on reasonable business terms and conditions for shared use of the facility.
- (4) Respond to inquiries for shared use with the information required herein.

§ 137-11. Enforcement.

All telecommunication facilities in the Town of Concord shall fulfill the requirements of this section. The Town Code Enforcement Officer is empowered to enforce these regulations.

- A. The sufficiency of the facility removal bond shall be confirmed at least every five years by an analysis of the cost of removal and property restoration performed by the New York State licensed professional engineer. The results of such analysis shall be communicated to the Town Board. If the bond amount in force is insufficient to cover the costs of removal of the tower, etc., it shall be immediately increased to cover such amount.
- B. The facility shall be inspected minimally every second year for structural integrity by a New York State licensed professional engineer, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer (CEO) and the Town Planning Board.
- C. Any work to augment or repair the facility shall comply with all applicable code requirements and a building permit shall be obtained to conduct such work when required by the code.
- D. The safety analysis shall be updated minimally every second year to demonstrate that the telecommunication facilities continue to comply with the federal regulations for public exposure to electromagnetic radiation. The safety analysis update shall be prepared by the applicant's expert and shall be submitted to the Town CEO. Any specific conditions set forth in the granting of the special use permit relative to the safety and operation of the facility shall be individually addressed.
- E. Any additional antennas, reception or transmission dishes or other similar received or transmitting devices proposed for attachment to an existing facility shall require review in accordance with this section. The intent of the requirement is to ensure the structural integrity, visual aesthetics and land use compatibility of communications towers upon which antennas, dishes or similar receiving devices installed will not adversely affect the structural integrity of the facility. A visual impact analysis shall be included as part of the application for approval to install one or more additional communications devices to an existing facility.
- F. The use of any portion of the facility for signs or advertising purposes, including company name, banners, streamers, etc., is prohibited.

- G. No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when the facility is undergoing additions, repairs or renovation.
- H. The facility and its approaches shall be maintained in good order and repair at all times according to Town Code requirements.
- I. Severability clause. If any section(s), subsection(s), clause(s), phrase(s) or portion(s) of this chapter is/are for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion(s) shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

§ 137-12. Penalties for offenses. [Added 6-9-2005 by L.L. No. 2-2005]

Any person, firm, corporation or other entity violating the provisions of this chapter shall be subject to the penalty provisions set forth under Chapter 150, Zoning, § 150-170.

Chapter 142
VEHICLES AND TRAFFIC

ARTICLE I
Parking

- § 142-1. Definitions.
- § 142-2. Compliance required.
- § 142-3. Applicability.
- § 142-4. Parking on sidewalk or between sidewalk and curb prohibited.
- § 142-5. Parking vehicles for sale in street prohibited.
- § 142-6. No parking and no standing signs.
- § 142-7. No parking in certain places.

ARTICLE II
Weight Limits

- § 142-8. Authority to post limits.

ARTICLE III
Stop Intersections

- § 142-9. Authority to install signs.

ARTICLE IV
Winter Parking

- § 142-10. Parking restrictions.

ARTICLE V
Penalties for Offenses

- § 142-11. Statutory penalties to apply.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Parking
[Adopted 10-4-1976]

- § 142-1. Definitions. [Amended 6-9-2005 by L.L. No. 2-2005]

The words and phrases used in this article have the meanings respectively ascribed to them by Article 1 of the Vehicle and Traffic Law of the State of New York.

- § 142-2. Compliance required.

- A. Every person shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this article in the manner prescribed by, and subject to the exceptions specified in, the Vehicle and Traffic Law of the State of New York.
- B. Every person shall obey any properly posted provision of this article applicable thereto in the manner prescribed by this article when such obedience is not required by the Vehicle and Traffic Law of the State of New York.

§ 142-3. Applicability.

The provisions of this article shall apply except when it is necessary to stop a vehicle to avoid conflict with other traffic in compliance with the directions of a police officer or official traffic control device.

§ 142-4. Parking on sidewalk or between sidewalk and curb prohibited.

No person shall park a vehicle or any portion thereof upon any sidewalk or between the sidewalk and curb or between the sidewalk and the parking lane on any street which has no curb.

§ 142-5. Parking vehicles for sale in street prohibited.

No person shall park a vehicle upon any roadway of any street for the express purpose of displaying such vehicle for sale.

§ 142-6. No parking and no standing signs.

No person shall park any vehicle under his or her control between no parking signs or permit the same to stand between no standing signs which are placed on the street by the police to control the parking or standing of vehicles at funerals, weddings, church services, where street repair work is taking place or utility lines are being repaired or where an accident has occurred.

§ 142-7. No parking in certain places. [Amended 9-13-1995 by L.L. No. 3-1995; 3-6-2008 by L.L. No. 1-2008]

Parking is prohibited in certain designated locations, at all hours. No person shall permit any vehicle under his or her control to be parked or to stand in any of the following places during the dates indicated:

- A. Between November 1 and April 1: on the east side of Glenwood-East Concord Road, County Routes 30 and 30-A (N.Y. Route 240), from the town line of the Town of Colden and the Town of Concord southerly to the south edge of Kissing Bridge South Drive, located south of Crane Road.
- B. Between November 1 and April 1: on the west side of Route 240, 100 feet north and 100 feet south of each of the following: Kissing Bridge Main Entrance, Kissing Bridge North Entrance and Kissing Bridge South Drive.
- C. Between April 1 and November 1: on the west side of Buffalo Road, from its intersection with Springville-Boston Road to a point 800 feet south.

ARTICLE II
Weight Limits
[Adopted 7-9-1979]

§ 142-8. Authority to post limits. [Amended 9-13-1995 by L.L. No. 3-1995; 6-9-2005 by L.L. No. 2-2005]

The Town Board of the Town of Concord authorizes the Highway Superintendent to post an axle limit on any roads which are under the jurisdiction of the Town of Concord.

ARTICLE III
Stop Intersections
[Adopted 5-11-1981]

§ 142-9. Authority to install signs. [Amended 6-9-2005 by L.L. No. 2-2005]

The Town Board reserves the right to install any traffic control signs to ensure safety on any road under Town jurisdiction.

ARTICLE IV
Winter Parking
[Adopted 9-14-1988]

§ 142-10. Parking restrictions.

No vehicle shall be parked on any county road or Town highway in the Town of Concord, outside of the Village of Springville, during the period of November 1 of each year through April 1 of each following year during the hours of 11:00 p.m. to 7:00 a.m., prevailing time.

ARTICLE V
Penalties for Offenses
[Adopted 9-13-1995 by L.L. No. 3-1995]

§ 142-11. Statutory penalties to apply.

The penalties for violation of this chapter shall be those set forth in § 1800 of the Vehicle and Traffic Law of the State of New York.

Chapter 144

VEHICLES, JUNKED

- | | |
|---|---|
| § 144-1. Statutory authority. | § 144-6. Enforcement. |
| § 144-2. Title. | § 144-7. Service of notice. |
| § 144-3. Purpose. | § 144-8. Disposal of vehicles required. |
| § 144-4. Definitions. | § 144-9. Penalties for offenses. |
| § 144-5. Outdoor storage of junked motor vehicles on private property prohibited. | |

[HISTORY: Adopted by the Town Board of the Town of Concord 4-14-1997 by L.L. No. 4-1997. Amendments noted where applicable.]

§ 144-1. Statutory authority. [Amended 6-9-2005 by L.L. No. 2-2005]

Pursuant to the authority conferred by Article 2 of the Municipal Home Rule Law of the State of New York, and for each and every purpose specified therein, the Town Board of the Town of Concord, County of Erie and State of New York, has ordained and does hereby enact the following local law regulating and restricting the use and disposal of abandoned automobiles within said Town.

§ 144-2. Title.

This chapter shall be known and may be cited as the "Junked Motor Vehicle Ordinance of the Town of Concord."

§ 144-3. Purpose. [Amended 6-9-2005 by L.L. No. 2-2005]

This chapter is enacted in recognition of the fact that the outdoor storage of junked motor vehicles on privately owned property within the Town of Concord is detrimental to the health, safety and general welfare of the community. The same also constitutes an attractive nuisance to children and in many ways imperils their safety. Such storage also endangers the person and property of members of the community since fuel tanks containing gasoline or gasoline fumes may easily explode. Such storage is unsightly and depreciates not only property values on which they are located but also the property of other persons in the neighborhood and Town generally. The outdoor storage of junked motor vehicles on privately owned properties within the Town of Concord outside the Village of Springville is, therefore, regulated for the preservation of the health, safety and general welfare of the community. However, farm equipment is exempt from this chapter.

§ 144-4. Definitions.

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

JUNKED MOTOR VEHICLE — Any motor vehicle, whether automobile, bus, truck, mobile home or any other vehicle, originally intended for travel on the public highways which is abandoned, discarded, stored, left or located by its owner or any other person or is permitted or condoned to be abandoned, discarded, stored, left or located by its owner or any other person on private premises in the Town of Concord, outside the Village of Springville. A junked motor vehicle shall also mean any motor vehicle that is wrecked, discarded or dismantled or partially dismantled which is in such deteriorated condition that it cannot be legally operated upon the public highways. Any of the above not having a legally acquired and currently valid New York State inspection sticker properly affixed to it shall be classified as a junked motor vehicle. With respect to a motor vehicle not required to be inspected or motor vehicles not usually used on public highways, the intent of the owner shall be determined by the length of time since it was last used for the purpose intended and statements as to its abandonment and other relevant facts. Therefore, seasonally used vehicles used primarily on private property are exempt from being classified as a junked motor vehicle. [Amended 6-9-2005 by L.L. No. 2-2005]

MOTOR VEHICLE — Every vehicle originally designed and intended to be operated, drawn or driven or capable of being operated, drawn or driven upon a public highway by the power other than muscular power. For the purpose of this chapter, the term "motor vehicle" shall include automobiles, trucks, buses, motorcycles, snowmobiles and trailers.

OWNER OF MOTOR VEHICLE — A person, firm or corporation having the property in or title to a motor vehicle, a person entitled to the use and possession of a vehicle, subject to security interest in another person, and also including any lessee or bailee of a motor vehicle having the use thereof under the lease or otherwise.

OWNER OF PRIVATE PROPERTY — A person, firm or corporation being the owner, contract purchaser, tenant, lessee, occupant, undertenant, receiver or assignee of private premises or private property located within the Town of Concord.

§ 144-5. Outdoor storage of junked motor vehicles on private property prohibited.

It shall be unlawful for any person, firm or corporation either as owner, occupant, lessee, agent, tenant or otherwise, of property within the Town of Concord, to store or deposit, or cause or permit to be stored or deposited, a junked motor vehicle, or part or piece thereof, on any private property within the Town of Concord, unless:

- A. Such motor vehicle is stored or deposited on premises legally used and operated as a junkyard; or
- B. Such motor vehicle is under repair, reconstruction or refurbishing by the owners thereof who must actually be residing on the premises. Not more than two such motor vehicles shall be permitted at any one time on any premises. Such motor vehicles must be so maintained and protected so as not to create any hazard. Such motor vehicles shall not remain on the premises more than one year.

§ 144-6. Enforcement.

It shall be the responsibility of the Code Enforcement Officer or his duly authorized representative to enforce the provisions of this chapter.

§ 144-7. Service of notice.

Notice of violation shall be served to the owner/owners, executors legal representative, agents or any other person having ownership or vested interest of the property (as shown on the Town's most recent assessment roll) on which the junk vehicle is located. If no such person can be reasonably found, by mailing to such owner, by registered mail, a copy of such notice shall be directed to his/her last known address.

§ 144-8. Disposal of vehicles required.

If the owner has not properly removed and/or disposed of the junk vehicle within 30 days of the date of notice was issued it will be declared an offense and subject to the following mandatory penalties. In situations where more than one junk vehicle are found to occupy the property, each vehicle unit shall constitute a separate offense.

§ 144-9. Penalties for offenses.

- A. Maximum penalty. For violation of any provision of this chapter, the maximum penalty shall, upon conviction thereof, be a fine not exceeding \$250 or a term of imprisonment not exceeding 15 days, or both, in the discretion of the court. **[Amended 6-9-2005 by L.L. No. 2-2005]**
- B. Separate violations. Except as otherwise provided, each and every day in which a violation of any provision of this chapter exists shall constitute a separate violation.

Chapter 147

WATER

ARTICLE I Water Districts

§ 147-1. Purpose.

§ 147-2. Applicability.

§ 147-3. Definitions.

§ 147-4. Rules and regulations.

§ 147-5. Rights reserved by Board.

§ 147-6. General instructions and practices.

§ 147-7. Benefit assessments and taxes.

§ 147-8. Penalties for interference with water system.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Water Districts

[Adopted 10-25-1999 by L.L. No. 3-1999]

§ 147-1. Purpose. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The purpose of this article is to establish rules and regulations pertaining to the use of public water facilities and the furnishing of water to consumers of water in water districts legally formed within the Town of Concord.

§ 147-2. Applicability. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The territory to which the regulations established by this article shall apply includes the entire area of any legally formed water district within the Town of Concord.

§ 147-3. Definitions.

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

BOARD — The Town Board of the Town of Concord, Erie County, New York, or its duly authorized representative.

CONSUMER — The person or corporation to be served or the authorized agent of such person or corporation, including any water use customer using any water from the Town of Concord Water District No. 2 supply system.

OWNER — The person or corporation owning the property to be served or the authorized agent of such person or corporation.

SUPERVISOR — The Supervisor of the Town of Concord or such other person(s) duly authorized by the Board to act in such capacity, or his/her authorized representative.

TECHNICAL SPECIFICATIONS — The "Town of Concord Water and Sewer Technical Specifications," latest revision, incorporated by reference and which may be changed from time to time by Board resolution. [**Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]

§ 147-4. Rules and regulations. [**Amended 6-9-2005 by L.L. No. 2-2005; at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]

- A. No connection to water main without permit. No consumer shall make any connection or opening into any public water main without the written permission of the Board. All water main connections and all service work within the street right-of-way shall be done under the direction of the Supervisor or the Supervisor's authorized representative.
- B. Application for permit and for water. An application for a permit to connect to the water main and for water service must be made by the owner in writing on forms provided by the Water District. Such application shall be made not later than 20 days previous to the time such service is to begin, and shall contain such information as the Water District may require. When the owner desires to use water from the water system, or if he/she is already a consumer, and desires to extend, increase, decrease or discontinue it, such owner shall make a written application, specifying the purposes for which he/she desires to make the change.
- C. Making connection.
 - (1) No service connection shall be made, laid or covered, except in the presence of the Supervisor or his/her authorized representative, and then only when he/she or his representative shall have approved all work and materials and authorized the making of such connection and covering of it. All lines covered without the approval of the Supervisor or authorized representative will be uncovered at the owner's expense.
 - (2) Any existing services which at any time require replacement because of leaks shall be replaced with acceptable materials in accordance with these rules and regulations.
- D. Service connections.
 - (1) All service connections shall be of nominal 3/4-inch or larger pipe and shall be carried full size to the water meter. Service pipe material shall be Type K copper or polyethylene (PE) in accordance with the latest revision of the Technical Specifications.
 - (2) Service pipe shall be constructed without intermediate joints, except when the length of service exceeds manufactured lengths of pipe. In such case, fittings shall be employed in accordance with the latest revision of the Technical Specifications.

- (3) Plastic pipe intended to be buried shall be installed along with a tracer wire system to allow the pipe to be located by modern means. The tracer wire system shall be installed in accordance with the Technical Specifications and shall be approved by the Supervisor prior to backfilling.
 - (4) All pipe shall be laid in a trench with not less than four feet six inches of cover to prevent freezing. When installing service lines from highway right-of-way to the building, consumers should exercise particular care in maintaining the four-foot minimum cover when crossing gutters, drainage ditches or other like depressions. Where four feet six inches of cover is impractical to achieve and permission is granted by the Supervisor to maintain less than four feet of cover, the pipe shall be insulated and inspected to the satisfaction of the Supervisor, prior to backfilling.
 - (5) The connection from the water main to and including the curb stop at the highway boundary will be laid by the Water District at a reasonable charge established by resolution of the Water District/Town Board, which charge may be changed from time to time by Town Board resolution.
 - (6) No installation shall be permitted which has any connection whatsoever with a private water system or to piping, tanks, vats or other apparatus which contains liquids, chemicals or any other matter which may flow back into the Town system and consequently endanger the water supply.
- E. Separate connection for each consumer. A separate tap and service shall be installed for each improved premises. No consumer will be allowed to supply water to another person or premises. Service lines in excess of 120 feet in length from the curb stop to the meter must use a meter pit, installed within 10 feet of the curb station.
- F. Meters.
- (1) All water shall be metered. Meters shall be signed for by the owner, or his/her duly authorized agent, for whose premises the water is to be used.
 - (2) When water is desired the owner of said premises shall make written application to the Water District on a standard form provided, at which time he/she shall make payment to the Town in an amount to be set by Town Board resolution. Such meter charge shall be set by the Town Board hereafter from time to time by appropriate resolution.
 - (3) Upon request of the owner thereafter, the Water District shall then cause the meter to be installed according to its regulations and rules.
 - (4) The Water District/Town Board reserves the right, at all times, to stipulate the size, type and make of any and all meters used or to be used within the Water District.
 - (5) The Water District/Town Board reserves the right, at all times, to inspect, repair, remove and replace any meter at any time and to substitute another meter in its place. In case of a disputed account involving the question of accuracy of the meter, such meter will be tested by the Water District upon request of the consumer or owner. The fee for testing meters will be established from time to

time by resolution of the Town Board, and shall be payable in advance of the testing. In the event that the meter so tested is found to have an error in registration to the prejudice of the consumer in excess of 4% at any rate of flow within the normal test limits, the fee advanced for testing will be refunded and the bill for the current period adjusted to correct such over-registration.

- G. Turning on water. No person except an authorized Water District representative shall turn the water on or off at any connection to the water main. Water will be turned on by the Water District to test the pipes and fixtures before the pipes are covered and immediately turned off; it will be finally turned on upon final approval by the Water District representative.
- H. Turning off water.
- (1) Water may be turned off by the Water District because of failure of payment by any consumer 60 days after the due date of billing, and a charge to be set by Town Board resolution will be made for turning water on again.
 - (2) The Board reserves the right to shut off the water to premises at any time that it may deem necessary, and the Town or Water District shall not be responsible for any damage which may result therefrom. It is not necessary for the Water District to give notice the water will be shut off.
 - (3) Upon detection of a leak in a service line, between the curb stop and the meter, of any nature prejudicial to the Water District, the owner shall make the necessary repairs to said service, at no expense to the Water District, and shall perform the work in strict accordance with the requirements set forth for a new service.
 - (4) Upon failure by the owner to repair such leak, the Water District may, at its option, terminate service five days following issuance of a notice to repair. The Water District reserves the right to enter on any property or premises to repair any leak, break or other damage which, if left unrepaired, would or could be prejudicial to the Water District's water system. The expense of such repairs to services shall be charged to the owner, while the expenses incurred in repairing Water District mains and facilities shall be borne by the Water District.
- I. Piping on premises. No private pumping system shall have any connection whatsoever with the Water District water system regardless of how piped or valved, without the express, written consent of the Supervisor and installation of an approved backflow prevention device. The backflow prevention device shall be inspected annually by a certified technician and a copy of the inspection report must be furnished to the Town within one month of the inspection.
- J. Expense borne by the Town. The following expenses shall be borne by the Town:
- (1) The cost of installing the portion of a service line extending from the main to the curb stop, inclusive, during water main construction undertaken by the Town.
 - (2) Maintenance and repair of meters in the case of normal mechanical defects and insofar as ordinary wear and tear are concerned.
 - (3) Maintenance and repair of service lines from main line to the curb stop, inclusive.

- K. Expense borne by the owner. The following expenses shall be borne by the owner:
- (1) Installation charge, including the cost of making taps and installing service from the main to the curb stop, except as part of the initial construction of the main.
 - (2) Materials and labor in laying and maintaining the service pipe and meter pit if required from owner's premises to the curb box at the street right-of-way.
 - (3) Water rentals and special assessment which shall be set by Town Board resolution.
 - (4) Payment for all meters, to be acquired from the Water District.
 - (5) The charge to be set by the Water District/Town Board for turning on the water after it has been turned off due to delinquency; also all arrearage penalties or back rentals of whatever nature. All delinquent charges shall be a lien against the property.
 - (6) Cost of installation, testing and repair of meters, except for mechanical defects or natural wear and tear. Consumer will be held responsible for damage due to freezing, hot water or other external causes. In case of damage, the Water District will repair the meter and, if necessary, replace it with another meter, the total cost of which will be paid by the consumer.
 - (7) Penalties prescribed by law for unauthorized breaking of meter seals.
 - (8) Turn-on and turn-off charges, per consumer request.
 - (9) Such additional charges as may be set forth in the Water District.
- L. Water rentals.
- (1) All water rentals will be charged to the owner, and statements rendered to the consumer.
 - (2) In the case of duplexes or multiple dwellings with or without separate meters for each dwelling, statements shall be mailed or delivered to the owner of such multiple dwelling and it shall be such owner's responsibility to see that individual consumers receive notice of such billings.
 - (3) Rates for water used by individual consumers living outside the Water District boundary shall be double the rate charged in the Water District boundary. The Town Board reserves the right to refuse the sale of water to anyone for consumption outside the Water District.
 - (4) Meter rates. The Water District shall, from time to time, by resolution, establish water service rates. The amounts due shall be billed and paid quarterly for the water used in the preceding quarter. The penalty for nonpayment shall be established by resolution of the Town Board and may be changed at the Board's discretion.
 - (5) Where meters have failed during any billing period, the Water District shall have the right to estimate the quantity of water used and to charge for this estimated

water use on the basis of the established schedule of rates, the same as if the meter had been functioning for the entire billing period.

- (6) Upon the effective date of this article, the meter rates and Water District services rate schedule shall take effect. The rates and services shall be subject to change by Town Board resolution without a public hearing.
- M. Operation of hydrants. No person except the Supervisor or a person(s) acting under his/her direction or permission shall open any fire hydrant or draw water therefrom, except the chief of a fire department having jurisdiction in the area and his/her assistants, and in no case shall inexperienced or incompetent persons be allowed to manipulate or interfere with any hydrant or any gate, valve or other fixture of said water works.
- N. Building permits; temporary service connection.
- (1) Persons desiring to use available Town water for construction purposes will be required to make application to the Town Board therefor, stating the name of the contractor and the owner of the property and its location, and on receiving such permit will be required to pay the fee established by the Town Board plus actual meter rates per thousand gallons for such privilege. If water is wasted, the Town Board may cancel such permit and stop the supply of water.
 - (2) All such water shall be metered and the meter shall be adequately protected from freezing or other damage prejudicial to the Water District. In addition to all installation charges and meter rentals and charges referred to in Subsections D and F, there shall be a deposit fee established by the Water District/Town Board required for the faithful fulfillment of the agreement. Except as otherwise provided, all deposits will be returned when the equipment is returned and after it has been found to be in good operating condition.
 - (3) Except as otherwise directed by the Water District/Town Board or as set forth herein, all requirements for permanent service shall apply to temporary service connections.
 - (4) The Town Board reserves the right to reject any application for service which it believes will be prejudicial to the best interests of the Water District or Town.
- O. Special services. The Water District also reserves the right to accept or reject any or all applications for services of a nature not hereinbefore covered by these regulations, including the right to determine the rates for such services, and shall approve only those permits which it finds are not prejudicial to the best interests of the Water District or Town.

§ 147-5. Rights reserved by Board.

The following rights are reserved by the Town Board:

- A. To make such changes in the rules and regulations as it may deem to be in the best interests of the Water District.
- B. To make such changes in the rates for water rental as may in its judgment seem to be for the best interests of the Water District.

- C. In periods of drought or in the event of any emergency affecting the supply of water, to restrict the use of water to particular hours determined by the Water District or to prohibit its use entirely for sprinkling, irrigation or uses other than human or animal consumption, and to impose penalties for violations of such restrictions.
- D. To order existing service pipes and fixtures to be replaced with acceptable material as determined by the Water District/Town Board and to refuse service with all penalties hereinbefore set forth for failure of an owner to comply with such order.
- E. To have free access to enter premises of any consumer at any reasonable time for the purpose of inspection, reading, repair, replacement and/or removal of meters.
- F. To enter into contracts for a supply of water.
- G. To discontinue water service for violation of this article.

§ 147-6. General instructions and practices.

- A. It is the intention of the Water District to notify consumers when the water in the mains is to be shut off, but it is here noted that it is at times impractical and sometimes impossible to do.
- B. Whenever the water is shut off for any reason, the consumer is hereby advised that all hot water boilers should be immediately banked and water content checked often and thoroughly.
- C. If the plumbing is in proper condition, no damage can occur from turning the water in the mains off or on without notice, and the Town is not liable for any damage caused thereby.
- D. When property is conveyed, written notice should be given to the Town Clerk of said conveyance so the transfer of ownership may be noted on the water books and the new owner notified of his accounts.
- E. In case of fire or an alarm of fire, all water consumers are requested to cease the use of water for motors, fountains, sprinkling and power purposes during such fire, in the interest of keeping up a strong and effective pressure for fire purposes.
- F. A pressure-reducing valve shall be installed at the meter location. The valve must be provided by the owner since operating pressures in the main may exceed the maximum pressure desired by the owner. The Town shall not be responsible for any damage resulting from excessive pressure.

§ 147-7. Benefit assessments and taxes.

The Water District shall have the right from time to time to set and adjust both direct and indirect benefit assessments against all parcels of property within the Water District.

§ 147-8. Penalties for interference with water system. [Amended 6-9-2005 by L.L. No. 2-2005]

Any person who willfully or maliciously displaces, removes, injures or destroys a pipe or main connected therewith or forming a part thereof or who shall deface, injure, disturb or interfere with any machinery, pumps, buildings, gates, valves or any part of the system of water works, or who, with intent to injure or defraud, commits or does any of the acts prohibited by Article 145 of the Penal Law of the State of New York shall, in addition to the appropriate offense as set forth in said Article, be guilty of a misdemeanor under this article, punishable by fine not to exceed \$1,000 or by imprisonment up to one year, or by both such fine and imprisonment.

Chapter 150

ZONING

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[HISTORY: Adopted by the Town Board of the Town of Concord 6-9-2005 by L.L. No. 2-2005. Amendments noted where applicable.]

ARTICLE I

Enactment

§ 150-1. Authority.

Pursuant to Article 3, § 20 of the Municipal Home Rule Law of the State of New York, the Town Board of the Town of Concord, Erie County, New York, hereby adopts this chapter to replace the Zoning Ordinance of the Town of Concord (Erie County, New York) with a new comprehensive zoning law.

§ 150-2. Title.

This chapter shall be known as the "Zoning Local Law of the Town of Concord, County of Erie and State of New York."

§ 150-3. When effective.

This chapter shall be in effect after adoption and publication as prescribed in §§ 20 and 27 of Article 3 of the Municipal Home Rule Law of the State of New York.

§ 150-4. Repealer.

Unless otherwise provided in this chapter, pursuant to Article 3, § 22, of the Municipal Home Rule Law of the State of New York, the Zoning Ordinance of the Town of Concord (Erie County, New York) adopted by the Town Board of the Town of Concord on August 10, 1964, together with all subsequent amendments thereto, is hereby repealed on the effective date of this chapter.

ARTICLE II
General Provisions

§ 150-5. Purposes and scope. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- A. A Comprehensive Plan is hereby established for the area of the Town of Concord outside the Village of Springville by dividing the territory thereof into certain districts and prescribing regulations for buildings or other structures and the use of land therein. The Comprehensive Plan, set forth in the text and map which constitute this chapter, is adopted in order to promote and protect public health, safety, comfort, convenience, prosperity and other aspects of the general welfare. These general goals include, among others, the following specific purposes: to provide adequate light, air and convenience of access; to prevent undue concentration of population and overcrowding of land; to lessen congestion in the streets or roads; to secure safety from fire, flood, panic and other dangers; to enhance the environment by the conservation of certain open land or wetland areas with certain desirable or unique characteristics worthy of preservation; to facilitate the adequate provision of transportation, parks, schools and other public requirements, including the transmission of power; and to preserve and promote the attractiveness of the Town of Concord.
- B. It is also the intent of the Comprehensive Plan hereby established to recognize those developmental, conservation and preservation plans or any portions thereof as promulgated by the federal government, the governments of the State of New York and the County of Erie, official regional bodies and public authorities that are inconsistent or incompatible with the Comprehensive Plan of the Town of Concord.
- C. The Comprehensive Plan, currently on file with the Town Clerk's Office, hereby established has been formulated with reasonable consideration, among other things, as to the characteristics of each district and its particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land in the most desirable manner.
- D. The Comprehensive Plan of the Town of Concord, currently on file with the Town Clerk's Office, is hereby deemed to be the Comprehensive Plan of the Town of Concord pursuant to § 272-a of the Town Law. The Concord Town Planning Board and the Concord Town Board shall continue to study and revise the Comprehensive Plan of the Town of Concord.

ARTICLE III
Word Usage and Definitions

§ 150-6. Word usage.

- A. Words used in the present tense include the future tense.
- B. Words used in the singular include the plural, and words used in the plural include the singular.
- C. The word "person" includes an individual, firm, company, partnership or corporation.

- D. The word "shall" or "will" is mandatory; the word "may" is permissive.
- E. The word "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied."
- F. Any reference to an "R District" shall be interpreted to mean R-E, R-1, R-2, R-M, R-AG, R-12, R-RB and R-CRDG Districts. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)**]
- G. Any reference to a "C District" shall be interpreted to mean C-1, C-2, C-T and C-R Districts.
- H. Any reference to an "M District" shall be interpreted to mean M and M-R Districts.
- I. Any reference to a "P District" shall be interpreted to mean a PID District.

§ 150-7. Definitions.

For the purpose of this chapter, certain terms or words used herein shall be interpreted or defined as follows:

ACCESSORY BUILDING OR STRUCTURE — A building or structure the use of which is incidental to that of the main building and which is located on the same premises.

ACCESSORY USE — A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building, except as otherwise provided for off-street parking.

ALTERATION — Any change, rearrangement or addition to or any relocation of a building or structure; any modification in construction or equipment.

ANIMAL HOSPITAL — The premises or buildings used for the diagnosis, treatment or other care of the ailments of domesticated, household animals, which may include related facilities, such as laboratories, offices and temporary quarters for such animals.

BED-AND-BREAKFAST — An arrangement in a main building on a lot designed primarily for single-family residential usage in which not more than three rooms located above ground are designated by the owner-occupant for rental sleeping purposes to guests as primarily overnight accommodations, including, or with the option to include, breakfast within the residence the next morning. Said rented sleeping accommodations, which may include private bathroom or shared bathroom facilities, shall not include any separate cooking facilities, and all cooking shall be done in the main kitchen of said residence.

BUILDING — A combination of any materials, whether portable or fixed, having a roof, to form a structure affording shelter for persons, animals or property. The word "building" shall be construed, when used herein, as though followed by the words "or part or parts thereof," unless the context clearly requires a different meaning.¹

CAMPGROUND — A parcel of land used or intended to be used, let or rented for transient, vacation or recreational occupancy by travel trailers, campers, tents, recreational vehicles,

1. Editor's Note: The former definition of "building height," which immediately followed, was superseded 3-6-2008 by L.L. No. 3-2008. See now the definition of "height."

motor homes and the motor vehicles propelling or carrying the same, but excluding manufactured homes designed for year-round occupancy or as a place of residence. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

CLUSTER HOUSING — A residential subdivision of single-family detached dwellings, designed for single-family dwelling purposes, comprising 10 or more acres in which minimum lot areas and minimum lot dimensions may be reduced by a specific amount, provided that land not used for residential lots, except streets, in the subdivision is used for recreational or open space purposes. The phrase "clustering" shall refer to cluster housing.

COMMERCIAL EXTRACTION OF TOPSOIL, SAND, GRAVEL OR STONE — The extraction of stone, sand, gravel or topsoil for sale, as an industrial operation, and exclusive of the extraction of stone, sand, gravel or topsoil solely in furtherance of on-site construction projects which are permitted uses in the district in which they are to be undertaken and for which a building permit has been lawfully issued by the Town of Concord Code Enforcement Officer or Building Inspector and which does not constitute mining, as defined herein.

CONDOMINIUM — An apartment house or houses the apartments or dwelling units of which are individually owned, with each owner receiving a deed enabling said owner to sell, mortgage, rent or otherwise exchange his/her apartment independent of the owners of the other apartments in the building or buildings.

CRYPTOMINING — The process of verifying and adding new blocks of cryptocurrency transactions to a blockchain, a decentralized and public ledger. Miners use powerful computers to solve complex mathematical problems, a process known as "proof-of-work," and are rewarded with newly minted cryptocurrency and transaction fees. This process secures the network and ensures the integrity of the blockchain. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

DATA CENTER — A physical facility that houses number of computer servers and networking equipment to store, process and manage an organization's data. These buildings are designed with specialized cooling systems, power infrastructure, and security to ensure continuous and reliable operation. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

DAY NURSERY or DAY-CARE CENTER — A place for the care of three or more children away from their homes who stay for a period of three hours or more but less than 24 hours during any day irrespective of compensation, reward or otherwise.

DOG KENNEL — The keeping of more than three dogs that are more than six months old.

DRIVE-IN RESTAURANT — A restaurant wherein all patrons thereof are not required to be seated to be served.

DWELLING — A building used as the living quarters for one or more families.

- A. **DWELLING UNIT** — One or more rooms designed for occupancy by one family for cooking, living and sleeping purposes.
- B. **SINGLE-FAMILY DWELLING** — A building containing one dwelling unit and designed or used exclusively for occupancy by one family.

- C. **TWO-FAMILY DWELLING** — A building containing two dwelling units and designed or used exclusively for occupancy by two families living independently of each other; or two single-family dwellings having a party wall in common.
- D. **MULTIFAMILY DWELLING** — A building or portion thereof containing three or more dwelling units and designed or used for occupancy by three or more families living independently of each other.

DWELLING GROUP — A group of two or more dwellings located on the same lot and having any yard or open space in common.

ENLARGEMENT — An increase in floor area of an existing building or an increase in size of an existing structure or an increase in the area of land used for an existing open use.

EXTENSION — An increase in the amount of existing floor area used for an existing use in an existing building.

FAMILY — One or more persons living together in one dwelling unit and maintaining a common household, including domestic servants and gratuitous guests, together with boarders, roomers or lodgers not in excess of the number allowed by this chapter as an accessory use.

FILLING STATION — Any area of land, including structures thereon, used for the retail sale of gasoline or other motor vehicle fuel for the propulsion of vehicles. A filling station can be either self-service or attendant operated.

FRONT YARD EQUIVALENT — That portion of a rear yard of a through lot extending along a street/road line and from the street/road line for a depth equal to a required front yard. Any front yard equivalent shall be subject to the regulations of this chapter which apply to front yards.

GARAGE, PRIVATE — An accessory building or portion of a main building used for the storage of self-propelled vehicles, including not more than two commercial vehicles, used by the occupants of the premises and may include space for not more than one passenger vehicle used by others.

GARAGE, PUBLIC or REPAIR GARAGE — Any garage other than a private garage and which is used for storage, repair, rental, greasing, washing, lubrication, servicing, adjusting or equipping of automobiles or other motor vehicles.

GASOLINE STATION — Any area of land, including structures thereon, that is used for the sale of gasoline, other motor vehicle fuel, oil or other lubricating substances and motor vehicle accessories and which may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof or the storage of vehicles for any purpose other than servicing with fuel, lubricants or antifreeze, tire repair and other emergency repairs of a temporary nature.

HEIGHT [Added 3-6-2008 by L.L. No. 3-2008]

- A. The vertical distance measured from the adjacent ground elevation of the finished or natural grade, whichever is lower, at the lowest point where the natural or finished grade meets the foundation wall to the following points on the building or structure:

- (1) For flat roofs or roofs with a slope of 3:12 or lower, height shall be measured to the highest point on the roof.
 - (2) For mansard roofs, height shall be measured to the deckline. For purposes of this definition, the deckline is the point at which the pitch of the roof changes; the inflection point.
 - (3) For hip, gable or gambrel roofs where the slope of the roof is higher than 3:12, height shall be measured to a point midway between the highest ridge of the building and the lowest point on the corresponding eave.
 - (4) For other roof shapes, such as domed or vaulted shapes, height shall be measured to the highest point of the roof.
- B. In no case shall a mansard roof or the parapet wall of a flat roof extend more than 18 inches above the deckline or maximum height, whichever is lower.
- C. When referring to a tower or other structure, the height shall be measured from existing or natural grade, whichever is lower, to the highest point on the tower or other structure, including the base pad and any antenna. The height of a wind energy conversion system shall be measured from such grade to the apex of the blade in the vertical position.

HOME OCCUPATION — An accessory use of a service character conducted within a dwelling by residents thereof, which occupation is clearly secondary to the dwelling use for living purposes and does not change the character thereof or have any exterior evidence of such secondary use other than a permitted nameplate, and in connection with which there is not involved the keeping of a stock-in-trade.

- A. The home occupation shall be carried on wholly within the principal or secondary building. Not more than one person outside the resident family shall be employed. There shall be no exterior storage of materials used in the home occupation. No offensive noise, vibration, smoke, dust, odor, light or glare shall be produced.
- B. Home occupations shall be allowed in the following districts only: R-1, R-AG, R-RB and R-12.

LOT LINE — The property lines bounding a lot. Where any property line parallels a street and is not coincident with the street line, the street line shall be construed as the property line for the purpose of complying with the area and setback regulations of this chapter.

LOT, NONCONFORMING — Any lot which does not conform with the minimum width, depth and area dimensions specified for the district in which said lot is located. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

LOT LINE, FRONT — Where a lot abuts upon only one street, the street line shall be the front lot line. Where a lot abuts upon more than one street or road, the assessment roll of the Town of Concord shall determine the front lot line.

LOT LINE, REAR — Any lot line which is opposite and more or less parallel with the front lot line. In the case of a lot which comes to a point at the rear, the rear lot line shall be an imaginary line, 10 feet in length, entirely within any lot, parallel to and most distant from the front lot line.

LOT LINE, SIDE — Any lot line which is not a front lot line or a rear lot line.

MANUFACTURED HOME — A factory-built home, originally transportable, designed to be used as a year-round single-family dwelling that is manufactured according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401). A manufactured home is sometimes referred to as a "HUD Code home." The term "manufactured home" does not include a mobile home or recreational vehicle. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

MANUFACTURED HOME PARK — Formerly known as "mobile home court." A lot containing two or more manufactured homes. **[Added amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

MINING — Any activity regulated by the New York State Mined Land Reclamation Law (Environmental Conservation Law Article XXIII, Title 27), including but not limited to 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 uses; 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. For the purpose of this provision, "construction projects" shall mean the excavation, removal and disposition of minerals solely in the furtherance of on-site construction projects which are permitted in the district in which they are to be undertaken and for which a building permit has been lawfully issued.

MINING SITE — The geographic location and spatial extent of area intended to be mined and as so designated on a required site plan approved by the Concord Town Board as part of the mining application process described in Article XIX herein.

MOBILE HOME — A transportable, factory-built home, designed to be used as a year-round, single-family dwelling, built prior to June 15, 1976, the effective date of the Federal Manufactured Housing Construction and Safety Standards Act of 1974. "Mobile home" does not include a recreational vehicle. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

MOBILE HOME COURT — As defined pursuant to Local Law No. 2 of 1991, entitled "A Local Law to License and Regulate Mobile Homes and Mobile Home Courts in the Town of Concord." Now known as a "manufactured home park."²

MODULAR HOME — Factory-built housing that is certified as meeting the New York State Building Code. A modular home is constructed on site from components that are substantially made and assembled in a factory and that are delivered to a building site, where they are assembled and installed on a permanent foundation. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

2. Editor's Note: See Ch. 94, Mobile Homes.

MOTEL — A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing accessory off-street parking facilities. The term "motel" includes buildings designated as motor lodges, auto courts and similar appellations.

NONCONFORMING — Any lawful building or structure or any lawful use of land, premises, a building or structure which does not conform to the regulations of this chapter for the district in which such building, structure or use is located, either at the effective date of this chapter or as a result of subsequent amendments thereto.

NURSERY SCHOOL — A school designed to provide daytime care or instruction for two or more children from two to five years of age, inclusive, and operating on a regular basis.

NURSING OR CONVALESCENT HOME — Any building where persons are housed or lodged and furnished with meals and nursing care for hire.

OPEN SPACE — The unoccupied area open to the sky on the same lot with a principal building or structure and/or any accessory building exclusive of parking areas or driveways. "Open space" also refers to a parcel or parcels of land or an area of water, or a combination of land and water, within a site with any or all of such features as common outdoor recreation areas, woodland areas, parks, playfields, playgrounds, golf courses, tennis courts, skiing facilities, nature trails, formal gardens, lakes and swimming pools, camping facilities, unoccupied areas in a natural state and similar open areas exclusive of streets, roads and parking areas.

PANEL HOMES — Factory-manufactured housing in which walls, ceilings and floors are constructed at a factory-manufactured housing plant and transported as housing components to a housing site to be assembled thereat to form complete housing units on a permanent foundation. Furthermore, said housing is subject to the requirements and regulations of the New York State Uniform Fire Prevention and Building Code.

PERMANENT FOUNDATION — The above and partially below grade support for the base of a building or structure extending completely around the perimeter or base of said building or structure. It shall be composed of poured concrete or prefabricated concrete components suitable for such above and partially below grade support or concrete blocks formed together by mortar or an equivalent bonding material to create and secure a solid, rigid effect.

PLANNED UNIT DEVELOPMENT — A project comprising two or more buildings designed to be maintained and/or operated as a single unit in a single ownership or control by an individual, partnership, corporation or cooperative group, which has certain facilities in common, such as yards and open spaces, recreation areas and garage and parking areas.

PROFESSIONAL RESIDENCE-OFFICE — A single-family detached residence in which the residential occupant has a professional office, such as an architect, accountant, chiropractor, dentist, doctor of medicine, engineer, insurance agent, landscape architect, land surveyor, lawyer, osteopath, physiotherapist, planning consultant, podiatrist, psychologist, realtor or tax specialist, and which is clearly secondary or accessory to the single-family dwelling use for living purposes and does not change the residential character thereof and where not more than one person outside the family is employed.

PUBLIC UTILITIES — A system of public water supply and distribution and public sanitary sewers complete with Health Department approved facilities for waste disposal.

RECLAMATION — The conditioning of the land affected by mining to make it suitable for any uses or purposes consistent with the provisions of the New York State Mined Land Reclamation Law (Environmental Conservation Law, Article XXIII, Title 27) and this chapter.

REPAIR — Replacement or renewal, excluding additions, of any part of a building, structure, device or equipment with like or similar materials or parts, for the purpose of maintenance of such building, structure, device or equipment.

RESERVOIR SPACE — A temporary storage space for a vehicle waiting for service or admission.

SAND PIT, GRAVEL PIT, CLAY PIT OR TOPSOIL STRIPPING — A parcel of land or part thereof used for the purpose of extracting sand, gravel, clay or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a legal building permit has been issued by the Town of Concord.

SCHOOL — A public, parochial or private school.

SETBACK — The minimum horizontal distance from any existing or proposed building or structure to the nearest point in an indicated lot line or street/road line.

SETBACK, REAR — On an interior lot, a yard extending for the full length of the rear lot line between side lot lines; and on a corner lot, a yard extending along a rear lot line between an interior side line and a side yard which abuts a street/road. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

SETBACK, REQUIRED FRONT — A yard extending the full length of the front lot line between side lot lines. The front yard depth of a lot located on a curve shall be measured from the chord connecting the arc of the front lot line. **[Added adoption of Code (see Ch. 1, General Provisions, Art. I)]**

SIGN — Any structure or part thereof or any device attached to, painted on or represented on a building or other structure upon which is displayed or included any letter, work, model, banner, flag, pennant, insignia, decoration, device or representation used as, or which is in the nature of, an announcement, direction, advertisement or other attention-directing device.

- A. A "sign" shall not include a similar structure or device located within a building except for illuminated signs within show windows.
- B. A "sign" includes any billboard, but does not include the flag, pennant or insignia of any nation or association of nations or of any state, city or other political unit or any political, charitable, educational, philanthropic, civic, professional, religious or like campaign, drive or movement or event.

SIGN, ADVERTISING OR BILLBOARD — A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same lot on which the sign is located.

SIGN, FLASHING — Any moving or animated sign or any illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color at all times when in use. Any revolving illuminated sign shall be considered a flashing sign.

SIGN, ILLUMINATED — Any sign designed to give forth any artificial lights or designed to reflect light from one or more sources.

SMALL-SCALE WIND ENERGY CONVERSION SYSTEM — A wind energy conversion system (WECS) that is incidental and subordinate to another use on the same parcel and that supplies electrical power solely for on-site use, except that when a parcel on which a small-scale WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by the small-scale WECS not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use, as long as the main purpose of the installation is not to produce net revenue by sale of such excess electrical power. **[Added 3-6-2008 by L.L. No. 3-2008]**

STORY — That portion of a building 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. A basement shall be counted as a story, for purposes of height measurement, if the ceiling is more than five feet above the average adjoining ground level or if used for business or dwelling purposes. A half-story is a story under a sloping roof, having a ceiling height of seven feet or more for an area not exceeding 1/2 the floor area of the next lower full story in the building.

STREET — Any road, avenue, lane, alley or other way which is an existing public way or which is shown on an approved plat, or any private right-of-way or easement approved by the Concord Town Board.

STREET/ROAD LINE — A line separating a lot from a street or road. In any case where a future street/road line has been established or approved by the Concord Town Board, such future street or road line shall be considered as a street/road line for the purposes of determining lot area and setback requirements.

STRUCTURAL ALTERATIONS — Any change in the supporting members of a building or other structure, such as bearing walls, columns, beams or girders.

STRUCTURE — Anything constructed or erected which requires permanent location in or on the ground or attachment to something having such location, but not including a trailer or mobile home.

TOURIST HOME — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

TOWNHOUSE — A building or dwelling designed for or occupied by no more than one family and attached to other similar buildings or dwellings by not more than two common walls extending from the foundation to the roof thereof and providing two direct means of access from the outside. A townhouse is individually owned, with an owner receiving a deed enabling him/her to sell, mortgage or exchange his/her dwelling unit independent of the owners of any other dwelling unit attached thereto by common wall.

TRAILER — A vehicle, other than a mobile home, used as sleeping or living quarters, whether self-propelled or towed, or a camper body mounted on a motor vehicle. A "trailer" shall also include any vehicle towed or used for carrying goods, equipment, machinery or recreational vehicles or as a site office.

USE — The specific purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

USE, ACCESSORY — A use, occupancy or tenancy which is customarily incidental and subordinate to the principal use, occupancy or tenancy and located on the same lot or premises. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

USE, CHANGE OF — A change in the nature of occupancy or use of any principal building or structure. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

USE, PRINCIPAL — The specific purpose for which land or a building is designed, arranged, or intended or for which it is or may be occupied or maintained. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

USE, PROHIBITED — Any use which is not listed as a permitted use, special permit use or permitted accessory use in this chapter shall be considered a prohibited use hereunder in all zoning districts. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

USE, TEMPORARY — One established for a fixed period of time with the intent to discontinue such use upon the expiration of such time. Such uses do not involve the construction or alteration of any permanent structure. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

UTILITY-SCALE WIND ENERGY CONVERSION SYSTEM — A wind energy conversion system that is intended solely to generate electrical power for sale to the power grid. **[Added 3-6-2008 by L.L. No. 2-2008]**

VARIANCE — Permission to depart from the literal requirements of the Zoning Law. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

VARIANCE, AREA — The authorization by the Zoning Board of Appeals for the use of the land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

VARIANCE, USE — The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

WIND ENERGY CONVERSION SYSTEM (WECS) — Any mechanism designed for the purpose of converting wind energy into electrical energy. A WECS may include one or more wind turbines, towers, associated control or conversion electronics, transformers and/or other maintenance or control facilities or other component used in the system. A WECS may be either a utility-scale wind energy conversion system or a small-scale wind energy conversion system. **[Added 3-6-2008 by L.L. No. 2-2008]**

YARD — That portion of a lot extending open and unobstructed from the ground upward along a lot line.³

3. Editor's Note: The definition of "yard, required front" of original § 150-7 of the 2005 Code, which immediately followed this definition, was repealed 6-9-2005 by L.L. No. 2-2005.

YARD, SIDE — A yard extending along a side lot line from the required front yard to the required rear yard, except that, on a corner lot where the side lot line abuts a street/road, the side yard shall extend from the required front yard to the rear lot line.

- A. **EXTERIOR SIDE YARD** — A side yard extending along a street or road line.
- B. **INTERIOR SIDE YARD** — A side yard extending along a lot line of an adjoining lot.

ZONING MAP — A composite of sectional maps, including all area of the Town of Concord outside the incorporated Village of Springville, plus an Index Location Sheet and a Legend of Zoning Map Districts with descriptions and symbols used on said sectional maps.

- A. Scales used on the sectional maps vary. Affixed to each sectional map is a stamp which identifies said map as a section of the Zoning Map of the Town of Concord and indicates the number of said map to correspond with its number and location as shown on the Index Location Sheet.
- B. Each of said sectional maps includes, in whole or in part, the area in the Town of Concord outside any incorporated village. Any zoning district described on said sectional maps is described by district boundary and by appropriate district symbols as indicated in the aforesaid Legend of Zoning Map Districts. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

ARTICLE IV
Zoning Districts and Zoning Map

§ 150-8. Establishment of zoning districts.

The area of the Town of Concord outside the incorporated Village of Springville is hereby divided into the following zoning districts:

- A. **Residence or R Districts. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - R-E Single-Family Residence-Estate District
 - R-1 Single-Family Residence District
 - R-2 General Residence District
 - R-M General Residence-Mobile Home Court District
 - R-AG Residential-Agricultural District
 - R-RB Residence-Restricted Business District
 - R-CRDG Craneridge District
 - R-12 Cluster Housing
- B. **Business or C Districts.**
 - C-1 Local Retail Business District
 - C-2 General Commercial District
 - C-T Commercial-Tourist District
 - C-R Commercial-Recreation District

C. Industrial or M Districts.

M	General Industrial District
M-R	Mining-Reclamation District
PID	Planned Industrial District

§ 150-9. Incorporation of Zoning District Map. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- A. The location and boundaries of the aforesaid zoning districts are shown on the map entitled "Town of Concord Zoning Map," which, in all sections thereof, with all explanatory matter therein, is hereby incorporated into this chapter and shall be as much a part of this chapter as if fully set forth and described herein.⁴ Said Zoning Map shall consist of an Index Location Sheet indicating the situs of each section of the Zoning Map in the Town of Concord outside the Village of Springville; a Legend Sheet delineating each zoning district of the chapter as stipulated in § 150-8 above; and a series of individual maps or sections of the chapter wherein the district boundaries of the zoning districts of the chapter are delineated. Furthermore, each of the sectional maps of the chapter are stamped to indicate the exact number of each section in relationship to the series of sectional maps. Map scales among the sectional maps vary so each sectional map indicates its exact scale in feet per inch.
- B. As evidence of the authenticity of the Zoning Map and all sections thereof, said map and all sections thereof and all amendments thereto shall be duly certified by the Town Clerk of the Town of Concord and shall be posted and filed according to Article 16 of the Town Law of New York State.

§ 150-10. Interpretation of zoning district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Town of Concord Zoning Map and all sections thereof, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center lines of streets, roads or highways, street lines, road lines or highway right-of-way lines, such center lines, street lines, road lines or highway right-of-way lines shall be construed to be said boundaries.
- B. Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets or the center lines or road lines of roads or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map and all sections thereof. If no distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map and all sections thereof.

4. Editor's Note: The Zoning Map is on file in the office of the Town Clerk.

- D. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located in the middle of the main tracks of said railroad line. Where the boundary of a district follows an aboveground utility or power line, such boundary shall be deemed to be located in the middle of said utility or power line.

ARTICLE V

Application of Regulations

§ 150-11. General application.

Except as hereinafter provided:

- A. No building, other structure or land shall hereafter be used or occupied and no building or other structure or parts thereof shall be erected, relocated, altered, extended or enlarged unless in conformity with the use, height and area regulations specified herein for the district in which such building, other structure or land is located and in conformity with all other regulations of this chapter.
- B. No lot area shall be reduced or diminished so that the yards or other open space thereon shall be less than prescribed by this chapter, nor shall the density of population be increased in any manner except in conformity with area requirements herein established. If at the time of the adoption of this chapter or of any subsequent amendments increasing the area or open space requirements the lot area or required open spaces are less than the minimum required by this chapter, such area or open space shall not be further reduced.
- C. No yard or other open space provided on one lot for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space required on any other lot.

§ 150-12. Certain public uses excluded.

The regulations of this chapter shall not be construed as to limit or interfere with the dedication, development or use of any land or building for public parks, other public recreation areas or public schools required for compulsory education or with the use of land or buildings owned by the United States of America, the State of New York, the County of Erie or the Town of Concord or the Village of Springville and used for governmental purposes.

§ 150-13. Public improvements.

- A. Inspector; services required.
- (1) Payment of inspector; bond or cash deposit required. Any petitioner for the establishment of any special improvement district, the improvements in which are, pursuant to the petition or by order of the Concord Town Board, to be installed at no expense to the Town of Concord or the district, shall be required to pay for the services of an inspector appointed by the Town of Concord during the installation of the improvements and shall, before commencing the work, furnish

a bond or cash deposit in an amount to be determined by the Concord Town Board to ensure payment of such inspector.

- (2) Notification to inspector. Any such petitioner shall be required to notify the inspector before commencing the work and keep such inspector advised of the work installation schedule in order that the work may be properly and fully inspected at all stages of installation.
 - (3) Scope of section. These requirements shall also apply to the installation of any road or highway deeded or offered to be deeded to the Town of Concord for public purposes and shall also apply to any other installation or improvements which the Concord Town Board shall require to be made as a condition of its approval of any subdivision map or the issuance of any building permit.
- B. Construction procedures; permit required; fee. No person, firm, association or corporation shall install, construct or perform any work incident to the installation and/or construction of a public improvement upon real property in the Town of Concord without first having obtained a permit therefor, to be issued by the Concord Town Clerk with the approval of the Concord Town Board after certification by the Concord Town Consulting Engineer that the plans and specifications as submitted by the applicant comply with the specifications and requirements of the Town of Concord. The fee for such permit shall be as established by the Town Board.
- C. Application for permit. The application for such permit shall be made on forms furnished by the Town of Concord and shall contain such information as the Town Consulting Engineer of the Town of Concord shall require to determine that the proposed improvement will conform to the specifications and requirements of the Town of Concord for such proposed improvement.
- D. Map and specifications to accompany application. All applications shall be accompanied by a map or survey, together with specifications, prepared by a professional engineer duly licensed by the State of New York, one copy of which shall be filed with the Town Consulting Engineer and the Superintendent of Highways.
- E. Specifications supplied by Concord Town Consulting Engineer. The Concord Town Consulting Engineer shall provide such applicant with a set of standard specifications and requirements of the Town of Concord for such work, for which a charge per copy, as established by the Town Board, shall be made, and no work shall be performed except in accordance therewith.
- F. Inspector to supervise work. No work shall be performed except under the supervision and inspection of an inspector designated by the Concord Town Consulting Engineer and approved by the Concord Town Board. The wages or fees of such inspector shall be fixed and paid to the Town of Concord prior to the issuance of such permit.
- G. Security required; forfeiture.
- (1) If public improvements, as defined by this section, are to be installed or constructed upon real property to which the Town of Concord has title or will acquire title thereto, the holder of the public improvement permit, before commencing any work in connection therewith, shall submit to the Town Clerk of

the Town of Concord one of the following forms of security for approval by the Town of Concord:

(a) Bond.

- [1] A bond executed by a solvent surety corporation as surety authorized to do business in the State of New York, in a sum equal to 10% of the cost of the work to be performed, as determined by the Concord Town Consulting Engineer, shall be provided, which bond shall be approved by the Town of Concord, guaranteeing faithful performance of all work in accordance with the specifications and requirements of the Town of Concord.
- [2] Such bond shall remain in full force and effect until the certificate of completion and satisfactory compliance with this article shall have been issued by the Town of Concord.
- [3] Failure to comply; forfeiture. In the event that the holder of such permit shall fail or refuse to comply with the provisions of this article, the above-described bond shall be forfeited to the Town of Concord.

(b) Irrevocable letter of credit.

- [1] An irrevocable letter of credit supplied by a bank authorized to do business in the State of New York, in a form acceptable to the Town of Concord and in a sum equal to 10% of the cost of the work to be performed, as determined by the Concord Town Consulting Engineer, shall be provided, guaranteeing faithful performance of all work in accordance with the specifications and requirements of the Town of Concord.
- [2] Such letter of credit shall remain in full force and effect until the certificate of completion and satisfactory compliance with this article shall have been issued by the Town of Concord.
- [3] Failure to comply; forfeiture. In the event that the holder of such permit shall fail or refuse to comply with the provisions of this article, the above-described letter of credit shall be forfeited to the Town of Concord.

(c) Cash deposit.

- [1] A cash deposit in the amount of 10% of the cost of such public improvement, as determined by the Concord Town Consulting Engineer, shall be placed on deposit with the Town of Concord.
- [2] Such deposit shall remain in full force and effect until the certificate of completion and satisfactory compliance with this article shall have been issued by the Town of Concord.

- [3] Failure to comply; forfeiture. In the event that the holder of such permit shall fail or refuse to comply with the provisions of this article, the above-described cash deposit shall be forfeited.
- (2) Security.
 - (a) Security shall be provided for the construction of the following public improvements:
 - [1] Paving and curbing.
 - [2] Storm sewer, including retention facilities.
 - [3] Sanitary sewer.
 - [4] Waterline.
 - [5] Streetlighting.
 - (b) Security for sidewalk and streetlighting. A separate agreement between the applicant for a public improvement permit and the Town of Concord shall provide for security in the construction and maintenance of sidewalk and streetlighting public improvements.
- (3) The Town of Concord shall have final approval over the form of any security device for use by applicants for public improvement permits.

H. Maintenance security.

- (1) In the interest of protecting public improvements from any and all defects in material or workmanship and to provide for the cost of repair and/or replacement of such improvements, the Town of Concord has determined that a maintenance bond, irrevocable letter of credit or cash deposit shall be filed by all applicants for public improvement permits.
- (2) Applicants for public improvement permits for public improvements which are to be installed or constructed upon real property to which the Town of Concord has acquired or will acquire title shall provide or cause to be provided and submitted to the Concord Town Clerk, prior to acceptance of such public improvement, one of the following forms of security for approval by the Town of Concord:
 - (a) Bond.
 - [1] A maintenance bond executed by a solvent surety corporation as surety authorized to do business in the State of New York in a sum equal to 50% of the cost of the work to be performed, as determined by the Concord Town Consulting Engineer pursuant to Subsection G(1)(a) of this section, shall be provided. Such bond shall remain in full force and effect for a period of two years from the acceptance of said public improvement by the Town Board of the Town of Concord.
 - [2] Failure to comply; forfeiture. In the event that the holder of such permit shall fail or refuse to comply with the provisions of this

article, the above-described bond shall be forfeited to the Town of Concord.

(b) Irrevocable letter of credit.

[1] An irrevocable letter of credit supplied by a bank authorized to do business in the State of New York, in a form acceptable to the Town of Concord and in a sum equal to 50% of the cost of the work to be performed, as determined by the Concord Town Consulting Engineer pursuant to Subsection G(1)(b), shall be provided.

[2] Failure to comply; forfeiture. In the event that the holder of such permit shall fail or refuse to comply with the provisions of this article, the above-described letter of credit shall be forfeited to the Town of Concord.

(c) Cash deposit.

[1] A cash deposit in an amount equal to 50% of the cost of the work to be performed, as determined by the Concord Town Consulting Engineer pursuant to Subsection G(1)(c), shall be provided. Such cash deposit shall remain on deposit with the Town of Concord for a period of two years from the acceptance of said public improvement by the Town Board of the Town of Concord.

[2] Failure to comply; forfeiture. In the event that the holder of such permit shall fail or refuse to comply with the provisions of this article, the above-described cash deposit shall be forfeited to the Town of Concord.

(d) Other acceptable security in the discretion of the Concord Town Board.

(3) A maintenance bond, irrevocable letter of credit or cash deposit shall be required for the following public improvements:

- (a) Paving and curbing.
- (b) Storm sewer, including retention facilities.
- (c) Waterline.
- (d) Sanitary sewer.
- (e) Streetlighting.

(4) The Town of Concord shall have final approval over the form of any security device for use by applicants for public improvement permits.

I. Compliance with other laws. The holder of a permit shall comply with all the ordinances of the Town of Concord and all laws of the State of New York now in force or hereafter adopted applicable to the work to be performed thereunder.

- J. Acceptance of streets and public improvements. Compliance with the provisions of this article shall be a condition precedent to the acceptance of any street, highway or other public improvement by the Town of Concord for the purpose of maintenance.
- K. Adoption of construction specifications. The construction specifications of the Town of Concord are adopted as a provision of this article as if fully set forth herein, except that this article shall supersede and replace those provisions in the construction specifications of the Town of Concord relating to maintenance bonds for public improvements.⁵

§ 150-14. Prior approved permits and variances.

- A. Building permits.
 - (1) No person, firm, corporation, association or other organization shall commence the erection, construction, enlargement, alteration or improvement of any building or structure in any zone within the Town of Concord without the approved building permit with the proper fees paid as per Town policy schedule.
 - (2) The Code Enforcement Officer or the Town Building Inspector shall have the authorization to issue building permits without the Town of Concord Board approval, providing that all rules and regulations are adhered to.
 - (3) The fees as listed within our Town policy will be automatically doubled for any building which is started without obtaining the required building permit.
 - (4) All other permits shall have the approval of the Town of Concord Town Board.
- B. Special permits and variances. Special permits or variances granted prior to the effective date of this chapter and which are not permitted by this chapter as of right in the district in which located shall be subject to all the conditions and limitations placed thereon when such special permit or variance was granted and to the provisions contained herein pertaining to nonconforming uses. Any such special permit or variance shall become null and void unless exercised within one calendar year from the effective date of this chapter.

§ 150-15. Conflict with other regulations.

- A. In their interpretation and application, the provisions of this chapter shall be considered to be minimum requirements to implement the general goals and specific purposes of this chapter as set forth in § 150-5.
- B. Whenever any provision of this chapter is at variance or in conflict with any other provision of this chapter or any other statute, local law, local ordinance or regulation covering the same subject matter, the most restrictive provision or the one imposing the highest standard shall govern.

⁵ Editor's Note: The construction specifications are on file in the Code Enforcement Office.

§ 150-16. Severability.

It is hereby declared to be the intent of the Concord Town Board that:

- A. If a court of competent jurisdiction finds any provision of this chapter invalid in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of this chapter shall continue to be separately and fully in effect.
- B. If a court of competent jurisdiction finds the application of any provision of this chapter to any building, other structure or tract of land to be invalid in whole or in part, the effect of such decision shall be limited to the person, property or situation involved in the controversy, and the application of any such provision to any other person, property or situation shall not be affected.

ARTICLE VI**Classification and Interpretation of Permitted and Prohibited Uses****§ 150-17. (Reserved)****§ 150-18. Prohibited uses.**

- A. Nothing contained in this chapter shall be construed as permitting in any district the erection or operation of buildings or structures or the use of land for any purpose which shall constitute a nuisance or for any of the following purposes:
 - (1) Abattoir, commercial feed lot, stockyard or slaughterhouse.
 - (2) Acetylene gas manufacture for commercial purposes.
 - (3) Ammonia, chlorine or bleaching powder manufacture.
 - (4) Blast furnaces, rolling mills or smelter works.
 - (5) Carbon, lampblack or graphite manufacture.
 - (6) Cement, gypsum, lime or plaster manufacturing or processing.
 - (7) Coke ovens.
 - (8) Creosote manufacture or treatment.
 - (9) Dead animal, offal, garbage or sewage reduction or treatment or storage, except where controlled by the Town of Concord.
 - (10) Distillation of coal, wood or bones.
 - (11) Dyestuff manufacturing.
 - (12) Glue, size, gelatin manufacture.
 - (13) Gunpowder, fireworks or other explosive manufacturing.

- (14) Junkyards, dumps, automobile wrecking and old car or appliance storage yards, operating without a junk yard permit. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (15) Match manufacturing or storage in bulk.
- (16) Oilcloth and linoleum manufacture.
- (17) Ore reduction or the smelting of iron, copper, tin, zinc or lead.
- (18) Paint, oil, varnish, turpentine, shellac or enamel manufacture.
- (19) Petroleum storage or refining, except:
 - (a) Storage of petroleum products in garages or oil filling stations under conditions allowed by law and by the ordinances of the Town of Concord.
 - (b) Underground storage of petroleum products in the M Zone. Such storage shall comply with all applicable state and local laws and regulations.
- (20) Printing ink manufacture.
- (21) Rubber or gutta-percha manufacture from crude or scrap materials; rubber reclaiming or processing.
- (22) Soap, tallow, grease or lard manufacturing or rendering.
- (23) Caustic soda or washing compound manufacture.
- (24) Sulfurous, sulfuric, nitric or hydrochloric acid manufacture.
- (25) Tanning, curing or storage of rawhides or skins.
- (26) Tar distillation and tar roofing manufacture.
- (27) Yeast manufacture.
- (28) Those uses which are noxious, offensive or hazardous by reason of dust, fumes, gas, glare, lights, noise, refuse matter, smoke or any waterborne or airborne waste.
- (29) The manufacture or processing of any substance or product which results in waste material which is radioactive.
- (30) Parking off the public highway of vehicles used for commercial or industrial purposes in any R District, except:
 - (a) Where such vehicle is being used during the course of construction, alteration or repair of the building or buildings on the premises where parked.
 - (b) Where the commercial vehicle does not exceed a capacity of 18,000 GVW and/or does not exceed 25 feet in overall length. Not more than two such vehicles may be housed or parked in a private garage or off-street parking area, but such vehicles may not be housed or parked in any front yard or within 10 feet of a side lot line.

- (c) Where the commercial vehicles are being stored, inside or outside, in the R-AG District in connection with the operation of a farm, as defined by this chapter.
- (31) Those uses which involve toxic substances, specifically designated as such by statute or state regulations.
- (32) A trailer or detached truck body for storage purposes, in any zone, whether on wheels or other supports. For the purpose of this subsection, the following exceptions shall apply:
 - (a) Any trailer designated primarily for personal occupancy or recreational use.
 - (b) Any trailer used in connection with construction of a structure for which a building permit has been issued may remain on the construction site for the duration of construction, but in no event for more than one year, unless otherwise extended by the Concord Town Board. The number of any such construction trailers shall be limited to one per 5,000 square feet of building under construction.
 - (c) Any permitted storage unit, shipping container or pod. **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (33) Sale of used motor vehicles, except:
 - (a) Sale by a state-licensed automobile dealer.
 - (b) Casual sale by an individual, partnership or corporation of a used motor vehicle which was previously used by the seller for personal use only. Roadside display of such vehicles shall not exceed 60 days.
- (34) The commercial collection, storage or disposal of nuclear waste and medical or surgical waste materials, except in hospital, nursing home, medical, dental or veterinary facilities.

B. Exceptions.

- (1) Franchised automobile and truck dealers. Outside storage shall be permitted as follows:
 - (a) Motor vehicles able to pass inspection pursuant to the New York State motor vehicle inspection standards as provided by the Vehicle and Traffic Law of the State of New York and all rules and regulations promulgated by the Commissioner of Motor Vehicles for the periodic inspection of motor vehicles in the state and as the same may be amended from time to time: six months.
 - (b) Other motor vehicles: 30 days.
- (2) Garages, public. Outside storage of motor vehicles shall be permitted for a period not to exceed 30 days.

ARTICLE VII

R-E Single-Family Residence-Estate District Regulations**§ 150-19. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

Permitted uses and structures shall be as follows:

A. Principal uses and structures.

- (1) Single-family dwelling constructed or erected on-site. No clustering shall be permitted.
- (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
- (3) Fire station without club facilities.
- (4) Public and private clubs with at least a nine-hole golf course, including accessory buildings, uses and structures which are necessary for or customary to golf course operation; provided, further, that no building or structure shall be less than 100 feet from any road line, street line or any other lot in an R District.
- (5) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.

B. Accessory uses and structures.

- (1) Accessory uses and structures customarily incidental to permitted principal uses.
- (2) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.
- (3) Storage only of campers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (4) Private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side yard. In the case of any private swimming pool, such pool shall comply with any applicable swimming pool regulations enacted by the Town of Concord.
- (5) On premises of four or more acres, private horse stables for use by the occupant of the premises and his/her occasional guests without compensation, provided that such uses and structures are located in the rear of the front setback line and do not occupy any part of a required side yard.
- (6) Building for private horticultural purposes, provided that such building and use are located to the rear of the front setback line and do not occupy any part of a required side yard.

§ 150-20. Minimum lot size.

Unless otherwise provided, the minimum lot size shall be as specified in this section.

- A. Lot area: minimum of two acres. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]
- B. Lot width at building line: 150 feet.

§ 150-21. Maximum height of buildings.

Unless otherwise provided, the maximum permitted height of buildings shall be as specified in this section.

- A. Single-family dwelling: 2 1/2 stories not to exceed 35 feet.
- B. Other principal buildings: as regulated by yard requirements.
- C. Clubs: three stories not to exceed 35 feet.
- D. Accessory buildings: one story not to exceed 15 feet.

§ 150-22. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 50 feet measured from the edge of the nearest right-of-way, regardless of whether or not said right-of-way is public or private.
- B. Side setbacks: two required.
 - (1) For dwellings, 15 feet per side.
- C. Rear setback: A rear setback shall be required:
 - (1) For dwellings, not less than 50 feet.
 - (2) For non-dwelling structures, not less than five feet.

§ 150-23. Off-street parking.

The off-street parking requirement for this district is a minimum of two spaces.

§ 150-24. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-25. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXVI, XXVII and XXVIII of this chapter.

ARTICLE VIII

R-1 Single-Family Residence District Regulations**§ 150-26. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

Permitted uses and structures shall be as follows:

- A. Principal uses and structures.
 - (1) Single-family dwelling.
 - (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
 - (3) Fire station without club facilities.
 - (4) Private, nonprofit, elementary or secondary school accredited by the New York State Department of Education.
 - (5) Public and private clubs with at least a nine-hole golf course, including accessory buildings, uses and structures which are necessary for or customary to golf course operation; provided, further, that no building or structure shall be less than 100 feet from any road line, street line or any other lot in an R District.
 - (6) Public school, public library or public museum.
 - (7) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
- B. Accessory uses and structures.
 - (1) Accessory uses and structures customarily incidental to permitted principal uses.
 - (2) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.
 - (3) Storage only of campers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side yard.
 - (4) A private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side yard. In the case of any private swimming pool, such pool shall comply with any applicable swimming pool regulations enacted by the Town of Concord.

- (5) On premises of four or more acres, private horse stables for use by the occupant of the premises and his/her occasional guest without compensation, provided that such uses and structures are located to the rear of the front setback line and do not occupy any part of a required side yard.
- (6) A building for private greenhouse purposes, not to exceed 500 square feet in floor area, and provided that such building is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (7) Professional residence-office, except under clustering, conducted in a dwelling by the occupant thereof when approved by the Concord Town Board, provided that:
 - (a) Such use shall be located entirely within a dwelling.
 - (b) Such use shall not include the confinement of any person under care or treatment.
 - (c) Such use shall not occupy an area of more than 1/5 of the total gross floor space of the dwelling in which it is located or 300 square feet, whichever is less.
- (8) Home occupations, subject to the same restrictions and procedures as stipulated for a professional residence-office and as defined in this chapter.

§ 150-27. Minimum lot size.

Unless otherwise provided, the minimum lot size shall be as specified in this section.

- A. Lot area: minimum of two acres. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- B. Lot width at building line: 150 feet.

§ 150-28. Maximum height of buildings.

Unless otherwise provided, the maximum permitted height of buildings shall be as specified in this section.

- A. Single-family dwelling: 2 1/2 stories not to exceed 35 feet.
- B. Other principal buildings: as regulated by yard requirements.
- C. Accessory buildings: one story not to exceed 15 feet.

§ 150-29. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 50 feet measured from the edge of the nearest right-of-way, regardless of whether or not said right-of-way is public or private.

B. Side setbacks: two required.

- (1) Single-family dwelling: 15 feet per side.
- (2) Other principal buildings. Except as otherwise provided, each side setback shall equal 15 feet or a distance equal to the height of the principal building, whichever is greater; provided, however, that when a side setback adjoins a lot in any district other than an R District, such side setback shall equal 15 feet or a distance equal to 1/2 the height of the principal building, whichever is greater.

C. Rear setbacks: A rear setback shall be required:

- (1) For dwellings, not less than 50 feet.
- (2) For non-dwelling structures, not less than five feet.

§ 150-30. Off-street parking.

The off-street parking requirement for this district is a minimum of two spaces.

§ 150-31. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-32. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXVI, XXVII and XXVIII of this chapter.

ARTICLE IX**R-2 General Residence District Regulations****§ 150-33. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

Permitted uses and structures shall be as follows:

A. Principal uses and structures.

- (1) Single-family dwelling.
- (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
- (3) Fire station without club facilities.
- (4) Private, nonprofit, elementary or secondary school accredited by the New York State Department of Education.
- (5) Public and private clubs with at least a nine-hole golf course, including accessory buildings, uses and structures which are necessary for or customary to golf course

operation; provided, further, that no building or structure shall be less than 100 feet from any road line, street line or any other lot in an R District.

- (6) Public school, public library or public museum.
- (7) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
- (8) Two-family dwelling.
- (9) Multifamily dwelling or condominium.
- (10) Dwelling group, provided that all buildings are located so as to permit future division of the property into separate lots with minimum area and yard requirements as stipulated for a two-family dwelling in the R-2 District.
- (11) Hospital or institution of a religious, charitable or philanthropic nature, provided that it is not used for penal or correctional purposes. Such principal buildings shall be at least 50 feet from any other lot in any R District.
- (12) Group home for developmentally disadvantaged, unrelated persons, subject to side yard requirements for other principal buildings.
- (13) Nursing, custodial or convalescent home, subject to side yard requirements for other principal buildings.
- (14) Nursery school or day nursery, subject to side yard requirements for other principal buildings.

B. Accessory uses and structures.

- (1) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.
- (2) Storage of campers, house trailers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (3) On premises of four or more acres, private horse stables for use by the occupant of the premises and his/her occasional guest without compensation, provided that such uses and structures are located to the rear of the front setback line and do not occupy any part of a required side yard.
- (4) A building for private greenhouse purposes, not to exceed 500 square feet in floor area, and provided that such building is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (5) A private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side yard. In the case of any private swimming pool, such pool shall comply with any applicable swimming pool regulations enacted by the Town of Concord.

- (6) Professional residence-office, except under clustering, conducted in a dwelling by the occupant thereof when approved by the Concord Town Board, provided that:
 - (a) Such use shall be located entirely within a dwelling.
 - (b) Such use shall not include the confinement of any person under care or treatment.
 - (c) Such use shall not occupy an area of more than 1/5 of the total gross floor space of the dwelling in which it is located or 300 square feet, whichever is less.
- (7) Accessory uses and structures customarily incidental to permitted principal uses.
- (8) Accommodations for not more than three roomers or lodgers within a dwelling.

§ 150-34. Minimum lot size. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum lot size shall be as specified in this section. None of the principal uses and structures delineated in § 150-33 above, other than single-family dwellings and two-family dwellings, shall be permitted in the R-2 District unless said principal uses and structures are served by public utilities.

- A. Lot area.
 - (1) Minimum: two acres.
 - (2) Two-family dwelling: 20,000 square feet per dwelling unit.
 - (3) Three-or-more-family dwelling: 15,000 square feet per dwelling unit.
- B. Lot width at building line: 150 feet.

§ 150-35. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

- A. Single-family or two-family dwelling: 2 1/2 stories not to exceed 35 feet.
- B. Other principal buildings: as regulated by yard requirements.
- C. Accessory buildings: one story not to exceed 15 feet.

§ 150-36. Required setbacks.

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 50 feet.
- B. Side setbacks: two required.

- (1) For dwellings, 15 feet per side.
- C. Rear setback. A rear setback shall be required.
- (1) For dwellings, not less than 30 feet.
 - (2) For non-dwelling structures, not less than five feet.

§ 150-37. Off-street parking reference.

For applicable off-street parking requirements, see Article XXI of this chapter.

§ 150-38. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-39. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area, open space or clustering, see Article XXV.

ARTICLE X

R-M General Residence-Mobile Home Court District Regulations

§ 150-40. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Permitted uses and structures shall be as follows:

- A. Principal uses and structures.
- (1) Single-family dwelling.
 - (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
 - (3) Fire station without club facilities.
 - (4) All forms of manufactured housing designed for single-family dwelling purposes.
 - (5) Public school, public library or public museum.
 - (6) Private, nonprofit, elementary or secondary school accredited by the New York State Department of Education.
 - (7) Public and private clubs with at least a nine-hole golf course, including accessory buildings, uses and structures which are necessary for or customary to golf course operation; provided, further, that no building or structure shall be less than 100 feet from any road line, street line or any other lot in an R District.

- (8) Mobile home courts, subject to the regulations of mobile home courts in the Town of Concord.

B. Accessory uses and structures.

- (1) For areas outside mobile home courts:
 - (a) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.
 - (b) Storage only of campers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side setback.
 - (c) On premises of four or more acres, private horse stables for use by the occupant of the premises and his/her occasional guest without compensation, provided that such uses and structures are located to the rear of the front setback line and do not occupy any part of a required side setback.
 - (d) A building for private greenhouse purposes, not to exceed 500 square feet in floor area, and provided that such building is located to the rear of the front setback line and does not occupy any part of a required side setback.
 - (e) Except under clustering, a private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side setback. In the case of any private swimming pool, such pool shall comply with any applicable swimming pool regulations enacted by the Town of Concord.
 - (f) Professional residence-office, except under clustering, conducted in a dwelling by the occupant thereof when approved by the Concord Zoning Board of Appeals, provided that:
 - [1] Such use shall be located entirely within a dwelling.
 - [2] Such use shall not include the confinement of any person under care or treatment.
 - [3] Such use shall not occupy an area of more than 1/5 of the total gross floor space of the dwelling in which it is located or 300 square feet, whichever is less.
 - (g) Accessory uses and structures customarily incidental to permitted principal uses.
 - (h) Accommodations for not more than three roomers or lodgers within a dwelling.
- (2) Within a mobile home court: as provided for in the regulations for mobile home courts in the Town of Concord.

§ 150-41. Minimum lot size.

Unless otherwise provided, the minimum lot size shall be as specified in this section.

- A. Within a mobile home court: dimensions for uses as provided for in the regulations of mobile home courts in the Town of Concord.

§ 150-42. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

- A. Buildings located within a mobile home court: as provided for in the regulations of mobile home courts in the Town of Concord.
- B. Buildings located outside mobile home courts: 2 1/2 stories, not to exceed 35 feet; accessory buildings, one story.

§ 150-43. Required setbacks.

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Area within a mobile home court: as provided for in the regulations of mobile home courts in the Town of Concord.
- B. Lots located outside a mobile home court. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (1) Front setback: 50 feet.
 - (2) Side setback, two required: 15 feet per side.
 - (3) Rear setback: not less than five feet.

§ 150-44. Off-street parking reference.

For applicable off-street parking regulations, see Article XXI of this chapter and/or the regulations of mobile home courts in the Town of Concord.

§ 150-45. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter and/or the regulations of mobile home courts in the Town of Concord.

§ 150-46. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area, open space or clustering, see Articles XXVI, XXVII, XXVIII and XXIX of this chapter.

ARTICLE XI

R-AG Residential-Agricultural District Regulations**§ 150-47. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

Permitted uses and structures shall be as follows:

A. Principal uses and structures.

- (1) Single-family dwelling.
- (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
- (3) Fire station without club facilities.
- (4) Private, nonprofit, elementary or secondary school accredited by the New York State Department of Education.
- (5) Golf courses of at least nine holes, public and semiprivate driving ranges and miniature golf and including accompanying structures necessary for customary golf course operation.
- (6) Public school, public library or public museum.
- (7) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
- (8) Two-family dwelling.
- (9) Hospital or institution of a religious, charitable, rehabilitative, custodial or philanthropic nature.
- (10) Multifamily dwelling or condominium.
- (11) Agricultural, floricultural and horticultural pursuits, including but not limited to general farms, greenhouses, plant nurseries, truck gardens, dairy husbandry, animal husbandry and the raising of bees, poultry and livestock, together with all customary buildings and other structures necessary for the production, processing and storage of the products of such pursuits. No manure or other odor- or dust-producing substances shall be stored within 100 feet of any lot line.
- (12) Nursery and farming.
- (13) Veterinarian, small animal hospital and dog kennels; provided, however, that buildings, pens or runways for the confinement of animals shall be at least 100 feet from the property line in an R District, and no manure or other odor- or dust-producing substances shall be stored within 100 feet of any lot line.
- (14) Private wildlife reservations or conservation projects, including the customary buildings and structures therefor.
- (15) Cemeteries.

- (16) Nonprofit private club, including a club swimming pool and/or tennis courts, catering exclusively to members and guests.
 - (17) The following uses by special use permit, when reviewed by the Concord Planning Board and approved by the Concord Town Board, subject to the appropriate article of this chapter relating to the issuance of special use permits.⁶
 - (a) Commercial radio or television transmission facilities where a federal license is required.
 - (b) Gun club, fishing club, conservation club, social club and all other recreational clubs or any corporation or private individual offering indoor or outdoor activities, such as carnivals or parties, when admission is charged or goods or services are offered for sale.
 - (c) Private airport.
 - (d) Seasonal cottages or cabins for use of the owner thereof or rented to others. "Seasonal cottages" shall not be construed to include tents.
 - (e) Picnic grounds or grove for which a fee or rental is charged for the use of the premises, excluding all amusement devices other than customary playground apparatus.
 - (f) Raising of fur-bearing animals.
 - (g) Campgrounds.
 - (h) Commercial extraction of topsoil, sand, gravel or stone as defined in § 150-7, not including mining regulated under the New York State Mined Land Reclamation Law.⁷
- B. Accessory uses and structures.
- (1) Accessory uses and structures customarily incidental to permitted principal uses.
 - (2) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.
 - (3) Storage of campers, house trailers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side yard.
 - (4) A private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side yard. In the case of any private swimming pool, such pool shall comply with any applicable swimming pool regulations enacted by the Town of Concord.

6. Editor's Note: See Art. XXXIV, Special Use Permits, of this chapter.

7. Editor's Note: See Environmental Conservation Law § 23-2701 et seq.

- (5) Professional residence-office conducted in a dwelling by the occupant thereof when reviewed by the Planning Board and approved by the Town Board, provided that:
 - (a) Such use shall be located entirely within a dwelling.
 - (b) Such use shall not include the confinement of any person under care or treatment.
 - (c) Such use shall not occupy an area of more than 1/5 of the total gross floor space of the dwelling in which it is located or 480 square feet, whichever is less.
 - (6) Accommodations for not more than three roomers or lodgers within a dwelling.
 - (7) Home occupations, not to occupy more than 600 square feet of total gross floor space.
 - (8) Refreshment stand dispensing food and beverages incidental to the operation of a commercial picnic grove.
 - (9) Roadside stand or building for the sale and display of agricultural products. Any roadside stand or building used for the sale or display of such products shall contain not more than 600 square feet of floor area and shall be set back at least 20 feet from the right-of-way.
- C. Special permitted uses. **[Added 3-6-2008 by L.L. No. 2-2008]**
- (1) Utility-scale wind energy conversion systems.
 - (2) Small-scale wind energy conversion systems.

§ 150-48. Minimum lot size.

Unless otherwise provided, the minimum lot size shall be specified in this section.

A. Lot area.

- (1) Minimum: three acres. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (2) Two-family dwelling or one single-family dwelling on a single lot: 1 1/2 acres.
- (3) Three-or-more-family dwelling: 15,000 square feet per dwelling unit.

B. Lot width at building line: 200 feet.

§ 150-49. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

A. Dwellings: 2 1/2 stories not to exceed 35 feet.

B. Farm buildings: no limit.

§ 150-50. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 50 feet, with the exception of a garage minimum requirement for setback from the edge of a right-of-way of 20 feet when reviewed by the Concord Planning Board and approved by the Concord Town Board.
- B. Side setbacks: two required.
 - (1) For dwellings: 15 feet per side.
- C. Rear setback:
 - (1) For dwellings, not less than 50 feet.
 - (2) For non-dwelling structures, not less than five feet.

§ 150-51. Off-street parking reference.

For applicable off-street parking requirements, see Article XXI of this chapter.

§ 150-52. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-53. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXVI, XXVII and XXVIII of this chapter.

ARTICLE XII

R-RB Residence-Restricted Business District Regulations

§ 150-54. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

All prospective uses and structures shall be approved by the Concord Town Board. Permitted uses and structures shall be as follows:

- A. Principal uses and structures.
 - (1) Single-family dwelling.
 - (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.

- (3) Fire station, with or without club facilities.
- (4) Private, nonprofit, elementary or secondary school accredited by the New York State Department of Education.
- (5) Golf course of at least nine holes, except miniature golf course and practice driving range operated as individual commercial enterprises, including accessory buildings, structures and uses which are necessary for or customary to golf course operations; provided, further, that no building or structure shall be less than 100 feet from any street line, road line or any other lot in an R District.
- (6) Public school, public library or public museum.
- (7) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
- (8) Two-family dwelling.
- (9) Hospital or institution of a religious, charitable or philanthropic nature, provided that it is not used for penal or correctional purposes. Such principal buildings shall be at least 50 feet from any other lot in any R District.
- (10) Dwelling group, provided that all buildings are located so as to permit future division of the property into separate lots with minimum area and yard requirements as stipulated for a two-family dwelling in the R-2 District.
- (11) Group home for developmentally disadvantaged, unrelated persons, subject to side yard requirements for other principal buildings.
- (12) Nursing, custodial or convalescent home, subject to side yard requirements for other principal buildings.
- (13) Nursery school or day nursery, subject to side yard requirements for other principal buildings.
- (14) Bed-and-breakfast establishments.
- (15) Tourist home or rooming or boarding house for up to eight persons.
- (16) Mortuary, funeral or undertaking parlor.
- (17) Telephone exchange.
- (18) Real estate or insurance office.
- (19) Optician, optometrist or ophthalmologist.
- (20) Art, dance, music or photography studios.
- (21) Antique shops, when conducted entirely within an enclosed building.
- (22) Meeting rooms for private club, lodge or fraternal organization.
- (23) Medical and/or dental buildings, clinics and laboratories.

- (24) Trade or industrial school, provided that such activity is conducted wholly within an enclosed building.
- (25) Other administrative, professional or executive offices.

B. Accessory uses and structures.

- (1) Unless otherwise specified, accessory uses and structures customarily incidental to permitted principal uses.
- (2) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.
- (3) Storage of campers, house trailers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (4) A private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side yard. In the case of any private swimming pool, such pool shall comply with any applicable swimming pool regulations enacted by the Town of Concord.
- (5) Professional residence-office conducted in a dwelling by the occupant thereof.
- (6) On premises of four or more acres, private horse stables for use by the occupant of the premises and his/her occasional guest without compensation, provided that such uses and structures are located to the rear of the front setback line and do not occupy any part of a required side yard.
- (7) A building for private greenhouse purposes, not to exceed 500 square feet in floor area, and provided that such building is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (8) Accommodations for not more than three roomers or lodgers within a dwelling.
- (9) Home occupations, as defined in this chapter.

§ 150-55. Minimum lot size. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum lot size for dwellings shall be as specified in this section.

A. Lot area.

- (1) Minimum: two acres.
- (2) Two-family dwelling: two acres.
- (3) Three-or-more-family dwelling: three acres.

- B. Lot width at building line: 150 feet.

§ 150-56. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

- A. Single-family or two-family dwelling: 2 1/2 stories not to exceed 35 feet.
- B. Other principal buildings: as regulated by yard requirements.
- C. Accessory buildings: one story not to exceed 15 feet.

§ 150-57. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 50 feet from right-of-way.
- B. Side setbacks, two required:
- (1) For dwellings: 15 feet per side.
 - (2) Other principal buildings: two required, 15 feet per side.
- C. Rear setback:
- (1) For dwellings, not less than 35 feet.
 - (2) For non-dwelling structures, not less than five feet.

§ 150-58. Off-street parking reference.

For applicable off-street parking requirements, see Article XXI of this chapter.

§ 150-59. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-60. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXVI, XXVII and XXVIII of this chapter.

ARTICLE XIII

R-12 Cluster Housing Regulations**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]****§ 150-61. Location and utility requirements.**

- A. The R-12 District shall be located on the Zoning Map of the Town of Concord, other than in the legend thereto, only in areas of the Town, outside the incorporated Village of Springville, served, or to be served, by a public water supply and distribution system and by a public sanitary sewer system, including proper treatment and disposal facilities, both approved by appropriate county and/or state health authorities.
- B. No portion of the R-12 District shall be included on the Zoning Map of the Town of Concord for an area of less than 10 acres.
- C. No building permits for construction nor certificates of occupancy shall be issued for any permitted principal or accessory uses in the R-12 District until the required public utilities, as delineated above, have been installed and are in a operational condition satisfactory to the above-cited public health officials.

§ 150-62. Permitted principal uses.

Permitted principal uses shall be as follows:

- A. Single-family detached dwelling, other than a mobile home, with no other dwelling or other principal building on the same lot, except in the case of church buildings.
- B. Church or other place of worship or religious instruction, parish house or rectory, convent in connection with a school, subject to a site plan approved by the Town Board.
- C. Public or private nonprofit school accredited by the New York State Education Department, subject to a site plan approved by the Town Board.

§ 150-63. Permitted accessory uses.

Permitted accessory uses shall be as follows:

- A. Customary accessory uses and structures, including private garages, located only to the rear of the front setback line.
- B. Professional office or home occupation, except under clustering, by a resident thereof, subject to a special permit approved by the Town Board. Furthermore, in no case shall said professional office or home occupation occupy an area of more than 1/5 of the total gross floor space of the dwelling in which it is located or 300 square feet for any permitted accessory use herein.

§ 150-64. Maximum height.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section:

- A. Two and one-half stories, not to exceed 35 feet for principal buildings.
- B. One story not to exceed 15 feet for accessory structures.

§ 150-65. Minimum ground floor area of dwelling.

Minimum ground floor area of a dwelling shall be 700 square feet.

§ 150-66. Minimum lot width.

Minimum lot width shall be 100 feet measured at the principal building setback line.

§ 150-67. Minimum lot size.

Unless otherwise provided, the minimum lot size shall be as specified in this section.

- A. Lot area: 12,000 square feet.
- B. Lot width at building line: 100 feet measured at the principal building setback line.

§ 150-68. Required setbacks.

Unless otherwise provided, the required setbacks and other open spaces shall be as specified in this section:

- A. Front setback:
 - (1) 35 feet measured from the edge of the nearest right-of-way, regardless of whether or not said right-of-way is public or private.
 - (2) Front setback depth shall be 35 feet measured from the edge of the nearest right-of-way, regardless of whether or not said right-of-way is public or private.
- B. Side setbacks: two required.
 - (1) For dwellings, 15 feet per side.
- C. Rear setback:
 - (1) For dwellings, not less than 35 feet.
 - (2) For non-dwelling structures, not less than five feet.

§ 150-69. Required yards.

Each lot shall contain one front yard, one rear yard and two side yards, one on each side of the principal building.

§ 150-70. Clustering.

Clustering may be permitted in the R-12 District for single-family detached dwellings, but only based on an approved subdivision plot plan (final approval) pursuant to action by the Town Board and in conformance with the cluster housing regulations herein (see supplemental regulations⁸).

§ 150-71. through § 150-72. (Reserved)

ARTICLE XIII
R-CRDG Craneridge District
[Added 7-13-2023 by L.L. No. 3-2023]

§ 150-72.1. Location; public utilities required.

The Craneridge District shall be located on the Zoning Map of the Town of Concord, other than in the legend thereto, only in areas of the Town, outside the incorporated Village of Springville.

- A. No portion of the Craneridge District shall be included on the Zoning Map of the Town of Concord for an area of less than 10 acres.
- B. No building permits for construction nor certificates of occupancy shall be issued for any permitted principal or accessory uses in the Craneridge District until the required public utilities have been installed and are in an operational condition satisfactory to the Code Enforcement Officer or public health officials.

§ 150-72.2. Permitted principal uses and structures.

- A. Permitted principal uses shall be as follows:
 - (1) Single-family detached dwelling, other than a mobile home, with no other dwelling or other principal building on the same lot.
- B. Permitted accessory uses shall be as follows:
 - (1) Private garages, located only to the rear of the front yard setback line.
 - (2) Off-street parking spaces, including the parking of not more than two commercial vehicles used by occupants of the premises.

8. Editor's Note: See Art. XXIX, Supplemental Cluster Housing and Townhouse Regulations.

- (3) Storage of campers, house trailers or boats owned by occupants of the premises for personal use, provided such storage is located to the rear of the setback line and does not occupy the required side yard.

§ 150-72.3. Maximum height.

Maximum height requirements shall be as follows:

- A. Two and one-half stories, not to exceed 35 feet for principal buildings.
- B. One story not to exceed 15 feet for accessory structures.

§ 150-72.4. Minimum ground floor area of dwelling.

Minimum ground floor area of a dwelling shall be 700 square feet.

§ 150-72.5. Minimum lot width.

Minimum lot width shall be 100 feet measured at the principal building setback line.

§ 150-72.6. Minimum lot area. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Minimum lot area shall be 15,000 square feet.

§ 150-72.7. Front yard depth or setback.

Front yard depth or setback shall be 35 feet measured from the edge of the nearest right-of-way, regardless of whether or not said right-of-way is public or private.

§ 150-72.8. Minimum depth of rear yard.

Minimum depth of rear yard shall be 35 feet measured from the rear of the principal building to the rear lot line.

§ 150-72.9. Side setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Side setback: two required, 15 feet per side.

§ 150-72.10. Required yards.

Each lot shall contain one front yard, one rear yard and two side yards, one on each side of the principal building.

ARTICLE XIV

C-1 Local Retail Business District Regulations**§ 150-73. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

Permitted uses and structures shall be as follows:

A. Principal uses and structures.

- (1) Single-family dwelling.
- (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
- (3) Fire station, with or without club facilities.
- (4) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
- (5) Public school, public library or public museum.
- (6) Private, nonprofit, elementary or secondary school accredited by the New York State Department of Education.
- (7) Golf course of at least nine holes, miniature golf course and practice driving range operated as individual commercial enterprises, including accessory buildings, structures and uses which are necessary for or customary to golf course operations; provided, further, that no building or structure shall be less than 100 feet from any street line, road line or any other lot in an R District.
- (8) Two-family dwelling.
- (9) Multifamily dwelling or condominium.
- (10) Dwelling group, provided that all buildings are located so as to permit future division of the property into separate lots with minimum area and setback requirements as stipulated for a two-family dwelling in the R-2 District.
- (11) Hospital or institution of a religious, charitable or philanthropic nature, provided that it is not used for penal or correctional purposes. Such principal buildings shall be at least 50 feet from any other lot in any R District.
- (12) Group home for developmentally disadvantaged, unrelated persons, subject to side setback requirements for other principal buildings.
- (13) Nursing, custodial or convalescent home, subject to side setback requirements for other principal buildings.
- (14) Nursery school or day nursery, subject to side setback requirements for other principal buildings.
- (15) Bed-and-breakfast establishments.
- (16) Tourist home or rooming or boarding house for up to eight persons.

- (17) Mortuary, funeral or undertaking parlor.
- (18) Telephone exchange.
- (19) Real estate, insurance office.
- (20) Optician, optometrist, ophthalmologist.
- (21) Art, dance, music, photography studios.
- (22) Antique shops, when conducted entirely within an enclosed building.
- (23) Meeting rooms for private club, lodge or fraternal organization.
- (24) Medical and/or dental buildings, clinics and laboratories.
- (25) Trade or industrial school, provided that such activity is conducted wholly within an enclosed building.
- (26) Other administrative, professional or executive offices, but not including the handling, repairing, processing, keeping, displaying, selling, manufacturing, servicing or storing of any goods or merchandise upon the premises.
- (27) Unless otherwise provided, the following uses when conducted entirely within an enclosed building:
 - (a) Retail sales, but not including any use first permitted in any other C District or first permitted in any M District.
 - (b) Personal service establishments, including but not limited to a barbershop, hair salon, beauty parlor, shoe or hat cleaning or repair, martial arts or health spa or related physical fitness facilities.
 - (c) Bank or other financial institution.
 - (d) Hand laundry, laundromat, dry cleaning or laundry pickup stations.
 - (e) Theater, bowling alley, skating rink, dance hall, billiard hall, restaurant, tavern.
 - (f) Auditorium, assembly hall.
 - (g) Passenger depot or terminal.
 - (h) Automotive sales and service of vehicles, used or new.
- (28) Gasoline station, subject to the applicable federal, state and local ordinances.

B. Accessory uses and structures.

- (1) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.

- (2) Storage of campers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side setback.
 - (3) On premises of four or more acres, private horse stables for use by the occupant of the premises and his/her occasional guest without compensation, provided that such uses and structures are located to the rear of the front setback line and do not occupy any part of a required side setback.
 - (4) A building for private greenhouse purposes, not to exceed 500 square feet in floor area, and provided that such building is located to the rear of the front setback line and does not occupy any part of a required side setback.
 - (5) A private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side setback. In the case of any private swimming pool, such pool shall comply with any applicable swimming pool regulations enacted by the Town of Concord.
 - (6) Professional residence-office conducted in a dwelling by the occupant thereof.
 - (7) Accommodations for not more than three roomers or lodgers within a dwelling.
 - (8) Accessory uses to R-RB principal uses permitted in the C-1 District.
 - (9) Unless otherwise specified, accessory uses and structures customarily incidental to permitted principal uses.
- C. The following use by special use permit:
- (1) Cryptomining.
 - (2) Data center.

§ 150-74. Minimum lot size.

Unless otherwise provided, the minimum lot size for dwellings shall be as specified in this section.

- A. Lot area.
- (1) Minimum: one acre.
 - (2) Two-family dwelling: one acre.
 - (3) Three-or-more-family dwelling: 15,000 square feet per dwelling unit.
- B. Lot width at building line: 150 feet.

§ 150-75. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

- A. Maximum: 50 feet.

§ 150-76. Required setbacks.

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 50 feet.

- B. Side setbacks.

- (1) For dwellings, two required.

- (a) Single-family dwelling where lot is served by public utilities: 15 feet per side.
- (b) Two-family dwelling where lot is served by public utilities: 15 feet per side.
- (c) Single-family or two-family dwelling where lot is not served by public utilities: 15 feet per side.
- (d) Three-or-more-family dwelling: minimum of 40 feet from any property line.

- (2) Other principal buildings, none required except:

- (a) Where a side setback is provided, it shall be no less than five feet.
- (b) Where a side setback abuts any R District boundary, it shall be not less than 20 feet or the height of the principal building, whichever is greater.
- (c) Where a side setback is used for vehicular ingress and/or egress, it shall not be less than 25 feet.

- C. Rear setback for other than three-or-more-family dwelling.

- (1) Minimum: 10 feet.

- (2) Along an R District boundary: the same distance as required for side setback, 15 feet.

§ 150-77. Off-street parking reference.

For applicable off-street parking regulations, see Article XXI of this chapter.

§ 150-78. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-79. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXVI, XXVII and XXVIII of this chapter.

ARTICLE XV

C-2 General Commercial District Regulations**§ 150-80. Permitted uses and structures.**

Permitted uses and structures shall be as follows:

- A. Principal uses and structures shall be as follows; provided, however that open retail sales (outdoor retail sales) shall be permitted unless otherwise specified in this subsection. No cluster housing shall be permitted.
- (1) Single-family dwelling.
 - (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
 - (3) Fire station with or without club facilities.
 - (4) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
 - (5) Public school, public library or public museum.
 - (6) Private, nonprofit, elementary or secondary school accredited by the New York State Department of Education.
 - (7) Golf course of at least nine holes, miniature golf course and/or practice driving range operated as individual commercial enterprises, including accessory buildings, structures and uses which are necessary for or customary to golf course operations; provided, further, that no building or structure shall be less than 100 feet from any street line, road line or any other lot in an R District. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (8) Two-family dwelling.
 - (9) Multifamily dwelling or condominium.
 - (10) Dwelling group, provided that all buildings are located so as to permit future division of the property into separate lots with minimum area and yard requirements as stipulated for a two-family dwelling in the R-2 District.
 - (11) Hospital or institution of a religious, charitable or philanthropic nature, provided that it is not used for penal or correctional purposes. Such principal buildings shall be at least 50 feet from any other lot in any R District.
 - (12) Group home for developmentally disadvantaged, unrelated persons, subject to side yard requirements for other principal buildings.

- (13) Nursing, custodial or convalescent home, subject to side yard requirements for other principal buildings.
- (14) Nursery school or day nursery, subject to side yard requirements for other principal buildings.
- (15) Bed-and-breakfast establishments.
- (16) Tourist home or rooming or boarding house for up to eight persons.
- (17) Mortuary, funeral or undertaking parlor.
- (18) Telephone exchange.
- (19) Real estate, insurance office.
- (20) Optician, optometrist, ophthalmologist.
- (21) Art, dance, music, photography studios.
- (22) Antique shops.
- (23) Retail sales establishments for the sale of garden products and/or produce, provided that bulk garden products offered for sale and stored on the premises at any one time not exceed 750 cubic yards of any particular bulk item.
- (24) Personal service establishments, including but not limited to a barbershop, hair salon, beauty parlor, shoe or hat cleaning or repair, martial arts or health spa or related physical fitness facilities.
- (25) Bank or other financial institution.
- (26) Hand laundry, laundromat, dry cleaning or laundry pickup stations.
- (27) Theater, bowling alley, skating rink, dance hall, billiard hall, restaurant, tavern.
- (28) Auditorium, assembly hall.
- (29) Passenger depot or terminal.
- (30) New or used motor vehicle sales and service, including recreational vehicles.
- (31) Gasoline stations subject to the applicable federal, state and local ordinances.
- (32) Eating or drinking establishments.
- (33) Custom shops, including but not limited to printing, electrical, heating, plumbing, welding or woodworking shops.
- (34) Dairy; bottling of nonalcoholic beverages.
- (35) Wholesale sales and distribution.
- (36) Dry-cleaning plant or laundry.

- (37) Drive-in theater.⁹
- (38) Commercial car wash.
- (39) Boat or marine sales and service.
- (40) Warehouse, but not including the storage of highly flammable or explosive materials.
- (41) The following uses, provided that they are conducted within a secure area:
 - (a) Public garage, but not including auto wrecking or the storage of motor vehicles not eligible for New York State motor vehicle inspection stickers.
 - (b) Building materials supply, including incidental millwork.
 - (c) Public utility storage, service buildings and yards.
 - (d) Small animal hospital.
 - (e) Machine and tool sales, rentals and service.
 - (f) Storage and sales of solid fuels.
 - (g) Storage and sales of feed for livestock.
 - (h) Storage and sales of seed and fertilizer.
 - (i) Contractor's equipment yard.

B. Accessory uses and structures.

- (1) Private garage or off-street parking spaces as regulated in this chapter, including the parking of not more than two commercial vehicles, provided that the vehicles are used by the occupants of the premises.
- (2) Storage of campers, utility trailers or boats, owned by the occupant of the premises, for his/her personal use, provided that such storage is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (3) On premises of four or more acres, private horse stables for use by the occupant of the premises and his/her occasional guest without compensation, provided that such uses and structures are located to the rear of the front setback line and do not occupy any part of a required side yard.
- (4) A building for private greenhouse purposes, not to exceed 500 square feet in floor area, and provided that such building is located to the rear of the front setback line and does not occupy any part of a required side yard.
- (5) A private tennis court and/or private swimming pool, provided that any such facility is located to the rear of the front setback line and does not occupy any part of a required side yard. In the case of any private swimming pool, such pool

9. Editor's Note: Former § 150-80A(38), Golf driving range or miniature golf, of the 2005 Code, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I)].

shall comply with any applicable swimming pool regulations enacted by the Town of Concord.

- (6) Professional residence-office conducted in a dwelling by the occupant thereof.
 - (7) Accommodations for not more than three roomers or lodgers within a dwelling.
 - (8) Unless otherwise specified, accessory uses and structures customarily incidental to permitted principal uses.
- C. The following uses by special use permit: **[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
- (1) Cryptomining.
 - (2) Data center.

§ 150-81. Minimum lot size.

Unless otherwise provided, the minimum lot size for dwellings shall be as specified in this section.

- A. Lot area.
- (1) Minimum: one acre.
 - (2) Two-family dwelling: one acre.
 - (3) Three-or-more-family dwelling: 15,000 square feet.
- B. Lot width at building line: 150 feet.

§ 150-82. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

- A. Maximum: 50 feet.

§ 150-83. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 50 feet.
- B. Side setbacks.
- (1) For dwellings, two required.
 - (a) Single-family dwelling where lot is served by public utilities: 15 feet per side.

- (b) Two-family dwelling where lot is served by public utilities: 15 feet per side.
- (c) Single-family or two-family dwelling where lot is not served by public utilities: 15 feet per side.
- (d) Three-or-more-family dwelling: minimum of 40 feet from any property line.

C. Rear setback for other than three-or-more-family dwelling: no less than 10 feet.

§ 150-84. Off-street parking reference.

For applicable off-street parking regulations, see Article XXI of this chapter.

§ 150-85. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-86. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXVI, XXVII and XXVIII of this chapter.

ARTICLE XVI

C-T Commercial-Tourist District Regulations

§ 150-87. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Permitted uses and structures shall be as follows:

- A. Principal uses and structures. The following uses and structures are subject to site plan and architectural plans approved by the Concord Town Board:
 - (1) Restaurant, other than a drive-in or fast-food restaurant, equipped with a dining room capable of seating and serving a minimum of 100 patrons at one time.
 - (2) Hotel.
 - (3) Motel.
 - (4) Single-family dwelling.
 - (5) Two-family dwelling.
 - (6) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
- B. Accessory uses and structures.

- (1) Accessory uses and structures customarily incidental to the operation of a restaurant, including but not limited to eating and drinking facilities, dance floor, facilities for live entertainment, bandstand, television, radio or other music and banquet facilities when conducted entirely within a restaurant.
 - (2) Accessory uses and structures customarily incidental to the operation of a hotel or motel, including the following uses and structures only when conducted within a hotel or motel with all entrances thereto only from within the main entrance of the hotel or motel:
 - (a) Boutiques or similar facilities for the retail sales of clothing and accessories.
 - (b) Retail gift shop, confectionery, snack sales, newsstand, card sales.
 - (c) Machines to dispense nonalcoholic beverages.
 - (d) Personal services, including but not limited to beauty parlor, barbershop or haircutting salon, shoeshine parlor or machine.
 - (e) Pharmacy.
 - (f) Eating and drinking facilities.
 - (g) Television or video cassette recorder cassette rentals.
 - (h) Restaurant and entertainment facilities as permitted in Subsection B(1) above.
 - (i) Movie theater not to exceed seating accommodations for more than 100 hotel or motel patrons and their guests at one time.
 - (j) Indoor swimming pool, spa or health club.
 - (3) Outdoor patio or deck, swimming pool, tennis courts for the enjoyment of motel or hotel patrons and their guests.
- C. The following use by special permit:
- (1) Cryptomining.
 - (2) Data center.

§ 150-88. Minimum lot size.

Minimum lot size shall be subject to site plan approval and Town Board approval.

§ 150-89. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

- A. Hotel maximum: 100 feet.

B. All other permitted uses and structures maximum: 35 feet.

§ 150-90. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: minimum of 100 feet from the nearest edge of a property line or right-of-way, of which at least 50 feet shall be devoted exclusively to landscape usage, with the exception of one freestanding sign for the identification of the premises.
- B. Side setbacks: two required.
 - (1) Along an R District boundary: minimum of 100 feet, of which at least 50 feet shall be devoted exclusively to landscape usage.
 - (2) Along any other district boundary: minimum of 35 feet or a distance equal to the height of the principal building or structure, whichever distance is greater.
- C. Rear setbacks.
 - (1) Along an R District boundary: minimum of 100 feet, of which at least 50 feet shall be devoted exclusively to landscape usage.
 - (2) Along any other district boundary: minimum of 35 feet or a distance equal to the height of the principal building or structure, whichever is greater.

ARTICLE XVII

C-R Commercial-Recreation District Regulations

§ 150-91. Permitted uses and structures. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Permitted uses and structures shall be as follows:

- A. Principal uses and structures. The following uses and structures are subject to the site plan and architectural plans shall be reviewed by the Concord Planning Board and approved by the Concord Town Board:
 - (1) Downhill ski center or resort operated on a commercial basis and available to the general public or an equivalent skiing facility operated as a private membership club.
 - (2) Campground or recreational vehicle park subject to the campground and/or recreational vehicle park regulations of the Town of Concord, if any.
 - (3) Commercial horseback riding stables and trails.
 - (4) One single-family dwelling.
 - (5) Two-family dwelling.

- (6) All forms of manufactured housing designed for single-family dwelling purposes, other than a mobile home as defined herein.
 - (7) Golf course of at least nine holes, miniature golf course or practice driving range, operated as individual commercial enterprises, including accessory buildings, structures and uses which are necessary for or customary to golf course operations; provided, further, that no building or structure shall be less than 50 feet from any street line or road line and 15 feet from the side lot in an R District.
- B. Accessory uses and structures.
- (1) Accessory uses and structures customarily incidental to permitted uses and structures.
 - (2) Accessory uses and structures in addition to those customarily incidental to the operation of a downhill ski center or resort:
 - (a) Lodge or other accessory buildings, including uses of a restaurant, cafeteria, rest rooms, facilities for ski equipment rental, retail sales of skiing equipment, clothing and gear or banquet facilities.
 - (b) On-site rental housing for the accommodation of skiers and their guests on a seasonal basis.
 - (c) Accessory buildings and uses for snow-making equipment, vehicle maintenance equipment and utility facilities.
 - (3) Accessory uses and structures for recreational vehicle parks and/or campgrounds may include:
 - (a) Utility hookups.
 - (b) Common buildings for utility and/or cleaning purposes.
 - (c) Water facilities for swimming, fishing or boating.
 - (d) Restaurant, with or without bar facilities.
- C. The following use by special use permit:
- (1) Cryptomining.
 - (2) Data center.

§ 150-92. Minimum lot size.

Unless otherwise provided, the minimum lot size for permitted uses and structures shall be as specified in this section.

A. Lot area.

- (1) Ski center or resort, commercial horseback riding stables and trails: minimum of 100 acres.

- (2) Campground, recreational vehicle park: minimum of 50 acres.

B. Lot width at building line: 150 feet.

§ 150-93. Maximum height of buildings.

Unless otherwise provided, the maximum height of buildings shall be as specified in this section.

A. Maximum: 35 feet.

§ 150-94. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be specified in this section.

A. Front setback: 50 feet.

B. Side setbacks: two required, 15 feet per side.

C. Rear setback:

- (1) For dwellings: not less than 50 feet.
- (2) For non-dwelling structures: not less than five feet.

§ 150-95. Off-street parking reference.

For applicable off-street parking regulations, see Article XXI of this chapter.

§ 150-96. Sign regulations reference.

For applicable sign regulations, see Article XXV of this chapter.

§ 150-97. Supplemental regulations reference.

For applicable supplemental regulations pertaining to use, height, area or open space, see Articles XXVI, XXVII and XXVIII of this chapter.

ARTICLE XVIII

M General Industrial District Regulations

§ 150-98. Permitted uses and structure.

Permitted uses and structures shall be as follows:

A. Principal uses and structures. This list is not exclusive. If the applicant wishes to institute a use not listed, a petition must be made to the Concord Town Planning Board.

- (1) Research and development activities, including laboratories, testing, small-scale experimental and pilot plant operations and production operations incidental to research and development practice and techniques.
- (2) The manufacture, compounding and assembly of products from previously prepared materials, including:
 - (a) Electrical and electronic components and equipment.
 - (b) Musical, scientific, medical, dental and photographic equipment and supplies.
 - (c) Pharmaceutical products, cosmetics and toiletries.
 - (d) Recreation equipment and toys.
 - (e) Clothing and other textile products.
 - (f) Printing, publishing and engraving.
 - (g) Furniture and furnishings for household and office related wood and metal products.
 - (h) Food and beverage products.
- (3) Warehousing and wholesale distribution when conducted within a completely enclosed building.
- (4) Adult uses. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (a) It has been acknowledged by communities across the nation that state and local governments have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special regulations deemed necessary to control the undesirable secondary effects arising from these enterprises are set forth below.
 - (b) The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods and important natural and human resources of the Town of Concord, to deter the spread of blight and to protect minors from objectionable characteristics of these adult uses by restricting their proximity to houses of worship, schools, parks, historic and scenic resources, civic and cultural facilities and residential areas.
 - (c) The operation of adult uses may have serious operational characteristics and damaging effects upon their surroundings as a result of their siting and concentration within the facilities. Special regulations pertaining to these uses are necessary to ensure adverse effects will not contribute to the blighting/downgrading of the surrounding neighborhood. These regulations will help ensure that adverse effects on the public health, safety, morals, comfort, convenience and general welfare are mitigated.

- (d) The development and proliferation of adult uses without regulation as to siting and concentration may result in the deterioration of residential and business neighborhoods. If placed near schools and other youth-related facilities, adult uses may adversely impact upon the welfare and morals of minors residing within the Town of Concord.
- (e) Location of adult uses. The following provisions shall apply to the location of adult uses:
 - [1] Adult uses shall be permitted in the M General Industrial District on approval of a special use permit.
 - [2] No adult use shall be permitted within 1,000 feet of the following:
 - [a] The boundaries of any zoning district which is zoned for residential use.
 - [b] A school or nursery school.
 - [c] Religious institution or house of worship.
 - [d] A public or private park, playground or public recreation facility; this distance shall be 300 feet for recreational trails.
 - [e] Historic or scenic resource, civic or cultural facility.
 - [3] For measurement purpose, the distance between an adult use and any such other named uses shall be measured in a straight line without regard to intervening structures or objects from the closest structural wall of such adult use to the boundary line of such residential district, school, nursery school, religious institution, house of worship, public park, playground or public recreational facility, historic or scenic resource, civic or cultural facility.
 - [4] Not more than one adult use shall be located in the same building or upon the same lot or parcel of land.
 - [5] No adult use shall be located within a one-thousand-foot radius of another adult use.
 - [6] All building openings, including doors and windows, shall be coated, covered or screened in such a manner as to prevent a view into the establishment from any public street, sidewalk or parking area.
 - [7] No loudspeakers or sound equipment shall be used by adult uses that can be heard by the public from outside the establishment.
 - [8] As a condition of approval of any adult use, there shall be a restriction that no person under the age of 18 years shall be permitted into or on the premises.
- (f) Registration. No person, firm, corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or

establishment, any part of which contains an adult use, without first complying with the provisions of this subsection as follows:

- [1] In addition to any and all other necessary licenses and permits, no form of adult use shall be allowed to operate or be allowed to continue to operate until a certificate of registration is filed with the Clerk of the Town of Concord, containing:
 - [a] The name and address of the owner(s) of the premises and name and address of the beneficial owner(s) if the property is in a land trust.
 - [b] The address of the premises.
 - [c] The name of the business or the establishment subject to the provisions of this section.
 - [d] The names, business and home addresses and business and home phone numbers of all owners of the business or establishment subject to the provisions of this section.
 - [e] The date of the initiation of the adult use.
 - [f] The exact nature of the adult use.
 - [g] If the premises or the building in which the business containing the adult use is located is leased, a copy of the lease is required.
- [2] If there occurs any change in the information required for the certificate of registration, the Clerk of the Town of Concord shall be notified of such change, and a new or amended certificate shall be filed within 30 days of such change.
- [3] The processing fee for each such certificate of registration or amendment thereto shall be as set by the Town Board from time to time.
- [4] No certificate of registration issued under the provisions of this section shall be transferable to any person 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.
- [5] The owner, manager or agent of any adult use shall cause a copy of the certificate of registration issued under the provisions of this section to be prominently displayed on the premises, building or location for which it is issued.
- [6] 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 any document or information supplied therewith shall be grounds for the rejection, suspension or revocation of the certificate of registration.

- [7] It is a violation of this section 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 section.
- [8] Additional sign requirements. In addition to the sign regulations of Article XXV of this chapter the following provisions shall apply to signs erected or maintained in connection with an adult bookstore or an adult motion-picture theater:
 - [a] No off-site signs shall be permitted.
 - [b] Advertisements, displays or promotional materials shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways or from other areas public or semipublic, and such displays shall be considered signs.
 - [c] Not more than one business wall sign shall be permitted for an adult use and such sign shall be permitted only on the front façade.
 - [d] Sign messages shall be generic in nature, shall not contain advertising material and shall only identify the business that is being conducted.
 - [e] Such sign shall be reviewed by the Town Board in conjunction with the special use application and shall conform to all signage requirements of this chapter.
- (g) 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 specific sexual activities or specific anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window, screen or other opening.
- (5) The following uses by special use permit authorized by the Planning Board.
 - (a) Wind energy conversion systems (WECS).
- (6) Accessory uses and structures.
 - (a) Accessory uses and structures customarily incidental to permitted principal uses.
 - (b) Truck dispatch and transfer incidental to permitted principal uses, provided that no vehicle loading, unloading, or parking shall be permitted in the public right-of-way.
- (7) Limitations on uses in the M District.
 - (a) No use of land, building or structure shall be permitted the operation of which normally results in any:

- [1] Fire or explosive hazard beyond the boundaries of the district in which such use is located.
- [2] Dissemination of atmospheric pollutant, noise, vibration, glare or odor into any R, C or M District.
- (b) No unneutralized refuse material shall be discharged into sewers, streams or ditches.
- (c) All side and rear lot lines abutting any lot in any R District or C-1 District shall be fenced or screened.
- (d) Unless otherwise provided, required side and rear yards shall be used only for landscaping and/or off-street parking.

§ 150-99. Minimum lot size.

Minimum lot size shall be 100 feet in width.

§ 150-100. Required setbacks. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Unless otherwise provided, the minimum required setbacks and other open spaces shall be as specified in this section.

- A. Front setback: 40 feet, except that, when opposite any R District boundary or when used for accessory parking, it shall be not less than 50 feet.
- B. Side setbacks: two required.
 - (1) Minimum: 10 feet per side.
 - (2) Where a side yard abuts any R District boundary, it shall not be less than 75 feet or the height of the principal building, whichever is greater.
 - (3) Where a side yard abuts a C-1 District boundary, it shall be not less than 25 feet in width.
- C. Rear setback.
 - (1) Minimum: 10 feet.
 - (2) Where a rear yard abuts the boundary of any R or C-1 District: the same distance as for a side yard.

ARTICLE XIX

M-R Mining-Reclamation District Regulations**§ 150-101. Legislative findings.**

The amendments to the New York State Mined Land Reclamation Law preserve and recognize the authority of municipalities to absolutely prohibit mining in zoning districts. However, these amendments grant the New York State Department of Environmental Conservation (DEC) exclusive authority to regulate the reclamation of mined lands in addition to the preexisting DEC exclusive authority to regulate mining. Moreover, while the amendments preserve the rights of municipalities to authorize mining as a special use in certain zoning districts, municipalities have been severely limited in the conditions which may be imposed upon mining by the special use permit. The amendments also require the chief administrative officer of the municipality to participate in the DEC permitting process in order to impose certain of these conditions by special use permit.

§ 150-102. Special use permit required.

A commercial extraction of topsoil, sand, gravel or stone, other than mining, shall be permitted by special use permit.

§ 150-103. Mining.

Mining in the M-R District may be permitted by special use permit upon those conditions set forth in § 23-2703, Subdivision 2b of the Mined Land Reclamation Law, which conditions include:

- A. Limitation and restriction regarding ingress and egress to public thoroughfares controlled by the local government of the Town of Concord.
- B. Limitations and restrictions regarding routing of mineral transport vehicles on roads controlled by the local government of the Town of Concord.
- C. Requirements and conditions which are specified in the mined land reclamation permit issued by the DEC concerning setbacks from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, dust control and hours of operation.
- D. Enforcement of reclamation requirements contained in mined land reclamation permits issued by the DEC.

§ 150-104. Supervisor's duties.

The Supervisor of the Town of Concord, as the chief administrative officer, is hereby authorized to participate in the review by the DEC of any application for a mining permit, including but not limited to making a determination as set forth in § 23-2711, Subdivision 3, of the New York State Environmental Conservation Law, in regard to the following:

- A. Appropriate setbacks from property boundaries or public thoroughfare rights-of-way.

- B. Man-made or natural barriers designed to restrict access if needed and the type, length, height and location thereof.
- C. The control of dust.
- D. Hours of operation.
- E. Whether mining is permitted at the location.

§ 150-104.1. Final reclamation process.

After the New York State Department of Environmental Conservation accepts the final reclamation and releases the property owner from any further obligations imposed by the NYS mining permit, the subject property will automatically revert back to the prior zoning district. The Town will file the necessary application to rezone. If the property owner does not want the property to revert back to the prior zoning, and have the property rezoned to a different zoning district, the property owner shall apply to the Town of Concord for the rezone.

ARTICLE XX

PID Planned Industrial District Regulations

§ 150-105. Purpose.

The Planned Industrial Districts (PID) are intended to permit the creation of defined areas for the unified and orderly development of compatible industrial uses. A PID allows flexibility in planning and development and provides a process for evaluating plans to assure compatibility with adjacent industrial and nonindustrial districts.

§ 150-106. Permissible uses.

The following uses may be permitted in the Planned Industrial District:

- A. Research, development and testing facilities when in conformance with applicable zoning regulations and other standards and performance standards contained herein.
- B. Compounding, fabrication, assembly and processing operations similar to but not limited to:
 - (1) Electrical, electronic equipment and appliances, instruments, devices and components.
 - (2) Furniture and furnishings.
 - (3) Musical, scientific, medical, dental and photographic instruments and supplies.
 - (4) Recreational equipment and toys.
 - (5) Clothing and other textile products.
 - (6) Candy, pharmaceuticals, soap and toiletries.

- (7) Panels, sheets, tubes and rods.
 - (8) Automobile and boating accessories from previously prepared materials.
 - (9) Printing, publishing and engraving.
 - (10) Food and beverage products.
 - (11) Preparation of articles or merchandise from previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, leather, paper, plastics, precious or semiprecious metals or stones, light sheet metals, rubber, shell, textiles, tobacco, wire, wax, yarns, wood and paint.
- C. Light manufacturing and lumber yards or mills (processing and finishing) meeting the performance standards specified herein and approved by the Planning Board.
 - D. Warehousing and wholesale distribution, including public utilities storage or service facilities, and contractors' equipment or materials storage.
 - E. Offices and office buildings.
 - F. Retail sale of products manufactured on site with the Planning Board recommendation and subjected to the Town Board's approval.
 - G. Other industrial uses which, in the opinion of the Planning Board, are similar in nature and scale to those permitted above and consistent with the objectives of the Master Plan.

§ 150-107. Parking and loading requirements.

Parking and loading requirements applicable in the Planned Industrial District are set forth to maintain a flow of traffic. All parking and loading is prohibited in the street. Facilities must be maintained to accommodate the companies' needs.

§ 150-108. Signs.

Sign regulations applicable in the Planned Industrial District are set forth in the Town of Concord Sign Ordinance, §§ 150-129 through 150-139.

§ 150-109. Performance standards.

All uses in a Planned Industrial District shall adhere to the following standards:

- A. Dust and smoke. The emission of smoke, soot, fly ash, fumes, dust and other types of air pollution borne by the wind shall be controlled so that the rate of emission and quantity deposited shall not be detrimental to or endanger the public health, safety, comfort or welfare or adversely affect property values.
- B. Glare and heat. Any operation producing intense glare or heat shall be conducted in such a manner so that the glare or heat shall be completely imperceptible from any point along a lot line.

- C. Odorous matter. The emission of odorous matter in such quantities as to produce a public nuisance or hazard beyond the lot occupied by the user shall not be permitted.
- D. Noise. The weighted average sound pressure level as measured at the edge of a lot and which is produced by a mechanical, electrical or other equipment operation on the lot, where said lot is adjacent to a residential area, shall not exceed the average intensity of the street traffic noise in that residential area. No sound shall have objectionable intermittence, volume, beat, frequency or shrillness characteristics. The maximum level shall not exceed 65 decibels on the A-scale measured at any adjacent residential property line.
- E. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated by said use is not perceptible without instruments at any point along any property line of the lot on which the use is located.
- F. Fire and explosive hazards. The handling, use and nonbulk storage of flammable and combustible materials shall be permitted only in conformance with New York State Uniform Fire Prevention and Building Code requirements and in structures having noncombustible exterior walls, and all operations in connection therewith shall be provided with adequate safety and protective devices against hazards of fire and explosion, as well as with adequate fire-fighting and suppression equipment and devices standard to the operation involved, as determined by the Planning Board.
- G. Toxic or noxious matter. The emission of toxic, noxious or corrosive fumes or gases which would be injurious to property, vegetation, animals or human health at or beyond the boundaries of the lot occupied by the use shall not be permitted.
- H. Fissionable or radioactive materials. No activities shall be permitted which utilize fissionable or radioactive materials if their use results at any time in the release or emission of fissionable or radioactive material into the atmosphere, the ground or sewerage systems which exceeds New York State regulation or more than 25% above background levels.
- I. Liquid wastes. New York State Department of Environmental Conservation and/or Health Department approval shall be required prior to the discharge of any liquid wastes unless said waste is discharged in a public sewer system. Liquid wastes discharged into a public sewer shall be in conformity with applicable Federal and/or State Health Department criteria.

§ 150-110. Other provisions and requirements.

- A. All industrial processes shall take place within an enclosed building. Exterior processing may be approved on an individual-case basis and subject to controls and regulations to be established by the Planning Board. Incidental storage out of doors may be permitted, provided that such materials are shielded from view from public streets and adjacent off-street parking areas by fencing, landscaping or other appropriate measures.
- B. No permitted or permissible use shall be conducted in any manner which would render it noxious or offensive by reason of dust, refuse matter, odor, smoke, gas, fumes, noise, vibration or glare.

ARTICLE XXI
Off-Street Parking Regulations

§ 150-111. Required parking spaces.

- A. After the effective date of this chapter, off-street parking spaces shall be provided as hereinafter specified at the time a building or structure is erected or at the time a new use of open land is established. In the case of an enlargement of any existing building, structure or use after the effective date of this chapter, off-street parking spaces shall be provided as hereinafter specified for the enlarged portion of such building, structure or use.
- B. No existing off-street parking area shall be reduced in capacity so as to be less than required by this chapter or, if such parking capacity is already less than herein required, such parking area shall not be further reduced; provided, however, that a reduction in such existing parking area shall be allowed if equivalent parking space is provided for the use involved.

§ 150-112. Dwellings.

Parking spaces for dwellings shall be as follows:

- A. Off-street parking requirements: a minimum of two spaces.
- B. Multifamily dwelling: two spaces for each dwelling unit.
- C. Tourist home, bed-and-breakfast accommodations, hotel, motel or rooming or lodging house: one space for each unit accommodation.
- D. Additional spaces for accessory uses:
 - (1) Offices for treatment of humans: five spaces for each treatment room.
 - (2) Other offices: two spaces for each office.

§ 150-113. Institutional uses.

Parking spaces for institutional uses shall be as follows:

- A. Hospital: 1 1/2 spaces for each bed.
- B. Sanitarium, nursing home or convalescent home: one space for each five beds.
- C. Home for senior citizens or aged or orphanage: one space for each five persons in residence.

§ 150-114. Places of assembly.

Parking spaces for places of assembly shall be as follows:

- A. School: one space for each classroom, plus one space for each five seats in the auditorium.
- B. Church, principal or accessory auditorium, theater or sports arena: one space for each three seats.
- C. Library or museum: one space for each 300 square feet of gross floor area.
- D. Bowling alley: 10 spaces per alley.
- E. Skating rink: one space for each 100 square feet of gross floor area.
- F. Eating or drinking establishments, principal or accessory:
 - (1) Drive-in type: one space for each 25 square feet of gross floor area.
 - (2) Other types: two spaces for each five seats.
- G. Club or lodge: one space for each 100 square feet of floor area used for club or lodge purposes, plus one space for each sleeping room.
- H. Mortuary or funeral parlor: 10 spaces for each parlor.
- I. Swimming pools, principal or accessory, other than private pools: one space for each 25 square feet of pool area.
- J. Dance hall or studio: one space for each 50 square feet of gross floor area.

§ 150-115. Business or industrial uses.

Parking spaces for business or industrial uses shall be as follows:

- A. Furniture, floor covering or appliance stores, custom shops or wholesale business: one space for each 700 square feet of gross floor area, with a minimum of four spaces required.
- B. New or used car sales: one space for each 700 square feet of sales area within a building, but not fewer than five spaces for customer parking and one space for each two employees. Such spaces shall be clearly marked and shall not be used for the parking of unregistered motor vehicles.
- C. Gasoline station, public garage or repair garage, principal or accessory: three spaces for each service bay.
- D. Food store, shopping center or group of stores over 20,000 square feet of gross floor area: one space of each 100 square feet of gross floor area.
- E. Individual retail stores: one space for each 175 square feet of gross floor area.
- F. Real estate office: five spaces or 1 1/2 spaces per employee, whichever is greater.

- G. Doctor or dentist office: five spaces per medical doctor or dentist.
- H. Other business or professional offices or banks: one space for each 175 square feet of gross floor area.
- I. Manufacturing, storage or other industrial floor area: one space for each 1,000 square feet of gross floor area used for such purposes, but shall not be fewer than one space for each two employees.
- J. All other principal uses not above-enumerated or excepted: one space for each 350 square feet of gross floor area.

§ 150-116. Mixed uses.

Except as otherwise provided in Article XXIV, where any building or lot is occupied by two or more uses having different parking requirements, the parking requirement for each use shall be computed separately to determine the total off-street parking requirement.

**ARTICLE XXII
Units of Measurement**

§ 150-117. Size of parking space.

For the purpose of computing gross parking area for required off-street parking, 350 square feet of unobstructed net standing, maneuvering or access area shall be considered as one parking space. However, a lesser area may be considered as one parking space if the Code Enforcement Officer certifies that the layout and design of the parking area are adequate to permit convenient access and maneuvering. In any event, the size of a parking space shall be at least 20 feet long and nine feet wide exclusive of access or maneuvering area.

§ 150-118. Gross floor area.

Gross floor area shall include all areas of a building; provided, however, that basement or cellar floor area not used for processing, servicing or sales of goods or merchandise shall not be counted as gross floor area.

§ 150-119. Seats.

In places of assembly, other than churches, where bench-type seats are provided or where standing patrons are served at a counter or bar, each 20 linear inches of such seating or standing space shall be considered as one seat for the purpose of determining off-street parking requirements.

§ 150-120. Employees.

In any case where there is more than one work shift, the total number of employees used to compute off-street parking requirements shall include the maximum number of employees on two shifts.

§ 150-121. Fractional units.

When application of the units of measurement to determine required off-street parking spaces results in a fractional parking space of 1/2 or more, one parking space shall be required.

ARTICLE XXIII

Waiver of Required Off-Street Parking**§ 150-122. Accessory uses.**

- A. No off-street parking shall be required for uses accessory to any institutional use specified in § 150-113 or for an accessory restaurant used primarily for students, patients, tenants or employees occupying a principal use.
- B. In the case of accessory retail sales, restaurants or swimming pools, the lesser parking requirement for either the accessory use or the principal use, whichever requirement is less, shall be reduced 50%.

§ 150-123. Joint facilities.

- A. In the case of a church and school on the same lot, the lesser parking requirement shall be waived.
- B. Where places of assembly specified in § 150-114 are located on the same lot with other uses, the Concord Zoning Board of Appeals may permit a reduction in the number of required off-street parking spaces for such places of assembly.

ARTICLE XXIV

Site Requirements for Off-Street Parking Spaces**§ 150-124. Location of required parking spaces.**

- A. General provisions. All required off-street parking spaces shall be provided on the same lot with the building or use they serve, except as provided in the following Subsection B (Group facilities).
- B. Group facilities. In any C or M District, required off-street parking spaces may be provided in group parking facilities designed to serve two or more buildings or uses on different lots, provided that:
 - (1) The total parking spaces in such group facility shall not be less than the sum of the requirements for the various uses computed separately; and

- (2) All required parking spaces shall be not more than 600 feet from the boundary of the lot on which such buildings or uses are located.

§ 150-125. Setback for all off-street parking spaces.

A. In any R District:

- (1) Enclosed off-street parking spaces shall be subject to the regulations for accessory buildings in Article XXVIII.
- (2) No open off-street parking for five or more motor vehicles shall be located within five feet of any side or rear lot line of an adjoining lot in any R District.

B. In any C or M District:

- (1) Unless reduced by action of the Concord Zoning Board of Appeals upon the favorable recommendation of the Concord Town Board, no open or enclosed off-street parking space shall be permitted within 35 feet of any street or road line; provided, however, that no action by the Zoning Board of Appeals shall allow such off-street parking space less distant than 10 feet from any street or road line.
- (2) No open or enclosed off-street parking space shall be permitted within 10 feet of any side lot line or rear lot line of a lot used for residential purposes or in any R District.

§ 150-126. Encroachment of required parking spaces prohibited.

All areas counted as required off-street parking area shall be unobstructed and free of other uses except off-street loading or unloading.

§ 150-127. Guaranty for off-site parking spaces.

In any case where required off-street parking spaces are provided off site in group facilities, such off-site parking spaces shall be subject to deed, lease or contract restrictions acceptable to the Town Attorney of the Town of Concord binding the owner, his or her heirs or assigns to maintain the required number of spaces available throughout the life of such use.

§ 150-128. Additional requirements for all open off-street parking spaces.

All open off-street parking spaces shall be considered as automotive use areas and shall be subject to the requirements of Article XXVI, in addition to the provisions of this article.

ARTICLE XXV
Sign Regulations

§ 150-129. Sign permit required.

Except as hereinafter provided, no person shall erect, alter, construct, relocate or cause to be erected, altered, constructed or relocated any sign without first having obtained a sign permit from the Code Enforcement Officer. Sign permits are not required in the R-AG District for roadside stands that sell or display agricultural products.

§ 150-130. Application for sign permit.

An applicant for a sign permit shall submit an application to the Code Enforcement Officer which shall include:

- A. The name, address and telephone number of the applicant and the owner of the building, structure or property upon which the sign is to be erected.
- B. The written consent of the owner of the building, structure or property upon which the sign is to be erected in the event that the applicant is not the owner thereof.
- C. A rendering exhibiting the proposed lettering and pictorial matter of the sign; the dimensions of the sign and proposed lettering; the construction details of the sign structure and mounting devices; a location plan of the position of the sign on the building or property; and such other information as the Code Enforcement Officer may require. An application for a sign permit for a sign on an awning shall show the location, size and construction of the awning and the lettering or pictorial material to appear thereon.

§ 150-131. General sign requirements. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- A. Permitted sign copy.¹⁰ A sign may contain only the name and/or nature of the business conducted and/or the primary goods sold or the services rendered on the premises. Signs not advertising a business conducted, service rendered or primary goods sold on the premises of the sign are prohibited, except as otherwise provided herein.
- B. Sign lighting standards.
 - (1) Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity and no sign shall be illuminated by or contain flashing, intermittent, rotating or moving light or lights. The source of illumination shall be suitably shielded to eliminate glare and annoyance to passersby or adjacent property.
 - (2) In no event shall any illuminated sign or lighting device be placed so as to permit its beams and illumination to be directed upon a public street, highway, sidewalk

¹⁰ Editor's Note: Former § 150-131, Subsection A, Required sign copy, of the 2005 Code, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.

- (3) The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced.
- C. "For sale," "for rent" and "sold" signs. One nonilluminated "for sale," "for rent" or "sold" sign not exceeding four square feet may be erected on the premises or property to which it pertains; provided, however, that where a parcel exceeding 10 acres located in a business or industrial zone is for sale, a "for sale" sign not exceeding 20 square feet may be erected. "Sold" signs are to be removed within seven days of posting. No permit is required for any such signs.
- D. Bulletin boards. Church, school or other exterior institutional bulletin boards shall not exceed 32 square feet in area. No permit is required for such signs.
- E. Awning, canopy and covered walkway signs. When lettering or graphics are provided on awnings, canopies and covered walkways, in addition to complying with the awning or canopy requirements, the awning, canopy and covered walkway signs shall be subject to the following regulations:
- (1) The awning, canopy or covered walkway area shall be determined as measured at the building face.
 - (2) The surface area of all shapes, letters, numbers, symbols or illustrations, as calculated per Subsection K, shall not exceed 25% of the awning, canopy and covered walkway area as measured for in Subsection F(1) and shall be calculated as part of the sign area permitted on the face of a building per § 150-134A.
 - (3) When illuminated, the awning, canopy or covered walkway area as measured for in Subsection F(1) shall comply with the limitation on size as set forth in § 150-134A for face signs and shall be calculated as part of the sign area permitted on the face of a building. Only awnings and canopies which are constructed of opaque material may be illuminated. The opaque material shall limit the light transmission through the material to a maximum of 10% of the measured lighting level below the awning, canopy or covered walkway. Only fluorescent strip-lighting illumination, mounted internally to the awning, canopy or covered walkway on the building, is permitted. Fluorescent fixtures shall be limited to one tube fixture per linear foot as measured on the building face.
 - (4) Awning and canopy signs shall not be considered to be projecting signs.
- F. Lighting reflection signs. Hoods or shields for lighting reflection signs may be attached to buildings or structures, provided that such hoods or shields do not extend more than 12 inches beyond the face of the building or sign and reflection lights on projecting arms do not extend more than two feet beyond the face of the building or sign.
- G. Marquees. No marquees shall be constructed or erected except upon approval of the Concord Town Board upon recommendation of the Concord Town Planning Board.
- H. Specialty signs. Special time and temperature signs, with or without electrical lettering, special clock signs and other special signs of similar nature may be erected upon approval of the Concord Town Board.

- I. Service organization identification signs. A permit for a service organization identification sign may be issued only after the location of said sign is approved by the Concord Town Board.
- J. Measurement of signs. The surface area of a sign shall include the background area of the sign when computed by standard measurement formulas for known or common shapes. Irregular shapes, independent letters, numbers, symbols or illustrations shall be determined by measuring the smallest polygon which encloses all of said shapes, letters, numbers, symbols or illustrations as they are intended to be displayed.
- K. Maintenance and removal. Signs shall be kept in good repair and free from structural defects. Signs shall be removed:
 - (1) When they become structurally defective or in deteriorated condition.
 - (2) Upon the termination of the business which owned or maintained the sign.

§ 150-132. Prohibited and restricted signs; illuminated tubing.

- A. The following signs are prohibited in the Town of Concord:
 - (1) Projecting signs over any public way, except when hung from the underside or ceiling of a covered walkway related to the exterior of an individual business establishment.
 - (2) Fluttering banners or strings of lights not part of a sign; provided, however, that nothing herein shall be construed to prohibit the decoration of any premises for any national holiday or religious or holiday season.
 - (3) Signs attached to light standards, utility poles or trees.
 - (4) Roof signs.
- B. The following signs are permitted in the Town of Concord only with Town Board approval on an individual basis:
 - (1) Revolving, moving, flashing or blinking signs or signs that appear to be in motion.
 - (2) Portable signs.
- C. Illuminated tubing restriction. Illuminated tubing not used in the construction of a conforming electrical sign and which outlines a building, fence or other similar structure or part thereof, measuring more than 20 linear feet or enclosing any area greater than 20 square feet, may not be erected so as to be visible from any public drive, street, highway or shopping center.

§ 150-133. Signs in residential or agricultural districts. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Signs in any R-E, R-1, R-2, R-M, R-AG, R-RB or R-CRDG District, as established by this chapter, are permitted as follows:

- A. Signs to identify residents and permitted uses of one- and two-family dwellings. One nonilluminated sign not exceeding two square feet in area, indicating the name of the resident or identifying a permitted use, may be located on the principal building or a separate post support not closer to any street than a distance equal to 1/2 the required setback from such street and not exceeding seven feet in height. No permit shall be required for such signs.
- B. Signs for identification of multiple dwellings or residents of multiple dwellings.
 - (1) Dwelling group identification. One sign not exceeding 16 square feet in area may identify a multiple dwelling or dwelling group complex. Such sign may be illuminated by a nonflashing, shielded light directed away from adjacent streets, highways or properties. Such sign shall be placed parallel to the street, shall not interfere with a public highway and shall not exceed seven feet in height. When an application for a building permit is submitted to the Concord Town Planning Board, such sign shall be subject to the approval or disapproval of the Concord Town Planning Board.
 - (2) Resident identification. One nonilluminated sign not exceeding two square feet in area may identify the residents of a multiple dwelling. Such sign shall be attached parallel to the multiple dwelling it serves. No permit shall be required for such signs.
- C. Permanent subdivision identification signs. One nonilluminated sign not exceeding 16 square feet in area may identify a permanent subdivision. Such signs shall not exceed seven feet in height and shall not interfere with the visibility from any driveway at its intersection with a public highway. Such signs shall be subject to the approval or disapproval of the Concord Town Planning Board.
- D. Signs to identify residents and permitted uses in the R-AG District may be a sign not exceeding 16 square feet in area (four feet by four feet) to identify each such farm and additional sign area that is needed for advertising such products that are sold from a location on said farm. Signs may be placed perpendicular to the road; however, they must be kept 15 feet from the right-of-way line or public walkway. The Town of Concord Planning Board may recommend to the Town Board, upon proper justification, to waive the fifteen-foot requirement.

§ 150-134. Signs in business and/or industrial districts. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Signs shall be permitted in business and/or industrial districts, as established by this chapter, as follows:

- A. Building face signs. A sign integral with or attached to and supported by the exterior wall of a building.

- (1) Location. Signs shall be permitted on the face of any building and may be attached to the face of the building or applied thereto but not painted thereon; provided, however, that such signs shall not project more than 12 inches from the face of the building nor extend beyond the wall at any corner.
 - (2) Size. A face sign on the front of the building shall not exceed 20% of the total surface of such face on one story, including areas occupied by doors and windows. Signs on each additional face shall not exceed 10% of the total surface of the front of the building; provided, further, that no sign shall exceed 20% of the face to which it is attached.
- B. Freestanding signs. A sign supported by uprights or braces placed upon or in the ground and not attached to any building.
- (1) Location. One freestanding sign may be erected, and no part of such sign shall be set back less than 10 feet from the right-of-way line. Where a business area abuts a residential area, any such sign shall be set back at least 15 feet from this side line. No sign shall interfere with the visibility from any driveway at its intersection with a public highway.
 - (2) Size. In the C-1 and C-2 Districts of the business district of the Town of Concord (Cascade Drive South) only, there shall be no more than two display surfaces, each of which shall not exceed 90 square feet. Also, the erection of a freestanding sign as set forth in Subsection C, in this area only, shall be at a height of no more than 40 feet.
 - (3) In all other business and/or industrial districts, there shall be no more than two display surfaces, each of which shall not exceed 20 square feet, the height to be determined by the Planning Board.
- C. Pole signs. A sign that is mounted on a freestanding pole or other support so that the bottom edge of the sign face is a minimum of eight feet above the finished grade of a paved walk, drive, or parking area.
- (1) Location. No part of such sign shall be set back less than 15 feet from the right-of-way. Where a business area abuts a residence area, any such sign shall be set back at least 15 feet from this side line. No sign shall interfere with the visibility from any driveway at its intersection with a public highway.
 - (2) Size. One pole sign, not exceeding 40 square feet, shall be permitted. The sign area may be increased at the rate of one square foot for each additional two feet from the required setback from the road right-of-way and the side property lines (or the required side line setback), but not to exceed, in any event, a total area of 180% of the area permitted by this subsection for pole signs. Only one pole sign shall be permitted in each shopping center or plaza, as defined in this chapter. Pole signs shall be prohibited on lots which are less than 100 feet in width measured at the right-of-way line.
 - (3) Erection of pole signs, as set forth in this subsection, shall preclude erection of a freestanding sign as set forth in Subsection B.

- D. Covered walkways. Where a covered walkway extends across the front of a building or buildings, one sign per business may be mounted on the roof of the walkway or walkways to a height of two feet. Signs may also be hung from the underside or ceiling of the covered walkway related to the entrance of the individual business establishments, provided that the bottom of such sign is at least seven feet above the sidewalk.
- E. Service or loading dock signs. One sign not exceeding eight square feet in area is permitted in addition to other permitted signs.
- F. Automotive service stations. Signs may be erected in the pump areas, but not to extend beyond either side of the row of pumps or beyond the last pump on each end of the pump row.
- G. Additional accessory signs. At the entrance of the buildings and business establishments above the first floor, nameplates of uniform design and appearance not more than 18 inches in length and nine inches in height may be mounted at the sides of such entrance, provided that they are placed flat against the exterior wall.
- H. Entrance, exit, projecting, etc., signs. Entrance, exit, identification and other traffic control signs and projecting signs are to be approved by the Concord Town Planning Board as to location and size.
- I. Off-premises signs. Where it is not practical to obtain necessary visibility from an identification sign on the premises, the Concord Town Board may, upon recommendation of the Concord Town Planning Board, grant permission to erect an off-premises identification sign, provided that:
- (1) The applicant has demonstrated a need for such off-premises identification sign(s) in order to alleviate a practical difficulty for the general public to locate and identify the applicant's place of business.
 - (2) The proposed off-premises identification sign(s) represents the most efficient use of signage under the circumstances. For any group of businesses similarly disadvantaged by a difficulty of the general public to locate and identify their premises, a single off-premises identification sign common to all such businesses shall be deemed the most efficient use of such signage as opposed to separate off-premises identification signs for each sign business.
 - (3) The proposed identification sign(s) is harmonious with its surroundings under the circumstances presented.
 - (4) Notwithstanding any other provision stated in this subsection:
 - (a) The text of such off-premises identification sign(s) shall be permanent in nature.
 - (b) The primary purpose of such off-premises identification sign(s) shall be to assist the general public in locating and identifying such businesses, as opposed to advertising the nature of such business, goods, wares, merchandise or services.

- (c) The proposed off-premises identification sign(s) is otherwise permitted by this chapter.
- (5) Should it be determined that an application is prompted by economic factors rather than a difficulty of the general public to locate and identify the applicant's place of business or that any hardship is self-inflicted, the application shall be denied.
- (6) The provisions of this subsection shall be strictly construed.

§ 150-135. Signs in industrial parks.

In any industrial park which exceeds 60 acres, the following signs shall be permitted:

A. Freestanding entrance signs.

- (1) Location. One freestanding sign may be erected at the main entrance of an industrial park, and no part of such sign shall be set back less than 15 feet from the right-of-way line or public walkway. No sign shall interfere with the visibility from any driveway or its intersection with a public highway.
- (2) Sizes. There shall be no more than two sign sides, the exterior dimensions of which shall not exceed 80 square feet per side. The total area on which printing appears shall not exceed 48 square feet.

B. Freestanding business signs.

- (1) Location. One freestanding sign may be erected at the main entrance of an industrial park, and no part of such sign shall be set back less than 15 feet from the right-of-way line or public walkway. No sign shall interfere with the visibility from any driveway at its intersection with a public highway.
- (2) Sizes. There shall be no more than two sign sides, the exterior dimensions of which shall not exceed 30 square feet per side. The total area on which printing appears shall not exceed 20 square feet.

§ 150-136. Special permit use signs.

Any applications for a sign identifying a special permit use, as defined in this chapter, shall be referred to the Concord Town Planning Board for approval.

§ 150-137. Temporary and special purpose signs.

- A. Notices. No notice shall be posted on public property within the Town of Concord except on bulletin boards maintained by the Town of Concord or other government authority.
- B. Banners. No banner shall be displayed over any sidewalk, Town street or highway except upon direction of the Concord Town Board. A public liability bond or policy in an amount as determined, from time to time, by the Town Board shall be furnished for each banner which extends across a sidewalk, street or highway. Such banner must be

securely fastened to buildings or structures. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- C. Temporary signs. Temporary signs erected or maintained by charitable and nonprofit organizations may be permitted by the Code Enforcement Officer upon direction of the Concord Town Board. The applicant must specify the number of signs to be erected, the size of the sign or signs and the proposed location of the sign or signs. Any temporary sign shall be removed on or before the removal established by the Concord Town Board. There shall be no fee for a permit for a temporary sign.
- (1) Political election signs.
 - (a) Nonilluminated political election signs, which shall not be located on public property, shall not be erected more than two weeks prior to a primary election nor six weeks prior to a general election. Successful candidates in a primary election may be permitted to have such election signs remain until after the general election. All unsuccessful candidates must cause their election signs to be removed within three days after a primary election. All candidates in a general election shall have their election signs removed within three days after a general election.
 - (b) Any political election sign attached to a building shall not exceed eight square feet in area and shall be attached only to the front wall of the principal building on occupied premises. Any detached, freestanding political election sign shall not exceed eight square feet in area, shall be erected only in the front setback area of occupied premises and shall be at least 10 feet from any property line, street or road line.
 - (2) All other temporary signs advertising an event cannot be erected more than four weeks prior to the event and must be removed within three days after the event.
- D. Construction signs. There shall be no fee for a construction sign permit. Construction signs shall be set back at least 10 feet from any right-of-way or side lot lines. Construction signs shall not be more than seven feet in height and shall be mounted on post supports. Construction signs displaying the name of the architect, engineer, principal, contractor and other participants engaged in the work of constructing a building or structure, as well as announcing the purpose of the building or structure for which a building permit has been issued and has not expired, may be permitted as follows:
- (1) Commercial and industrial zones. A single sign per lot not exceeding 40 square feet in area may be erected and maintained for the period beginning with the excavation and ending with the completion of the construction of any such building. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**
 - (2) Residential zone. A single sign per lot not exceeding six square feet in area may be erected. Permits for such signs shall be issued on a one-year renewable basis.
 - (3) Temporary subdivision sign. One temporary sign for a subdivision not exceeding 16 square feet in area may be erected after final subdivision approval is granted

by the Concord Town Planning Board. Permits from such signs shall be issued on a one-year renewable basis.

§ 150-138. Nonconforming signs.

- A. All nonconforming signs which are in use prior to the effective date of this chapter may continue in use as nonconforming signs except as follows:
 - (1) Any sign which does not directly relate to the sale of goods or services rendered on the property or a sign advertising a previous business on the premises which has not been purchased, leased or assumed by the present occupant shall be removed within 60 days after notification by the Code Enforcement Officer.
- B. Discontinuance. Any nonconforming sign which is removed from the position it occupied at the effective date of this chapter and not restored to such original position within 30 days shall be presumed to be abandoned and discontinued and may not be restored or re-erected except in compliance with this chapter.
- C. Repair or alteration. Nothing herein shall be deemed to prevent maintaining a nonconforming sign in good repair and safe condition.

§ 150-139. Safety provisions for signs.

- A. No sign shall be erected in such a manner as to obstruct free egress from a window, door or fire escape or as to become a menace to life, health or property.
- B. All signs affixed to any wall or building shall be securely fastened thereto and shall be subject to inspection by and approval of the Code Enforcement Officer.
- C. All wiring, fillings, materials and electrical or other installation or illumination or lighted signs shall be subject to inspection by and approval of the Code Enforcement Officer.

ARTICLE XXVI

Supplemental Use Regulations

§ 150-140. Temporary structures or uses.

The following temporary structures shall be deemed to be permitted uses in all zoning districts:

- A. Temporary structures or uses incidental to construction work, including a nonilluminated sign not exceeding 40 square feet in area of any contractor, engineer or architect, shall be permitted for a period of time not to exceed one year, provided that any such structure shall be removed forthwith upon the completion or abandonment of the construction work. Any extension of said time limit shall require the approval of the Concord Zoning Board of Appeals. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- B. The temporary use of a dwelling as a model home shall be permitted for a period of time not to exceed one year. Any extension of said time limit shall require the approval of the Concord Zoning Board of Appeals.
- C. Any temporary structures or uses permitted by the Concord Zoning Board of Appeals as authorized in Article XXXVI.

§ 150-141. Limitations on automotive use areas.

Except for farms or single-family or two-family residences, any portion or a lot used for open off-street parking or reservoir space or for open sales, service or storage areas for motor vehicles, contractor's equipment or boats shall be deemed to be an automotive use area and shall be subject to the following requirements:

- A. Surfacing. Every automotive use area and access driveway thereto shall be surfaced with a durable material and shall be so graded and drained as to dispose of surface water accumulation.
- B. Lighting. Any fixture used to illuminate any automotive use area shall be so arranged as to direct the light away from the street or road and away from adjoining premises in any R District.
- C. Screening. Every automotive use area, except off-street parking areas for more than five vehicles, must be screened from any adjoining lot in any R District:
 - (1) Along a street or road line, by a live planting strip five feet wide; provided, however, that no shrub planting or tree foliage shall be placed or maintained which obstructs vision at an elevation between three feet and seven feet above the street or road level. Such screening may be interrupted by normal entrances and exits.
 - (2) Along a rear lot line or an interior side lot line which abuts an existing or future rear yard or side yard on such adjoining lots, by a compact evergreen hedge which will reach a height of five feet within three years or by a solid, uniformly painted fence or an unpierced masonry wall five feet in height. Such screening shall be maintained in good condition at all times.
- D. Access. No entrance or exit to any automotive use area shall be permitted within 30 feet of any intersecting street or road lines, and, except for off-street parking areas for uses permitted in any R District requiring fewer than 10 parking spaces, no entrance or exit shall be permitted within 20 feet of a lot in any R District.
- E. Restriction on use. No automotive use area shall be used for auto wrecking or for the storage of wrecked, partially dismantled or junked vehicles or equipment or motor vehicles which do not qualify for New York State motor vehicle registration.

§ 150-142. Lots divided by district boundaries.

- A. Where a lot is divided by any zoning district boundary so as to be in more than one zoning district and where such lot was an existing lot when such district boundary was established, a conforming use, occupying 50% or more of the area of said lot and

having a street or road frontage in the district where permitted, may be extended on such lot not more than 25 feet (measured perpendicular to the district boundary) into any district where such use is not permitted.

- B. Such use shall be subject to all regulations applicable to the district where permitted.

§ 150-143. Lot frontage on street for dwellings.

No dwelling shall be erected on any lot, which lot does not have immediate frontage on a street or road, as defined in this chapter, unless the owner of said lot has a permanent right-of-way from the street or road with a minimum width of 50 feet.

§ 150-144. Screening of service entrances in C or M District.

Where a loading or unloading platform or any service entrance in a C or M District faces any lot line which coincides with any R District boundary, such platform or service entrance shall be effectively screened from such R District in a manner approved by the Concord Town Board.

§ 150-144.1. Utility-scale wind energy conversion systems. ¹¹ [Added 3-6-2008 by L.L. No. 2-2008]

- A. Intent and purpose.

- (1) The Town of Concord recognizes that wind energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease air and water pollution that result from the use of conventional energy sources.
- (2) The purpose of these regulations for utility-scale wind energy conversion systems (WECS) is to ensure that development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Town.

- B. Application process.

- (1) Prior to construction of any utility-scale WECS, the project proponent shall first obtain a special use permit and site plan approval from the Town of Concord Town Board and a building permit from the Town's Code Enforcement Officer.
- (2) Initial application materials. In order to ensure Town Board input into the parameters of the studies that are required in Subsection B, there will be a two-stage application process. Initially, in addition to the application requirements of

¹¹ Editor's Note: The Town of Concord passed L.L. No. 4-2023 on 10-5-2023 to establish a three-year moratorium on all wind energy systems. During the effective period of this local law, neither the Town Board, the Planning Board, the Zoning Board of Appeals, nor the Code Enforcement Office shall grant any approval or issue permits that would result in the siting, location, development, construction, establishment, placement, installation, enlargement, or erection of wind energy systems, or related facilities or structures within the Town of Concord, New York. Said local law is available for review in the Town office.

the Zoning Ordinance, all applications for a utility-scale WECS shall include the following information:

- (a) Name and address of the applicant.
 - (b) Evidence that the applicant is the owner of the property or has the written permission of the owner to make such an application.
 - (c) A site plan drawn in sufficient detail to show the following:
 - [1] Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
 - [2] Utility lines, both aboveground and below ground, within a radius equal to the proposed tower height, including the blades.
 - [3] Property lot lines and the location and dimensions of all existing structures and uses on site within 1,000 feet of the wind energy conversion systems.
 - [4] Surrounding land use and all off-site structures within 1,000 feet, or 2.25 times the tower height, whichever is greater, of the wind energy conversion systems.
 - [5] Description of the various structural components of the tower construction, including the base and footing.
 - [6] Existing topography.
 - [7] Proposed plan for grading and removal of natural vegetation.
 - (d) Full SEQRA environmental assessment form.
 - (e) Such additional information as may be reasonably required by the Town Engineer, Town Planner or Town Board for an adequate assessment of the proposed project.
 - (f) The Town Board may determine that not all of these application materials are necessary for a particular proposed project.
- (3) Studies and information required prior to decision on the application, which would include a detailed property value study of the surrounding areas. After a review of the environmental assessment form and the proposed project, the Town Board shall provide direction to the applicant on the methodology and parameters of the studies to be provided, below:
- (a) Proposed plan for site restoration after construction, prepared according to New York State Department of Agriculture and Markets and New York State Department of Environmental Conservation guidelines.
 - (b) Plan for ingress and egress to the proposed project site, including:
 - [1] A description of the access route from the nearest state-county-and/or Town-maintained roads.

- [2] Road surface material, stating the type and amount of surface cover.
 - [3] Width and length of access route.
 - [4] Dust control procedures during construction and transportation.
 - [5] A road maintenance schedule or program.
- (c) Detailed construction plan, including but not limited to construction schedule; hours of operation; designation of heavy haul routes; a list of material, equipment and loads to be transported; identification of temporary facilities intended to be constructed; and contact representative in the field with name and phone number.
 - (d) Erosion and sediment control plan. (A SWPPP will meet this requirement.)
 - (e) Specific information on the type, size, height, rotor material, rated power output, performance, safety and noise characteristics of each utility-scale wind turbine model, tower and electrical transmission equipment.
 - (f) Photographs and/or detailed drawings of each wind turbine model, including the tower and foundation.
 - (g) Visual assessment, including a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures. The Town Board shall determine which viewpoints the visual assessment shall include.
 - (h) Noise analysis. A noise analysis shall be furnished which shall include the following:
 - [1] A description and map of the project's noise-producing features, including the range of noise levels expected and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone and repetitive/impulsive sound.
 - [2] A description and map of the noise-sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities, within 1,000 feet, or 2.25 times the tower height, whichever is greater, from any off-site residence.
 - [3] A survey and report prepared by a qualified professional that analyzes the preexisting ambient sound level (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction and analyses at affected sensitive noise receptors located within 1,000 feet, or 2.25 times the height, of the proposed facilities, as identified by the Town Board.

- [4] A description and map showing the potential noise impacts, including estimates of expected noise impacts from both construction and operation, and estimates of expected noise levels at sensitive receptor locations.
 - [5] A description of the project's proposed noise-control features, including specific measures proposed to protect workers, and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with the requirements of this section.
 - [6] Manufacturers' noise design and field testing data, both audible (dBA) and low frequency (deep bass vibration), for all proposed structures.
- (i) A geotechnical report shall be furnished which shall at a minimum include the following:
- [1] Soils and geologic characteristics of the site, based on on-site sampling and testing, to provide an assessment of the soil suitability for construction of the proposed WECS.
 - [2] Foundation design criteria for all proposed structures.
 - [3] Slope stability analysis.
 - [4] Grading criteria for ground preparation, cuts and fills, soil compaction.
- (j) Engineer's report, prepared by a professional engineer licensed in New York State, that provides information regarding the following potential risks. The results of the engineer's report shall be used to determine the adequacy of setbacks from the property line to mitigate any effects from potential ice throw, tower failure or blade throw.
- [1] Ice throw calculations: a report that calculates the maximum distance that ice from the turbine blades could be thrown and the potential risk assessment for inhabitants and structures. (The basis of the calculation and all assumptions must be disclosed.)
 - [2] Blade throw calculations: a report that calculates the maximum distance that pieces of the turbine blades could be thrown and the potential risk assessment for inhabitants and structures. (The basis of the calculation and all assumptions must be disclosed.)
 - [3] Catastrophic tower failure: a report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand and the potential risk assessment for inhabitants and structures (including all assumptions).
 - [4] Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures or as established by the New York State Building Code.

- (k) Lighting plan. The applicant shall submit a lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include, but is not limited to, the planned number and location of lights, light color, whether any such lights will be flashing and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
 - (l) Shadow flicker study. The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problem.
 - (m) Study of potential impacts to birds and bats, using methodology approved by the NYSDEC or another agency acceptable to the Town Board.
 - (n) Decommissioning and site restoration plan.
 - (o) FAA notification: a copy of written notification to the Federal Aviation Administration.
 - (p) Utility notification: utility and NYISO interconnection data and a copy of a written notification to the utility or NYISO of the proposed interconnection.
 - (q) Study of electromagnetic interference with microwave or other communication or broadcast sources. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a study which identifies any potential impact on microwave or other communication or broadcast services and describes measures that shall be taken to eliminate or mitigate any problem.
 - (r) Other information. Such additional information, including a property value study, may be reasonably required by the Town Engineer, Town Planner or Town Board for an adequate assessment of the proposed project.
 - (s) The Town Board may determine that not all of these application materials are necessary for a particular proposed project.
- (4) SEQR review. Pursuant to § 617.13 of the New York State Environmental Quality Review Regulations, the Town may hire consultants to assist the Town Board in its review of the potential impacts of a proposed project and the assessment of impacts provided by the applicant. The Town will charge the applicant for the cost of such consultant to the extent allowed in § 617.13.
- C. Standards of operation. In addition to the criteria contained in the Zoning Ordinance, the Town Board shall use the following criteria to evaluate all utility-scale wind energy conversion systems:
- (1) Setbacks. All utility-scale WECS shall comply with the following setbacks:

- (a) All wind turbines and towers shall be set back from property lines a minimum of 1.5 times the height of the structure, including to the tip of the blade, excluding adjoining lot lines where both lots are part of the proposed project.
 - (b) All wind turbines and towers shall be set back a minimum of 2,500 feet from the boundaries of any R-E, R-1, R-2, R-12, R-M or R-RB Zoning District.
 - (c) All wind turbines and towers shall be set back a minimum of 1,000 feet, or 2.25 times the tower height, whichever is greater, from any off-site residence that exists at the time that an application for a WECS is made to the Town. For purposes of this subsection, a residence shall be considered to be in existence if a building permit for such structure has been issued by the Town's Code Enforcement Officer, even if construction is not yet completed and the residence is not yet occupied.
 - (d) All wind turbines and towers shall be set back from all structures and buildings, other than residences, that are in existence at the time of the application, or for which a building permit has been issued, a minimum of 1,000 feet, or 2.25 times the height, of the tower, including to the tip of the blade. The Town Board may, at its discretion, exempt minor structures such as walls, fences, tool sheds and similar minor structures from this setback requirement.
 - (e) All wind turbines and towers shall be set back from any public road right-of-way a minimum of 1.5 times the height of the structure, including to the tip of the blade.
- (2) Noise. A utility-scale WECS shall not be approved unless the applicant demonstrates that the proposed project complies with the following noise requirements. In order to enable the Town Board to make this determination, the applicant shall submit the noise assessment required in Subsection B.
- (a) Audible noise standards.
 - [1] Audible noise due to wind turbine operations shall not exceed 45 dBA for more than five minutes out of any one-hour time period or exceed 50 dBA for any time period, at the boundary of the proposed project site.
 - [2] The sound level from the operation of a utility-scale WECS shall not increase by more than three dBA the nighttime or daytime ambient sound level at any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities, within 1,000 feet, or 2.25 times the height, of the proposed turbine and/or at other sensitive receptor points that may be identified by the Town Board.
 - (b) Low frequency noise. A utility-scale wind energy facility shall not be operated so that impulsive sound below 20 Hz affects the habitability or use

of any dwelling unit, hospital, school, library, nursing home or other sensitive noise receptor.

- (c) Noise setbacks. The Town Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
 - (d) Within one year of commencement of commercial operation, the project proponent shall submit a noise study of operational conditions to ensure that the project is in compliance with the standards of this section. The study shall be based on receptor points identified during the application review process. In addition to this noise study, the Town Board may require periodic additional noise studies.
- (3) Noise and setback easements. In the event that a utility-scale WECS does not meet a setback requirement or exceeds the noise criteria above, the Town Board may grant a waiver of the setback and/or noise criteria, except for the setback required by Subsection C(1)(a) in the following circumstances:
- (a) Written consent from the affected property owners is presented to the Town Board, stating that they are aware of the WECS and the noise and/or setback limitations contained in this Zoning Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed and/or allow setbacks less than required; and
 - (b) In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the Erie County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this article or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
- (4) Interference with television, microwave and radio reception. The applicant must submit information that the proposed construction of the utility-scale wind energy conversion system will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure and specific measures proposed to mitigate interference impacts.
- (5) Interference with aviation navigational systems.
- (a) The applicant shall provide documentation that the proposed WECS will not cause interference with the operation of any aviation facility.
 - (b) The applicant shall provide documentation that the proposed WECS complies with all Federal Aviation Administration (FAA) regulations.

- (c) Locking mechanisms to limit radar interference required. All utility-scale WECS shall include a locking mechanism which prevents the blades from rotating when not producing power in order to limit airport radar interference. This provision does not apply while the WECS is free-wheeling during start-up and shutdown. The Town Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference will be caused by the utility-scale WECS.
- (6) Safety and security requirements.
 - (a) Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed-shutdown-disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
 - (b) Grounding. All structures shall be grounded according to applicable electrical codes.
 - (c) Wiring. All wiring between the wind turbines and the wind energy facility substation shall be placed underground unless the Planning Board determines that this is not prudent or practicable due to site-specific constraints. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.
 - (d) Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
 - (e) Climability. Wind turbine towers shall not be climbable up to 25 feet above ground level.
 - (f) Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
 - (g) Signage. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with local, state and federal codes.
- (7) Ice throw. The Town Board shall determine the acceptable ice throw range based on the activities in the area, location and calculations of the ice throw.
- (8) Fire hazard protection. The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:
 - (a) Fireproof or fire-resistant building materials.

- (b) Buffers or fire-retardant landscaping.
 - (c) Availability of water.
 - (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment or transmission equipment, without regular human occupancy.
 - (e) Provision of training and fire-fighting equipment for local fire protection personnel and/or other emergency responders.
- (9) Impact on wildlife species and habitat. Development and operation of a utility-scale wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife or plant species or their critical habitats or other significant habitats identified in the Town of Concord Comprehensive Plan and/or the studies and plans of other regional agencies, based on criteria established by the federal or state regulatory agencies, as determined by the Town of Concord Town Board during SEQRA review. The impact of a utility-scale WECS on migratory birds and bats shall be evaluated and mitigated based on SEQRA findings.
- (10) Visual impact.
- (a) No advertising sign or logo shall be placed or painted on any part of any utility-scale wind energy conversion system.
 - (b) Wind turbines shall be painted a nonobtrusive (e.g., white, gray or beige) color that is nonreflective. In order to reduce any daytime lighting requirements by the FAA, the Planning Board may require consultation with the FAA to determine an appropriate color for the structures.
 - (c) Where more than one wind turbine is proposed, the project shall use wind turbines whose appearance is similar throughout the project to provide reasonable uniformity in terms of overall size, geometry and rotational speed.
 - (d) Unless required by the FAA or by the Town of Concord Planning Board, no lighting shall be installed on the WECS turbine or tower, except for ground-level security lighting.
- (11) Shadow flicker. The WECS shall be designed such that the project shall minimize shadow flicker onto adjacent existing residences. Mitigation measures, which may include landscaping, shall be incorporated into any special use permit approval. The required shadow flicker study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or minimize the problem.

D. Decommissioning and site restoration plan and bond.

- (1) The applicant shall submit a decommissioning and site restoration plan, including cost estimate, to the Town Board for its review and approval prior to the approval of any special use permit. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures,

wind turbines, access roads and/or driveways and foundations to 3.5 feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the utility-scale WECS. The restoration shall reflect the site-specific character, including topography, vegetation, drainage and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan. The decommissioning plan shall include information regarding the anticipated life of the project. Any variation from the submitted decommissioning plan must be approved by the Town Board.

- (2) As a condition of special use permit approval, the Town Board shall require the project sponsor to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the tower, wind turbine and other components of the WECS and the restoration of the site subsequent to such removal, in accordance with the approved decommissioning and site restoration plan.
- (3) The sufficiency of such bond shall be confirmed at least every five years by an analysis and report of the cost of removal and site restoration, such report to be prepared by a New-York-State licensed engineer. The project sponsor/operator shall pay the cost of such report. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal, disposal and site restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the applicant's receipt of such report. The report and increased amount of the bond shall be filed with the Town Clerk.
- (4) All bond requirements shall be fully funded before a building permit is issued.
- (5) The decommissioning and site restoration bond shall be in effect for the entire duration of the special use permit.
- (6) The applicant and his/her successors, or assigns in interest, shall maintain the required bond funds for the duration of the special use permit.

E. Road bond.

- (1) Construction of WECS poses potential risks because of the large size of construction and transport (delivery) vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: minimizing traffic impacts from construction and delivery vehicles; minimizing WECS-related traffic during times of school bus activity; minimizing wear and tear on local roads; and minimizing impacts on local business operations. Permit conditions may limit WECS-related traffic to specified routes and include a plan for disseminating traffic route information to the public.
- (2) The applicant is responsible for remediation of damage to public roads caused by WECS-related traffic, after completion of the installation of the WECS. To ensure that this remediation occurs, prior to the issuance of a building permit, the project

sponsor shall post a public improvement bond in an amount, as determined by the Town Board and Highway Superintendent, sufficient to repair any damage that occurs to Town roads during the construction phase of the project. The Town Attorney shall approve the form of the bond.

- (3) In the event that any postconstruction maintenance or replacement of components which could affect Town roads is necessary, the project owner/operator shall notify the Town and a new bond for any potential damage to Town roads shall be posted.

F. Certification. The applicant shall provide the following certifications:

- (1) Certification of structural components. The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified, in writing, by a structural engineer registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Building Code that have been adopted in New York State. This shall be provided prior to the issuance of the special use permit.
- (2) Postconstruction certification. After completion of construction of the wind energy conversion system, the applicant shall provide a postconstruction certification from a licensed professional engineer registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans. This certification shall be provided to the Building Inspector and shall be maintained in a permanent file.
- (3) Certification of electrical system. The electrical system shall be certified, in writing, by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electrical Code that have been adopted by New York State. This shall be provided prior to the issuance of the special use permit.
- (4) Certification of rotor overspeed control. The rotor overspeed control system shall be certified, in writing, by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices. This shall be provided prior to the issuance of the special use permit.
- (5) Certification of seismic design. The applicant shall provide postconstruction certification from a licensed professional engineer registered in the State of New York that the design and construction protects against anticipated seismic hazards.

G. Liability insurance.

- (1) Prior to the issuance of a building permit, the project sponsor shall provide proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, that liability insurance has been obtained to cover damage or injury which might result from the failure of the tower, turbine or other component of the WECS. Such policy shall provide coverage of not less than \$5,000,000 or more, at the discretion of the Town Board and shall name the Town of Concord as a coinsured. The sponsor shall provide the Town annually with proof of continuing coverage in compliance with this requirement. Liability insurance shall be carried for the life of the project, through decommissioning. Liability

insurance shall be reviewed periodically and the amount adjusted as deemed appropriate by the Town Board.¹² **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

H. Transfer of ownership.

- (1) If the ownership of the WECS facility changes, the new owner shall present proof to the Town Clerk that all the required bonds and insurance policies remain in full force and effect. The new owner shall provide a written statement that he/she is aware of the conditions and requirements of the special use permit, which continue to govern the operation of the facility.
- (2) In order to ensure compliance with this provision, the person/company to whom the special use permit is originally issued, and subsequent owners, shall provide notification to the Town Clerk 30 days prior to the change of ownership.

I. Inspections. Unless waived by the Town Board, wind turbines or towers over 150 feet in height shall be inspected by a New-York-State-licensed professional engineer, who has been approved by the Town, annually or at any other time upon a determination by the Town's Building Inspector that the wind turbine, tower or pole may have sustained structural damage. A copy of the inspection report shall be submitted to the Town's Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

J. Permit revocation.

- (1) A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements, all other standards and requirements of this section and other permit conditions.
- (2) Should a WECS become inoperative or should any part of the WECS be damaged or become unsafe or should a WECS violate a permit condition or violate a standard or requirement of this section, the owner/operator shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The Code Enforcement Officer or Town Board may extend this period by another ninety-day period, for a total period not to exceed 180 days.
- (3) Upon notice from the Code Enforcement Officer or Town Board that the WECS is not repaired or made operational or brought into permit compliance after said notice pursuant to Subsection J(2) above, the Town Board shall hold a public hearing at which both the public and the operator/owner are given the opportunity to be heard and present evidence, including a plan to come into compliance. Following the close of the public hearing, the Town Board may either:
 - (a) Order compliance within a stated timeframe; or

¹² Editor's Note: Former § 150-144.1G(2), regarding liability insurance, of the 2005 Code, which immediately followed this subsection, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (b) Revoke the special use permit and order removal of the WECS within 90 days and site remediation pursuant to the approved decommissioning and site restoration plan.

K. Decommissioning of WECS.

- (1) Nonfunctional and/or inoperative WECS defined.
 - (a) If any utility-scale WECS remains nonfunctional or inoperative for a continuous period of one year, the permittee shall remove the WECS at his/her own expense and restore the site, in accordance with the approved decommissioning and site restoration plan. A utility-scale WECS shall be deemed nonfunctional and/or inoperative if it has not generated power within the preceding 12 months.
 - (b) The Code Enforcement Officer may request that the applicant periodically submit documentation reporting the power output generated by the WECS.
- (2) Use of decommissioning bond.
 - (a) Any nonfunctional or inoperative WECS, or any WECS for which the special use permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration plan within 90 days of the date on which the facility becomes nonfunctional or inoperative, as defined above, or of the revocation of the special use permit.
 - (b) If removal of the WECS is required and the applicant, permittee or successors fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the Town Board may contract for such removal and restoration and pay for the removal and restoration from the posted decommissioning and site restoration bond.
 - (c) If the bond is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the bond.

L. Planning Board action.

- (1) The Planning Board may recommend to the Town Board to grant the special use permit, deny the special use permit or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for each tower.
- (2) Prior to issuing a special use permit for a utility-scale WECS, the Planning Board shall make all of the following findings:
 - (a) The proposed utility-scale WECS project is consistent with the Town of Concord Code.
 - (b) The proposed utility-scale WECS project will not unreasonably interfere with the orderly land use and development plans of the Town of Concord.

- (c) That the benefits to the applicant and the public of the proposed utility-scale WECS project will exceed any burdens to the Town and residents therein.
 - (d) That the proposed utility-scale WECS project will not be detrimental to the public health, safety or welfare of the community.
 - (e) That the proposed utility-scale WECS project complies with all required provisions of the Town's Zoning Ordinance, or will comply with those requirements based on conditions that may be attached to any approval, unless variances have been properly granted by the Town of Concord Zoning Board of Appeals.
- M. Amendments to approved special use permit. Any changes or alterations to the wind energy conversion system, after approval of the special use permit and site plan, shall require amendment to the special use permit. Such amendment shall be subject to all the requirements of this section.
- N. New York State Real Property Tax Law exemption. The Town of Concord reserves the right to, by local law, provide that no exemption pursuant to the provisions of the New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.

§ 150-144.2. Small-scale wind energy conversion systems. [Added 3-6-2008 by L.L. No. 3-2008]

- A. Intent and purpose.
- (1) The Town of Concord recognizes that wind energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease air and water pollution that result from the use of conventional energy sources.
 - (2) The purpose of these regulations is to provide standards for small-scale wind energy conversion systems (WECS) that are designed for on-site home, farm and small commercial use and that are primarily used to reduce on-site consumption of utility power. The intent of this section is to encourage the development of small-scale WECS and to ensure that development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Town.
- B. Application process. Prior to construction of any small-scale wind energy conversion system, the project proponent shall first obtain a special use permit and site plan approval from the Town of Concord Town Board and a building permit from the Town's Code Enforcement Officer.
- (1) All applications for a small-scale WECS shall include the following information:
 - (a) Name and address of the applicant.
 - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.

- (c) A site plan drawn in sufficient detail to show the following:
 - [1] Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
 - [2] Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the wind energy conversion systems.
 - [3] Dimensional representation of the various structural components of the tower construction, including the base and footing.
 - [4] Certification by a licensed New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Building Code.
 - (d) Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system, provided by a licensed New York State professional engineer.
 - (e) Turbine information: specific information on the type, size, height, rotor material, rated power output, performance, safety and noise characteristics of the residential wind turbine and tower.
 - (f) Photographs or detailed drawings of each wind turbine model, including the tower and foundation.
 - (g) Grading plan and erosion and sedimentation control plan.
 - (h) A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code adopted by New York State.
 - (i) Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity from the grid.
 - (j) Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected, customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
 - (k) Environmental assessment form.
 - (l) Such additional information as may be reasonably requested by the Planning Board for a complete understanding of the proposed project.
 - (m) The Planning Board may determine that not all of these applications are necessary for a particular proposed project.
- (2) The Code Enforcement Officer shall evaluate all applications. The Code Enforcement Officer is authorized to issue a zoning permit for all small-scale WECS that meet the following standards. Upon issuance of a zoning permit, the

applicant shall be required to obtain a building permit prior to installation. In order to be approved by the Code Enforcement Officer, all small-scale WECS must conform to all of the following standards:

- (a) The WECS shall be located on a lot that is a minimum of 1 1/2 acres in size.
- (b) The WECS shall not be located on any ridgeline designated as significant on the Town of Concord Map.
- (c) Only one small-scale WECS per lot shall be permitted.
- (d) The turbine, measured to the apex of the blade, is not taller than 150 feet.
- (e) The maximum turbine output, as shown by the manufacturer's rated capacity, shall not exceed 10 kW per hour.
- (f) The small-scale WECS shall be set back a minimum of 1.5 times the total height of the WECS from:
 - [1] Any residence in existence at the time the application is made, except for the residence on the owner's lot.
 - [2] Property lines of the site on which the structure is located.
 - [3] The right-of-way of public roads.
- (g) In order to reduce visual impact, the WECS shall be painted a nonreflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible.
- (h) Lighting. Exterior lighting on any structure associated with the system shall not be allowed, except lighting that is specifically required by the Federal Aviation Administration (FAA).
- (i) Signage. No advertising sign or logo shall be placed or painted on any turbine or tower. The Town Board may allow the placement of the manufacturer's logo on the ground-level structure in an unobtrusive manner.
- (j) Safety and security requirements. All small-scale WECS shall adhere to the following safety and security requirements:
 - [1] Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.
 - [2] Grounding. All structures which may be charged with lightning shall be grounded according to applicable electrical code.
 - [3] Wiring. All wiring associated with the wind energy facility shall be installed underground within the fall zone. This standard may be modified by the Planning Board if the terrain is determined to be

unsuitable due to reasons of excessive grading, biological impacts or similar factors.

- [4] Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.
 - [5] Climability. Wind turbine towers shall not be climbable up to 15 feet above ground level and/or other appropriate methods of access control shall be provided.
 - [6] Anchor points for guy wires. Anchor points for any guy wires for a system tower shall be located on the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground. The minimum setback for the guy wire anchors shall be 10 feet from the property boundary.
- (k) The site drainage and erosion control plan is deemed adequate by the Town Engineer.
- C. Permit issued by the Town Board. Pursuant to the procedures and standards contained in this subsection, the Town Board may issue a special use permit to allow a small-scale WECS where the maximum turbine output, as shown by the manufacturer's rated capacity, exceeds 10 kW per hour, but does not exceed 100 kW per hour.
- (1) Application requirements. An applicant for a small-scale WECS that has an output exceeding 10 kW per hour shall apply to the Town Board for a special use permit, following the procedures outlined in the Zoning Ordinance. Application materials shall include:
 - (a) All the information listed in Subsection B(2) above.
 - (b) Required application information and materials contained in the Zoning Ordinance.
 - (c) Full environmental assessment form.
 - (d) Any additional information that may be reasonably required by the Town Board for an understanding of the project.
 - (2) Application review. The Town Board shall review the application following the procedures contained for a special use permit in the Zoning Ordinance.
 - (3) Standards for small-scale WECS.
 - (a) Minimum lot size. A small-scale WECS shall be located on a lot that is a minimum of 1 1/2 acres in size.
 - (b) Significant ridgelines. A WECS shall not be located on any ridgeline designated as "significant" on the Town of Concord Map.

- (c) Only one small-scale WECS shall be allowed per lot. The system shall be primarily used to reduce the on-site consumption of electricity.
- (d) Height. The turbine, measured to the apex of the blade, is not taller than 150 feet.
- (e) Capacity. The maximum turbine output, as shown by the manufacturer's rated capacity, shall not exceed 100 kW per hour.
- (f) Setbacks. The small-scale WECS shall be set back a minimum of 1.5 times the total height of the WECS from:
 - [1] Any residence in existence at the time the application is made, except for the residence on the owner's lot.
 - [2] Property lines of the site on which the structure is located.
 - [3] The right-of-way of public roads.
- (g) Visual impact. In order to reduce visual impact, the WECS shall be painted a nonreflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible.
- (h) Lighting. Exterior lighting on any structure associated with the system shall not be allowed, except lighting that is specifically required by the Federal Aviation Administration (FAA).
- (i) Signage. No advertising sign or logo shall be placed or painted on any turbine or tower. The Town Board may allow the placement of the manufacturer's logo on a ground-level structure in an unobtrusive manner.
- (j) Safety and security requirements. All small-scale WECS shall adhere to the following safety and security requirements:
 - [1] Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.
 - [2] Grounding. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
 - [3] Wiring. All wiring associated with the wind energy facility shall be installed underground within the fall zone. This standard may be modified by the Planning Board if the terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts or similar factors.
 - [4] Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.

- [5] Climability. Wind turbine towers shall not be climbable up to 15 feet above ground level and/or other appropriate methods of access control shall be provided.
 - [6] Anchor points for guy wires. Anchor points for any guy wires for a system tower shall be located on the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground. The minimum setback for the guy wire anchors shall be 10 feet from the property boundary.
 - [7] Signage. Appropriate warning signage shall be placed on wind turbine towers and electrical equipment. Signage shall also include one twenty-four-hour emergency contact number to the owner of the wind turbine, as well as signage warning of electrical shock or high voltage and harm from revolving machinery.
- (k) 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 related to the construction of the small-scale wind energy conversion system. If all such approvals have not been received at the time that the Planning Board considers the application for special use permit, receipt of these other agency approvals shall be a condition to be completed prior to the issuance of a building permit.
- (l) Noise standard.
- [1] Audible noise standard. Wind turbine operations shall not cause the noise level at the boundary of the proposed project site to exceed 45 dBA for more than five minutes out of any one-hour time period or to exceed 50 dBA for any time period. If the ambient noise level in the vicinity of the WECS already exceeds this standard, the operation of the WECS shall not increase the nighttime or daytime ambient sound level at an adjacent residence by more than 3 dBA.
 - [2] Low-frequency noise. A small-scale wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home or other sensitive noise receptor.
- (m) Interference with television, microwave and radio reception. The wind energy conversion energy system shall be operated such that no disruptive electromagnetic interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- (n) Erosion control. Prior to granting a special use permit for a small-scale WECS, the Planning Board shall determine that the erosion and sedimentation control plan is adequate.

- (4) Planning Board action on application.
 - (a) The Planning Board may recommend to the Town Board to grant the special use permit, deny the special use permit or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for the small-scale WECS prior to installation.
 - (b) Prior to issuing a special use permit for a small-scale WECS, the Planning Board shall make all of the following findings:
 - [1] The proposed WECS project is consistent with the Town of Concord Code.
 - [2] The proposed WECS project will not unreasonably interfere with the orderly land use and development plans of the Town of Concord.
 - [3] The proposed WECS project will not be detrimental to the public health, safety or welfare of the community.
 - [4] The proposed WECS project complies with all required provisions of the Town's Zoning Ordinance, including the standards contained in Subsection C(3), or will comply with those requirements based on conditions that may be attached to any approval, unless variances have been properly granted by the Town of Concord Zoning Board of Appeals.
- (5) Amendment to approved special use permit. Any changes or alterations to the wind energy conversion system, after approval of the special use permit, shall require amendment to the special use permit by the Town Board. Such amendment shall be subject to all the procedural requirements and standards of this section.
- (6) Permit revocation. Failure to abide by and faithfully comply with the standards of this section and with any and all conditions that may be attached to the granting of the special use permit shall constitute grounds for the revocation of the permit, after a public hearing.

D. Abandonment of use.

- (1) All small-scale WECS shall be maintained in good condition and in accordance with all requirements of this section.
- (2) Any WECS which is not used for 12 consecutive months shall be deemed abandoned and shall be dismantled and removed from the property at the owner's expense. The Town reserves the right to dismantle the structure and to charge back the cost of this removal to the property owner. If unpaid, this cost will be added as a charge to the tax levy of the property.
- (3) Failure to abide by and faithfully comply with the standards of this section and with any and all conditions that may be attached to the granting of the special use

permit shall constitute grounds for the revocation of the permit, after a public hearing.

- E. Assessment. A small-scale wind energy conversion system shall be subject to assessment by the Town of Concord.

ARTICLE XXVII

Supplemental Height Regulations

§ 150-145. Height exceptions and limitations.

The height limitations of this chapter shall not apply to:

- A. Chimneys, flues, spires or belfries.
- B. Elevator or stair bulkheads, roof water tanks or cooling towers (including enclosures), provided that such structures, in the aggregate, do not occupy more than 10% of the roof area.
- C. Flagpoles, radio or television antennas, masts or aerials located on a building and extending not more than 20 feet above the roof of such building.
- D. A utility-scale wind energy conversion system may exceed the height limit up to a height of 500 feet. **[Added 3-6-2008 by L.L. No. 3-2008]**
- E. A small-scale wind energy conversion system may exceed the height limit up to a height of 150 feet. **[Added 3-6-2008 by L.L. No. 3-2008]**

ARTICLE XXVIII

Supplemental Lot Size and Open Space Regulations

§ 150-146. General lot regulations.

- A. Existing lots of record. A single-family structure may be constructed on any lot of record if said lot is less than the minimum area required for building lots in the district in which it is located, provided that the following conditions exist or are met:
 - (1) Availability of adjoining vacant land. No structure shall be erected on any nonconforming lot if the owner of said lot owns any adjoining vacant land which would create a conforming lot if said vacant land were combined with the lot deficient in area.
 - (2) Side yards. No structure shall be constructed on a nonconforming lot 60 feet wide or more unless it shall have a minimum side yard of 10 feet or, where said lot is adjacent to any street, a side yard conforming to the minimum required for the district in which said lot is located. No structure shall be constructed on a nonconforming lot less than 60 feet wide unless it shall have a minimum side yard of five feet or, where said lot is contiguous to any street, a side yard conforming to the minimum required for the district in which said lot is located.

- (3) Front and rear yards. No structure shall be constructed on a nonconforming lot unless it shall have front and rear yards conforming to the minimums required for the district in which said lot is located.

§ 150-147. Front yard modification.

- A. In all districts except M Districts, where there are existing principal buildings on adjoining lots on each side of a parcel of land less than 100 feet in width, having a front yard setback or exterior side yard setback less than the required front yard depth of said parcel, the required front yard depth of said parcel shall equal the average setback from the street or road line of such existing buildings on said adjoining lots. This modification shall not permit any front yard depth less than 15 feet.
- B. In M Districts, where there are existing principal commercial or industrial buildings on adjoining lots on each side of a parcel of land less than 100 feet in width and these buildings have a front yard setback or exterior side yard setback less than the required front yard depth, the required front yard depth of said parcel shall equal the average setback from the street or road line of such existing buildings on said adjoining lots.

§ 150-148. Side yard modification for corner lots.

- A. In an R District:
 - (1) On a corner lot where the rear lot line coincides with the rear lot line of the adjoining lot for a distance from the street or road line, the required width of the exterior side yard for any building shall equal 10% of the lot width, but need not be more than 10 feet.
 - (2) On a corner lot where the rear lot line coincides with a side lot line of the adjoining lot for a distance from the street or road line:
 - (a) The required width of the exterior side yard for buildings up to 30 feet in height shall equal 30% of the lot width, but need not exceed 40 feet and shall not be less than 18 feet.
 - (b) The required width of the exterior side yard for buildings over 30 feet in height shall equal the required front yard depth of said adjoining lot, but need not exceed 40 feet.
- B. In C or M Districts:
 - (1) On a corner lot where the rear lot line coincides with a rear lot line of the adjoining lot for a distance from the street or road line, the required width of the exterior side yard of said corner lot shall be not less than:
 - (a) For dwellings: the same as in Subsection A(1) of this section.
 - (b) For other principal buildings: 30 feet when the exterior side yard abuts any R District boundary, or 10 feet in any other case.

- (2) On a corner lot where the rear lot line coincides with a side lot line of an adjoining lot, the width of the exterior side yard of said corner lot shall be not less than the depth of the required front yard of said adjoining lot.
- C. In any district, the regulations of this subsection may be varied by the Concord Zoning Board of Appeals, as provided for in Article XXXVI.

§ 150-149. Rear yard modification for through lots.

On a through lot, where the rear lot line coincides with a street or road line, a front yard equivalent shall be provided. The rear yard depth requirements in the district regulations shall not apply to that portion of a through lot where a front yard equivalent is required.

§ 150-150. Visibility at intersections.

In any district where a front yard of 25 feet or more is required by this chapter, no sign, fence, wall, hedge, shrub planting or tree foliage which obstructs vision at elevations between three and seven feet above the street or road level shall be placed or maintained within the triangular area formed by two intersecting street or road lines, as defined herein, and a line connecting points on such street or road lines 30 feet distant from their point of intersection. This regulation shall not apply to any necessary retaining wall or to buildings existing on the effective date of this chapter.

§ 150-151. Permitted obstructions in required open space.

None of the following uses, structures or parts of structures shall be considered as obstructions when located as specified:

- A. In any required open space:
- (1) Access drives or walks.
 - (2) Fence or wall not exceeding 3 1/2 feet in height (except as otherwise provided in this chapter for screening).
 - (3) Flagpoles not exceeding 25 feet in height.
 - (4) Retaining walls of any necessary height.
 - (5) Permitted signs.
 - (6) Unenclosed steps or terraces not extending more than three feet above the adjoining finished grade.
 - (7) Projections from a principal building as follows, provided that no projection is nearer than five feet to a side lot line:
 - (a) Awnings or canopies.
 - (b) Chimneys or roofs projecting not more than two feet into a required open space.

- (c) Window sills and architectural features projecting not more than four inches into a required open space.
- (d) Unenclosed steps not extending above the first floor level.
- (8) In any C or M District, open accessory off-street parking spaces.
- B. In any required interior side yard:
 - (1) A one-story attached garage not more than 12 feet in height projecting not more than three feet into a required interior side yard, provided that such garage shall not be nearer any side lot line than a distance of five feet.
 - (2) Open fire escape projecting not more than four feet into a required interior side yard, but not nearer any side lot line than five feet.
- C. In any rear yard, not a front yard equivalent, or in any part of an interior side yard which exceeds a required side yard:
 - (1) Fence or wall not to exceed six feet in height.
 - (2) Any accessory use or structure permitted in the district regulations subject to § 150-152 (Limitations on obstructions in required open space).
 - (3) Projections: balconies, bay windows, non-weather-proofed porches or breezeways or attached garages, not exceeding 12 feet in height, may extend into a required rear yard for a distance not to exceed 1/3 the required depth of such yard.
 - (4) Flagpoles or accessory radio or television antennas of any height, provided that such structure shall be set back from any property line in a distance equal to its height.

§ 150-152. Limitations on obstructions in required open space.

- A. In C or M Districts, no storage, truck parking, loading or unloading or processing of any kind shall be permitted in any required yard. This provision shall not apply to uses accessory to a permitted dwelling, but such accessory uses shall be subject to the following limitations on obstructions in required open spaces in R Districts.
- B. In R Districts:
 - (1) Accessory buildings and roofed projections shall not occupy more than 30% of a required rear yard of an interior lot or more than 40% of a required rear yard of a corner lot.
 - (2) No part of an accessory building shall be nearer than three feet to a rear or side lot line, except that where such lot line abuts a side yard of an adjoining lot in any R District, the setback shall not be less than five feet.
 - (3) Detached accessory buildings shall be at least 10 feet from any dwelling and five feet from any other building.

ARTICLE XXIX

Supplemental Cluster Housing and Townhouse Regulations**§ 150-153. Approval by Town Board.**

Cluster housing, including townhouse development, in the Town of Concord shall require the final approval of the Concord Town Board pursuant to its administration of Chapter 129, Subdivision of Land, of the Code of the Town of Concord.

§ 150-154. Regulations governing cluster housing.

Unless otherwise provided in this chapter, the following regulations shall apply to all cluster housing:

- A. Permitted districts. Cluster housing shall only be permitted within the R-12 District of this chapter.
- B. Minimum development area. Cluster housing shall apply to a major subdivision of not less than 10 acres in area.
- C. Service by public utilities. All cluster housing shall be served by public systems for water supply and sanitary sewerage.
- D. Minimum lot size. The required minimum lot area for single-family detached dwellings in the R-12 District may be reduced from 12,000 square feet to no less than 5,000 square feet, provided that any and all such area reduced, up to 7,000 square feet per single-family detached dwelling in a subdivision, shall be restricted on the subdivision plat for park and/or recreational purposes of an active and/or passive nature. Said private land assembled in common as a result of the clustering process above shall be located contiguous to the location of the clustered lots, as created above.
- E. Minimum yards. For cluster housing for single-family detached dwellings where the required minimum lot area has been reduced, the following yard requirements shall be minimum:
 - (1) Front yard: 35 feet in depth.
 - (2) Side yards, two required: 10 feet in width for each side yard.
 - (3) Rear yard: not less than 25% of lot depth; provided, however, that no rear yard shall have a depth of less than 20 feet.
- F. Minimum lot width shall be 50 feet, unless an alternate clustered plan design is approved by the Town Board. Under no circumstances shall the Town Board approve any plan for single-family detached dwellings under clustering for a distance of less than 20 feet between principal dwellings on separate lots.
- G. Maximum height of buildings shall be 2 1/2 stories, not to exceed 35 feet.
- H. Maximum density. The maximum density for the entire subdivision of cluster housing for single-family detached dwellings shall not be more than the maximum density permitted in the R-12 District of this chapter.

I. Maintenance of common area.

- (1) Nothing herein shall prevent the Planning Board, in its review of a proposed subdivision for cluster housing, from requiring that 10% of the entire subdivision be set aside for park and recreation purposes and dedicated to the Town of Concord for such purposes, nor from requiring, in lieu thereof, the payment of a recreational fee per dwelling unit, as established by the Town Board, in addition to the private land assembled in common as the result of the clustering process.
- (2) Provisions satisfactory to the Town Board shall be made to assure the proper maintenance of all nonpublic areas and facilities for the common use of occupants of any cluster housing development, but not in individual ownership of such occupants, without expense to the general taxpayers of the Town of Concord. The instrument incorporating such provisions shall be approved by the Town Attorney as to form and legal sufficiency before any final approval action is taken by the Town Board.

§ 150-155. Special regulations for townhouses.

In addition to other regulations for townhouses contained in this chapter, the following special regulations shall apply to townhouse development in the Town of Concord:

- A. Grouping length. A grouping of townhouses shall not exceed 160 feet in length.
- B. Height. The maximum height for any townhouse shall be 2 1/2 stories, not to exceed 35 feet.
- C. Minimum development area. The minimum size of the site to be developed for townhouses shall be five acres.
- D. Lot area for each townhouse. No townhouse lot shall contain an area of less than 2,000 square feet, and the average size for a group of townhouse lots shall not be less than 2,200 square feet. Each townhouse shall have its foundation on its individual lot, except where the townhouse units are separated by a common wall, in which event the foundation may be installed equidistant on each side of the lot line for the length of a party wall and its extension along the offset of the townhouses on abutting lots.
- E. Minimum yards. Minimum yards shall be as follows:
 - (1) Front yard: 35 feet.
 - (2) Side yard requirement. A minimum side yard of 10 feet shall be provided between the end of a group of townhouses and an interior side lot line and 35 feet between the end of such group and a public or private street or road, such thirty-five-foot setback to be unencumbered by walls, fences or other structures or buildings. A spacing of 20 feet shall be provided between each group of townhouses, and an additional 10 feet shall be required for each driveway provided between such groups. Such separation between such groups shall be unencumbered by walls or other structures or other obstructions which will prevent emergency vehicular access between such groups.

- (3) Rear yard: not less than 25% of the lot depth; provided, however, that no rear yard shall have a depth of less than 20 feet.
- F. Street frontage. Each townhouse lot must have a clear, direct frontage on a public street or road or to accessways complying with private street or road requirements.
- G. Utilities and services. Each townhouse shall be independently served by separate heating, air conditioning, sewer, water, electricity, gas or other facility and utility services, wherever such utilities and services are provided, and no townhouse shall be in any way dependent upon such services or utility lines located within another unit or on or in another townhouse or townhouse site, except as may be installed in public easements. All townhouses must be connected to public water and sewer lines, and all electrical and telephone lines in a townhouse development site shall be placed underground. Proper and adequate access for fire-fighting purposes and access to service areas to provide garbage and waste collection and for other necessary services shall be provided.
- H. Parking. A minimum of three off-street parking spaces shall be provided for each townhouse. Such parking spaces may be provided on the lot of the townhouse or in a commonly owned and maintained off-street parking facility, provided that no parking space shall be more than 150 feet, by the most direct pedestrian route, from the door of the townhouse it is intended to serve. Where on-site parking space is provided in the front yard area, it shall be limited to three parking spaces, and the balance of the front yard shall be landscaped. Each townhouse site must provide its own off-street parking area and driveway thereto where on-site, off-street parking is to be provided.
- I. Street/road right-of-way improvements. The right-of-way width of public streets/roads and private streets/roads, where permitted by the Concord Town Board, serving a group of townhouses and the improvements therein shall conform to all applicable minimum Town of Concord standards and requirements for such streets/roads.
- J. Walls, fences and buffering. All patio, outdoor living areas on each townhouse lot shall be enclosed by a wall, fence or dense hedge affording complete screening. In the plat review process, the Concord Town Board may modify this requirement as to type and extent of such enclosure on any townhouse lot while assuring the intent of such enclosure to provide adequate outdoor privacy on each townhouse lot. Where provided, such wall, fence or dense hedge shall be six feet in height with a life expectancy of not less than 20 years. All walls or fences erected pursuant to this provision shall be solid structures which afford visual privacy. A walled-in patio may include a roof. All rear yard areas used for service shall be completely screened from view from the street and from adjoining lots by walls, fencing or dense landscaping.
- K. Patios and service areas. There shall be provided on each townhouse lot at least 250 square feet of patio living area exclusive of parking and service areas.
- L. Recreation space. There shall be provided on the site of each townhouse development an area or areas devoted to the joint or common recreational use by the residents thereof. Such recreation space shall consist of not less than 500 square feet of space per dwelling unit. Each such recreation space shall be developed for passive and active recreational purposes and include the facilities normally attendant thereto.

- M. Accessory buildings. No accessory building shall be permitted in unwallled, unfenced areas or areas lacking a dense hedge on sites containing a townhouse and, where located within an area so enclosed, shall not extend above the height of such enclosure.
- N. Site plan specifications.
- (1) As part of the supplementary data required for Concord Town Board review of a proposed townhouse development, a scaled and dimensioned site plan of the development, a typical tentative plan showing front elevations of proposed townhouses and typical tentative floor plans of proposed townhouses prepared by a licensed architect shall be submitted to the Concord Town Board. If the subdivision plat for townhouse development receives final approval by the Concord Town Board, the townhouse development shall be in accordance with such approved plat.
 - (2) The site plan shall include, but shall not be limited to, location of buildings in relation to property and lot lines, off-street parking spaces and bays, patio and service areas, including garbage disposal areas, landscaping, walls or fences or hedges, public streets/roads, driveways, all common facilities, open space and walkways and utilities showing the same underground where such is required. In addition, lot size, percentage of building ground coverage and open space, square footage of each townhouse and its patio living area, density, etc., shall be included as data on such plan.
 - (3) If, after final approval of a plat, a substantial change therein is desired, such request for such change may be filed with the Concord Town Board, which shall consider such requested change pursuant to its procedures for amendment to an approved plat.

ARTICLE XXX

Nonconforming Use Regulations

§ 150-156. Continuation.

Any use which is made a nonconforming use by this chapter or by any subsequent amendments thereof may be continued, except as hereafter provided.

§ 150-157. (Reserved)

§ 150-158. Extension or enlargement.

Unless otherwise provided in this article, a nonconforming use shall not be enlarged or extended, except that in any C or M District any nonconforming use within a building may be enlarged to an extent not exceeding 25% in the aggregate of the gross floor area devoted to such nonconforming use. In no case shall enlargement extend beyond the lot occupied by such nonconforming use or violate any height, yard, parking area or other open space requirement of this chapter. When the total of all enlargements equals 25% of the gross floor

area existing at the time such use became a nonconforming use, no further enlargements shall be permitted.

§ 150-159. Repair or alteration.

- A. Nothing herein shall be deemed to prevent normal maintenance of a building or other structure containing a nonconforming use, including nonstructural repairs and incidental alterations not extending the nonconforming use.
- B. No structural alterations shall be made in a building or other structure containing a nonconforming use except:
 - (1) When required by law.
 - (2) To restore to a safe condition any building or structure declared unsafe by the Code Enforcement Officer of the Town of Concord.
 - (3) To accomplish permitted enlargements.

§ 150-160. Restoration.

Unless granted a variance by the Concord Zoning Board of Appeals, no building or structure containing a nonconforming use which has been damaged by fire or other causes to the extent of 50% or more of its equalized assessed value, as determined by the Town Assessor of the Town of Concord, shall be rebuilt or repaired except in conformance with the regulations of this chapter. In such reconstruction, neither the gross floor area nor the cubical content of a nonconforming use shall be increased from the floor area or cubical content of the nonconforming use prior to the time of damage.

§ 150-161. Discontinuance.

In any district, whenever a nonconforming use of land, premises, building or structure has been discontinued for a period of one year, such nonconforming use shall not thereafter be reestablished, and all future use shall be in conformity with the provisions of this chapter. Such discontinuance of the active and continuous operation of such nonconforming use for such period of one year is hereby construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon the same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such nonconforming use of the land and premises, the abandonment shall be construed and considered to be completed within a period of less than one year, and all rights to reestablish or continue such nonconforming use shall thereupon terminate. The provisions of this section shall not apply to agricultural lands participating in federal or state agricultural programs, nor shall they be construed to interfere with normal agricultural practices of crop rotation.

ARTICLE XXXI

Nonconforming Lot Size, Open Space and Height Regulations**§ 150-162. Continuation.**

Any building, other structure or use of land which is made nonconforming by any lot size, open space or height regulation of this chapter or by any subsequent amendments thereto may be continued, except as hereinafter provided.

§ 150-163. Enlargement or extension.

Such nonconforming building, other structure or use of land may be enlarged or extended, provided that any such enlargement or extension shall comply with the regulations of this chapter.

§ 150-164. Repair or alteration.

Such nonconforming building or other structure may be repaired or structurally altered, provided that alterations creating enlargements or extensions shall conform to the regulations of this chapter.

§ 150-165. Restoration.

Such nonconforming building or other structure which has been damaged or destroyed by any means to the extent of 50% or more of its equalized assessed value, as determined by the Town Assessor of the Town of Concord, or which has been condemned by the Code Enforcement Officer of the Town of Concord and ordered to be demolished shall not be rebuilt or repaired except in conformance with the regulations of this chapter. In the case of a permitted restoration of any such nonconforming use, the degree of nonconformance of the original building or other structure shall not be increased.

ARTICLE XXXII

Administration, Enforcement and Violations**§ 150-166. Administrative and enforcement officer.**

Unless otherwise provided, the provisions of this chapter shall be administered and enforced by the Code Enforcement Officer of the Town of Concord. The Code Enforcement Officer shall keep a complete file of all applications, permits, orders, certificates, requirements and decisions affecting each and every application filed with the Town of Concord pursuant to this chapter.

§ 150-167. Building permit required.

- A. The provisions of the New York State Uniform Fire Prevention and Building Code and all subsequent amendments thereto, as adopted by reference by the Town of Concord, and other applicable regulations of the Town of Concord shall control the issuance of

building permits. In addition to such provisions, every application for a building permit shall be accompanied by a plat, in duplicate, drawn to scale and showing the dimensions of the plot to be built upon, the size and location of the building on the plot and such other information as may be necessary to provide for the enforcement of the regulations contained in this chapter.

- B. No building permit shall be issued unless the provisions of this chapter are complied with.

§ 150-168. Certificate of zoning compliance required.

- A. No permit for excavation for, or the erection or alteration of, or repairs to any building shall be issued until an application has been made for a certificate of zoning compliance.
- B. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of zoning compliance shall have been issued by the Code Enforcement Officer stating that the building or proposed use thereof complies with the provisions of this chapter.
- C. All applications for a certificate of zoning compliance shall be in writing, signed by the property owner or his/her duly authorized agent, on forms furnished by the Code Enforcement Officer and shall contain the following information:
- (1) Nature and definite purpose of the building or use.
 - (2) Description of the property and buildings thereon and to be placed thereon.
 - (3) Statement of any restrictions by deed or other instrument of record.
 - (4) An agreement to comply with this chapter and all other laws, ordinances and regulations that may be applicable.
- D. In addition, upon written request by the property owner or his/her duly authorized agent, the Code Enforcement Officer shall inspect any building, other structure or tract of land existing on the effective date of this chapter and shall issue a certificate of zoning compliance certifying:
- (1) The use of the building, other structure or tract of land; and
 - (2) Whether such use conforms to all the provisions of this chapter.

§ 150-169. Inspection.

The Code Enforcement Officer is hereby empowered to cause any building, other structure or tract of land to be inspected and examined and to order, in writing, the remedying of any condition found to exist therein or thereat in violation of any provision of this chapter. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order except to correct the violation or to comply with such order.

§ 150-170. Penalties for offenses.

- A. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$1,000 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 \$1,000 nor more than \$2,000 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 \$2,000 nor more than \$3,000 or imprisonment for a period not to exceed six months, or both. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. D)]**
- B. However, for the purpose of conferring jurisdiction upon the courts and judicial officers generally, a first violation of this chapter shall be considered a violation, and each and every additional violation shall be considered a misdemeanor. Each week's continued violation of any of these subsections, after appropriate notice, shall constitute a separate additional violation.
- C. A person shall be subject to the penalties imposed by this section and § 268 of Article 16 of the Town Law in any case where an order to remove any violation of any of the provisions of this chapter has been served by the Code Enforcement Officer upon the owner, general agent, lessee or tenant of the building, other structure or tract of land or any part thereof or upon the architect, builder, contractor or anyone who commits or assists in any such violation and such person shall fail to comply with such order within 10 days after the service thereof. Each week's continued violation shall constitute a separate additional violation and shall be punishable hereunder.

§ 150-171. Other remedies.

In addition to the foregoing remedies, the Town of Concord may institute any appropriate action or proceeding to prevent or restrain any violation of this chapter.

ARTICLE XXXIII**Site Plan Review****§ 150-172. Applicability.**

Unless otherwise provided and as regulated by the Subdivision Regulations of the Town of Concord, a site plan review and a site plan approval shall be required for all uses, buildings and structures that require a building permit or certificate of zoning compliance under this chapter and for which an application therefor has been made to the Town of Concord, except for a single-family dwelling or a two-family dwelling and its permitted accessory uses, buildings or structures, prior to the issuance of a building permit or certificate of zoning compliance.

§ 150-173. Procedure for site plan review and approval.

- A. Site plan review.

- (1) Definition of site plan. As used in this article, the term "site plan" shall mean a rendering, drawing or sketch prepared to specifications and containing necessary elements, as set forth in this article, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plans showing lots, blocks or sites which are subject to review pursuant to authority provided for under § 276 of the Town Law shall continue to be subject to such review and shall not be subject to review as site plans under this article.
- (2) Approval of site plan.
 - (a) The Town Board may, as part of a zoning ordinance or local law adopted pursuant to Article 16 of the Town Law or other enabling law, authorize the Planning Board or such other administrative body that it shall so designate to review and approve, approve with modifications or disapprove site plans prepared to specifications set forth in the ordinance or local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the zoning ordinance or local law may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the Town Board in such zoning ordinance or local law.
 - (b) When an authorization to approve site plans is granted by the Town Board pursuant to this article, the terms thereof may condition the issuance of a building permit upon such approval.
- (3) Application for area variance. Notwithstanding any provision of law the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an area variance pursuant to § 267-b of the Town Law without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.
- (4) Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.
- (5) Waiver of conditions. The Town Board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event that any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

- (6) Reservation of parkland on site plans containing residential units.
- (a) Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.
 - (b) Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.
 - (c) In the event that the authorized board makes a finding pursuant to Subsection A(6)(b) that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors, including whether there is a need for additional facilities in the immediate neighborhood. Any moneys required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this subsection, shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.
 - (d) Notwithstanding the foregoing provisions of this subsection, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to § 276 of the Town Law, the authorized board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.
- (7) Public hearing and decision on site plans. In the event that a public hearing is required by this article, the authorized board shall conduct a public hearing within 62 days from the day an application is received on any matter referred to it under this article. The authorized board shall mail notice of said hearing to the applicant at least 10 days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the Town at least five days prior to the date thereof and shall make a decision on the application within 62 days after such hearing or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall immediately be filed in the office of the Town Clerk and a

copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

- (8) Notice to metropolitan, regional or county planning agency. At least 10 days before such hearing, the authorized board shall mail notices thereof to the county, metropolitan or regional planning agency, as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in Subdivision 1 of § 239-m of the General Municipal Law. In the event that a public hearing is not required, the matter shall be referred to the metropolitan, county or regional planning agency before final action is taken thereon, if required by § 239-m of the General Municipal Law.
 - (9) Compliance with State Environmental Quality Review Act. The authorized board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6 NYCRR 617.
 - (10) Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the Town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision by such board in the office of the Town Clerk. The Court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The Court at special term shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.
 - (11) Costs. Costs shall not be allowed against the authorized board unless it shall appear to the Court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.
 - (12) Preference. All issues addressed by the Court in any proceeding under this subsection shall have preference over all civil actions and proceedings.
- B. Where site plan review is required, the Code Enforcement Officer shall refer the application, site plan and supporting data to the Concord Town Planning Board. The Concord Town Planning Board shall review the application, site plan and supporting data and, at a regular meeting of the Concord Town Planning Board, submit written recommendations on each site plan reviewed to the Concord Town Board. Upon receipt of the Concord Town Planning Board's recommendations, the Concord Town Board, after determining that all requirements have been met, shall approve, approve with modification or disapprove the site plan. In modifying such site plan, the Concord Town Board shall enter its reasons for such action in its records.

§ 150-174. Authority to require additional supporting data.

In addition to the required site plan and supporting data indicated in § 150-175, the Concord Town Planning Board may request of a property owner or his or her agent additional

supporting data or plans the Concord Town Planning Board deems necessary and pertinent to carry out its responsibility for site plan review as provided in this chapter.

§ 150-175. Submission of site plan and supporting data.

The property owner or his or her agent shall submit at least six copies of a site plan and supporting data prepared by and bearing the official seal and signature of a licensed architect, landscape architect, civil engineer or land surveyor and may include the following information, presented in drawn form, at a scale approved by the Code Enforcement Officer of this chapter and accompanied by a written text:

- A. Survey of the property, showing existing topographic features, including contours, large trees, buildings, structures, streets/roads, property lines, utility easements, rights-of-way and land use, and zoning and ownership of surrounding property. An appropriate copy of the Concord Town Zoning Map pertaining to the property in question, with the location of the premises of the site plan clearly indicated on said Zoning Map, shall be required.
- B. Site plan showing proposed lots, blocks, building locations and land use areas.
- C. Traffic circulation, parking and loading spaces and pedestrian walks.
- D. Landscaping plans, including site grading and landscape design.
- E. Preliminary engineering plans, including street/road improvements, storm drainage system, public utility extensions, water supply, sanitary sewer facilities and outdoor lighting.
- F. Preliminary architectural drawings for buildings to be constructed.
- G. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas.

§ 150-176. Site plan review and recommendations.

- A. The Concord Town Planning Board shall review the site plan and supporting data before making its recommendations to the Concord Town Board and take into consideration the following:
 - (1) The harmonious relationship between the proposed uses and existing adjacent uses.
 - (2) The maximum safety of vehicular circulation between the site and street/road network.
 - (3) The adequacy of interior traffic circulation, parking and loading facilities with particular attention to vehicular and pedestrian safety.
 - (4) The adequacy of landscaping and setbacks in regard to achieving maximum compatibility with and protection to adjacent property and land uses.

- B. Should changes or additional facilities be recommended by the Concord Town Planning Board, recommended approval of the site plan shall be conditional upon satisfactory compliance by the property owner with the changes or additions.
- C. In cases where any action of the Concord Zoning Board of Appeals is required, the site plan shall be the subject of a preliminary review by the Concord Town Planning Board in accordance with the review procedure set forth above before action is taken by the Concord Zoning Board of Appeals. After such action by the Concord Zoning Board of Appeals, the Concord Town Planning Board shall conduct a final review of the site plan.

§ 150-177. Performance bond.

The Concord Town Board may require as a condition of site plan approval that the property owner file a performance bond in such amount as determined by the Town Attorney of the Town of Concord to insure that the proposed development will be built in compliance with accepted plans.

§ 150-178. Site plan revisions.

A property owner wishing to make any changes in an approved site plan shall submit a revised site plan to the Concord Town Planning Board for review and recommendation to the Concord Town Board for approval.

ARTICLE XXXIV
Special Use Permits

§ 150-179. General provisions.

Unless otherwise provided, the special uses for which conformance with additional standards is required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this chapter. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

§ 150-180. Procedure.

- A. Definition of special use permit. As used in this article, the term "special use permit" shall mean an authorization of a particular land use which is permitted by this chapter subject to conditions imposed by this chapter to assure that the proposed use in harmony with this chapter and will not adversely affect the neighborhood if such conditions are met.
- B. The Town Board may, as part of a zoning ordinance or local law adopted pursuant to Article 16 of the Town Law or by local law adopted pursuant to other enabling law,

authorize the Planning Board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

- C. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an area variance pursuant to § 267-b of the Town Law, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.
- D. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon the granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.
- E. Waiver of conditions. The Town Board may further empower the authorized board to, when reasonable, waive any preestablished requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event that any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.
- F. Public hearing and decision on special use permits. Applications for special use permits shall be acted on by the Concord Town Board after a public hearing. The public hearing shall be held within 62 days from the day an application is received. Notice of such public hearing shall be published in the official newspaper of the Town of Concord at least five days prior to the date thereof. Prior to such public hearing, the application shall be referred to the Concord Town Planning Board for report and recommendation. In the event that the Concord Town Planning Board shall fail to submit a report within 45 days after said referral, the Concord Town Board shall proceed with the public hearing. The Town Board shall decide upon the application within 62 days after the conduct of the hearing. The time within which the Town Board must render its decision may be extended by mutual consent of the applicant and the Town Board. The decision of the Town Board on the application after the holding of the public hearing shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered and a copy thereof mailed to the applicant.
- G. Notice to applicant and county, metropolitan or regional planning agency. At least 10 days before such hearing, the authorized board shall mail notices thereof to the applicant and to the county, metropolitan or regional planning agency, as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in Subdivision 1 of § 239-m of the General Municipal Law.
- H. A plan for the proposed development of a site for a permitted special use shall be submitted with an application for a special use permit, and such plan shall show the location of all buildings, parking areas, traffic access and pertinent information that may be necessary to determine if the proposed special use meets the requirements of this chapter.

- I. In its review of a special use permit and application and plan therefor, the Concord Town Planning Board and/or the Concord Town Board may require additional information to be supplied by the applicant relating to, among possibly others, the relationship of the proposed special use to factors such as public safety, noise, glare, traffic impact, operational schedule of the special use and the public welfare.
- J. Compliance with State Environmental Quality Review Act. The authorized board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6 NYCRR 617.
- K. Court review. Any person aggrieved by a decision of the Planning Board or such other designated body or any officer, department, board or bureau of the Town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within 30 days after the filing of a decision by the Town Board in the office of the Town Clerk. The Court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The Court at special term shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.
- L. Costs. Costs shall not be allowed against the Planning Board or other administrative body designated by the Town Board unless it shall appear to the Court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.
- M. Preference. All issues addressed by the Court in any proceeding under this section shall have preference over all civil actions and proceedings.

§ 150-181. Expiration. [Amended 6-11-2009 by L.L. No. 2-2009]

- A. All special use permits, excluding mining special use permits, shall be issued for as long as the activity permitted by said special use permit is ongoing. It will renew automatically on the anniversary of the granting of said permit without a renewal fee. The activity or activities permitted shall be specified on the permit itself, which shall be conspicuously posted at the premises where the special use is occurring. Only those activities shall be permitted. If any additional activities take place besides those specifically listed on the permit, the Code Enforcement Officer will issue a violation citation. This could result in a revocation by the Town Board of the special use permit, after an appropriate hearing.
- B. However, if there is a one-year discontinuance of said permitted use, then § 150-181 of the Concord Town Code shall apply and any resumption of use shall require a new application process, including a public hearing and a permit fee and all other provisions as generally described in § 150-180 of the Concord Town Code shall apply.

§ 150-182. Commercial extraction of topsoil, sand, gravel or stone.

- A. The Town Board may issue a special use permit for the commercial extraction of topsoil, sand, gravel, stone or other mineral resources on sites zoned for such use. The complete review procedures applicable under this article shall apply.
- B. The Town Board may require an annual fee to cover the Town's review of mining plans, reclamation plans and other required submittals, and for the annual inspection of the commercial operation to ensure compliance with conditions of the special use permit or other applicable laws. Such fees shall be approved by the Town Board from time to time.
- C. The Town Board may require an operation/reclamation performance bond or other surety to ensure that the site is operated and reclaimed in a safe and environmentally compatible manner, consistent with the mining and reclamation plans for which the special use permit is issued. The amount of the bond shall not exceed the Town's estimate of the cost to reclaim the active portion of the site for the term of the special use permit.

§ 150-183. Mining.

- A. The Town Board may issue a special use permit for mining on sites zoned for such use. The complete review procedures applicable under this article shall apply.
- B. The Town Board may require an annual fee to cover the Town's review of mining plans, reclamation plans and other required submittals to renew the special use permit, and for the annual inspection of the mining site to ensure compliance with those conditions of the special use permit, the New York State Mining Permit or other applicable laws that have such unique characteristics and are of local interest in that they are included to protect the environment of the Town and the safety and well-being of its residents.
- C. For mining sites that are regulated under the New York State Mined Land Reclamation Law, the Town Board may not require an operation/reclamation performance bond or other surety, but may cooperate with the New York State Department of Environmental Conservation in ensuring that the annual operation and any reclamation meets the standards under which the special use permit was issued.

ARTICLE XXXV

Planned Unit Development**§ 150-184. Purpose. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

Within the context of a Comprehensive Plan for the Town of Concord, as adopted and on file with the Concord Town Clerk and subject to amendment from time to time, the purpose of planned unit development regulations is to assist in the implementation of said Comprehensive Plan by providing a zoning technique to encourage flexibility in the design and development of land in certain specified zoning districts of this chapter in order to

promote its most appropriate use; to facilitate the adequate and economical provision of streets, utilities and public spaces; and to preserve the natural and scenic qualities of open areas. Planned unit development (or "PUD") is a procedure intended to permit diversification in the location of structures and improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety and welfare and convenience both in the use and occupancy of buildings and facilities in planned groups.

§ 150-185. Initiation and approval.

The Town of Concord shall not initiate consideration of any proposed land development as a PUD. Consideration of the development of any land as a PUD, pursuant to the PUD regulations of this chapter, shall be commenced solely at the initiation of private interests. However, a PUD initiated by private interests in the Town of Concord shall be subject to the approval of the Concord Town Board based on and subsequent to a review and recommendations by the Concord Town Planning Board and any and all reviews as required by the County of Erie and/or the New York State Department of Environmental Conservation.

§ 150-186. Permitted locations.

PUD is permitted only in the C-1 Local Retail Business District and in the C-T Commercial-Tourist District of this chapter. Furthermore, only those permitted principal uses and structures as delineated in this Article XXXV shall be allowed in a PUD. Only those accessory uses and structures approved by the Concord Town Board shall be permitted in a PUD based on a PUD site plan and supporting documentation and extent of any and all accessory uses and structures included in a PUD.

§ 150-187. Permitted principal uses and structures.

Where a PUD is located in a C-T District, the following principal permitted uses and structures are allowed:

- A. Principal uses and structures as allowed in a PUD located in a C-1 District.

§ 150-188. Minimum area.

A PUD shall include no less than 30 acres of contiguous land.

§ 150-189. Residential density.

A PUD shall have densities of residential population no greater than those permitted in the zoning districts where a PUD is permitted.

§ 150-190. Open space.

A minimum of 20% of a PUD site area shall be developed as open space, with a minimum of 10% of the entire PUD acreage devoted to public recreation. Parking areas and vehicle access facilities shall not be considered in calculating open space.

§ 150-191. Utilities.

A PUD shall not be approved by the Concord Town Board unless it is served in its entirety by a system of public utilities, as defined in this chapter.

§ 150-192. Authority to relax minimum requirements.

With the exception of §§ 150-186 through 150-191 above, and unless otherwise provided in this chapter, the Concord Town Board may relax the minimum requirements in the C-1 and C-T Districts of this chapter as they relate to such factors as yard requirements, height requirements and setbacks in the review of and prior to the approval of a PUD.

§ 150-193. Public hearing.

A public hearing shall be held by the Concord Town Board prior to its approval of any PUD.

§ 150-194. Standards for review.

The Concord Town Planning Board shall approve a PUD only if it finds that the PUD satisfies all of the following standards:

A. General standards.

- (1) The PUD shall be consistent with §§ 150-186 through 150-191 above.
- (2) The PUD group plan shall be consistent with the Comprehensive Plan of the Town of Concord.
- (3) The PUD shall provide for an effective and unified treatment of the development possibilities on the project site, making appropriate provisions for the preservation of scenic features and amenities of the site and the surrounding areas.
- (4) The PUD shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site.

B. Design standards.

- (1) All buildings in the layout and design shall be an integral part of the development and have convenient access to and from adjacent uses and blocks.
- (2) Individual buildings shall be related to each other in design, masses, materials, placement and connections to provide a visually and physically integrated development.

- (3) Treatment of the sides and rear of all buildings within the PUD group shall be comparable in amenity and appearance to the treatment given to street frontage of these same buildings.
- (4) The design of buildings and parking facilities shall take advantage of the topography of the project site, where appropriate, to provide separate levels of access.
- (5) All building walls shall be so oriented as to ensure adequate light and air exposure to the rooms within.
- (6) All buildings shall be so arranged as to avoid undue exposure to concentrated loading or parking facilities wherever possible and shall be so oriented as to preserve visual and audible privacy between adjacent buildings.
- (7) All buildings shall be arranged as to be accessible to emergency vehicles.

C. Landscape design standards.

- (1) Landscape treatment for plazas, roads, paths, service and parking areas shall be designed as an integral part of a coordinated landscape design for the entire project area.
- (2) Primary landscape treatment shall consist of shrubs, ground cover and street trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape materials selected should be appropriate to growing conditions of the Town of Concord's environment.
- (3) Whenever possible and appropriate, existing trees shall be conserved and integrated into the landscape design plan.
- (4) All streets bordering the project area shall be planted at appropriate intervals with street trees.

D. Circulation system design standards.

- (1) There shall be adequate, safe and convenient arrangements of pedestrian circulation facilities, roadways, driveways and off-street parking and loading space.
- (2) Roads, pedestrian walks and open space shall be designed as integral parts of an overall site design. They shall be properly related to existing and proposed buildings and appropriately landscaped.
- (3) Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.
- (4) Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas and adjacent buildings.

- (5) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs and benches shall be of good appearance, easily maintained and indicative of their function.

E. Parking and loading design standards.

- (1) Parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and monotony of parked vehicles.
- (2) Pedestrian connections between parking areas and buildings shall be by special pedestrian walkways and/or elevators.
- (3) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access and shall be developed as an integral part of an overall site design.
- (4) Any above-grade loading facility should be screened from public view to the extent necessary to eliminate unsightliness.

§ 150-195. Schedule of improvements.

A schedule of improvements shall be submitted as a part of the application for a PUD, including dates of construction commencement and completion for the major improvements proposed in the development plan.

§ 150-196. Delay in construction.

In the event that the construction is not started within two years from the date of approval by the Concord Town Board or in the event that construction has been started but the schedule of improvements has not been substantially adhered to, the Concord Town Board's approval of the PUD may be terminated. Said termination of a PUD approval by the Concord Town Board shall be confirmed by resolution of the Concord Town Board and the forwarding of a certified copy of said resolution to the last known address of the applicant by certified mail.

ARTICLE XXXVI

Zoning Board of Appeals

§ 150-197. Definitions; establishment.

- A. Definitions. As used in this article, the following terms shall have the meanings indicated:

AREA VARIANCE — The authorization by the Concord Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or topographical requirements of the applicable zoning regulations.

USE VARIANCE — The authorization by the Concord Zoning Board of Appeals for the use of land in a manner or for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

- B. Appointment of members. The Concord Town Board shall appoint a Concord Zoning Board of Appeals consisting of five members. In the absence of a Chairperson, the Concord Zoning Board of Appeals may designate a member to serve as Acting Chairperson. The Concord Town Board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the Concord Town Board for such purpose.
- C. Vacancy in office. If a vacancy shall occur otherwise than by expiration of terms, the Concord Town Board shall appoint the new member for the unexpired term.
- D. Removal of members. The Concord Town Board shall have the power to remove any member of the Concord Zoning Board of Appeals for cause and after public hearing.
- E. Chairperson duties. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson or, in his or her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
- F. In all other respects, the provisions of § 267 of the Town Law shall apply to the powers of the Town Board in regard to appointment and removal of members of the Zoning Board of Appeals.

§ 150-198. Powers and duties.

- A. Special permits.
 - (1) Temporary structures or uses. The Concord Zoning Board of Appeals may authorize a temporary and revocable permit for not more than two years for a use or structure that does not conform to the regulations of this chapter for the district in which it is located, provided that the following findings are made:
 - (a) Such use is of a temporary nature and does not involve the erection or enlargement of any permanent structure.
 - (b) In case of a renewal of such permit, that all conditions and safeguards previously required have been complied with.
 - (2) Extension of time limit for permitted temporary structures or uses. The Concord Zoning Board of Appeals may authorize the continuation of temporary structures or uses incidental to construction work, provided that the following findings are made:
 - (a) That the nature and scale of the construction is such to require a longer period of time for completion.
 - (b) That such construction has been diligently prosecuted or that any delays have been unavoidable.
- B. Modification of regulations.

- (1) Reduction of parking spaces for places of assembly. The Concord Zoning Board of Appeals may authorize a reduction of not more than 50% in the number of required off-street parking spaces for places of assembly when located on the same lot with other uses, provided that the following findings are made:
 - (a) That in accordance with the times of operation and times of peak demand, there will be no conflict in the joint use of such off-street parking spaces.
- (2) Reduction of parking spaces where public off-street parking facilities are available. Where public off-street parking facilities other than parking provided for a public building are available, the Concord Zoning Board of Appeals may reduce, on a pro rata basis, the parking requirements for all uses within 600 feet of any boundary of such public parking facility.
- (3) Exception from exterior side yard requirements. The Concord Zoning Board of Appeals may modify the exterior side yard requirements for principal buildings on deep corner lots, provided that the following findings are made:
 - (a) That the rear yard is at least 50 feet in depth.
 - (b) That such modification will not adversely affect the adjoining property.
- (4) Exception from fence height limitations. The Concord Zoning Board of Appeals may permit a fence up to eight feet in height in any rear yard, not a front yard equivalent, or in any side yard, not a required side yard, provided that such fence is at least 10 feet from any property line and that the following findings are made:
 - (a) That such fence shall not unduly shut out lights or air to adjoining properties.
 - (b) That such fence shall not create a fire hazard by reason of its construction or location.

§ 150-199. Procedures.

The Zoning Board of Appeals shall follow the procedures set forth in § 267-a of the Town Law and act on appeals and grant variances subject to the requirements of § 267-b of the Town Law. Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of the Town of Concord may apply to the Supreme Court for review in accordance with § 267-c of the Town Law.

ARTICLE XXXVII **Amendments**

§ 150-200. General provisions.

The Concord Town Board may from time to time, on its own motion or on petition or on recommendation of the Concord Town Planning Board, after proper public notice and public

hearing, amend, supplement or repeal the regulations, provisions or boundaries of this chapter.

§ 150-201. Provisional amendments.

- A. In the case of a proposed amendment which involves the reclassification or transfer of any area from an R District to any C or M District, the Concord Town Board may require the petitioner to submit a development plan showing the extent, location and character of proposed uses and structures. The Concord Town Board may require that such plan be modified to meet any objections raised at any public hearing thereon or subsequent thereto and may qualify its approval of any such amendment by attaching a special endorsement thereto.
- B. Within a period of six months from the approval of such a provisional amendment, no building permit or certificate of zoning compliance shall be issued for any property within the area described by said amendment except in accordance with the development plan approved and with all conditions and limitations placed thereon by the Concord Town Board or in accordance with the zoning regulations applicable prior to said reclassification action.
- C. Unless application for a building permit for such special development is made within six months from the Concord Town Board's approval and unless development of the area included in such development plan is commenced within a period of one year after the Concord Town Board's approval, said approval shall be null and void, and the zoning classification shall be as it was when the petition for amendment was filed.

§ 150-202. Procedure.

- A. Petition for amendment.
 - (1) Filing of petition. A petition to amend, change or supplement the text of this chapter or any zoning district as designated herein shall be filed with the Concord Town Clerk on forms obtained from the Concord Town Clerk's office and shall be transmitted by the Concord Town Clerk to the Concord Town Board. On and after the effective date of this chapter, any petition to amend, change or supplement this chapter shall be accompanied by a filing fee in an amount as established by the Concord Town Board.
 - (2) Public hearings; procedure. A public hearing shall be set by a majority vote of the Town Board, which public hearing shall occur not less than 10 days after said affirmative vote, and notice of said hearing shall be published for two consecutive weeks in the official newspaper.
- B. Referral to Concord Town Planning Board. Each proposed amendment, except those initiated by the Concord Town Planning Board, shall be referred to the Concord Town Planning Board for an advisory report prior to the public hearing held by the Concord Town Board. In reporting, the Concord Town Planning Board shall fully state its reasons for recommending or opposing the adoption of such proposed amendment and, if it shall recommend adoption, shall describe any changes in conditions which it

believes make the amendment desirable and shall state whether such amendment is in harmony with a Comprehensive Plan for land use in the Town of Concord.

- C. Other referrals. Where required by law, a proposed amendment shall also be referred for comment to the Erie County Department of Environment and Planning and/or the New York State Department of Environmental Conservation prior to the public hearing held by the Concord Town Board.
- D. Rehearing on petition. The disposition of a petition for amendment by the Concord Town Board shall be final, and disapproval or denial of the proposed amendment shall void the petition. No new petition for an amendment which has been denied by the Concord Town Board shall be considered by it, except for a vote to table or to receive and file, and no public hearing shall be held on such amendment within a period of one year from the date of such denial, unless the Concord Town Planning Board shall submit a recommendation with reasons stated therefor certifying that there have been substantial changes in the situation which would merit a rehearing by the Concord Town Board.

ARTICLE XXXVIII

Right to Farm

§ 150-203. Legislative intent and purposes.

- A. The Concord Town Board finds, declares and determines that agriculture is vital to the Town of Concord, New York, because it is a livelihood and provides employment for agri-service; provides locally produced, fresh commodities; agricultural diversity promotes economic stability; agriculture maintains open space and promotes environmental quality; and agricultural land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in the Town of Concord, farmers must be afforded protection allowing them the right to farm. When nonagricultural land uses extend into agricultural areas, agricultural operations may become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operation or are discouraged from making investments in agricultural improvements.
- B. It is the purpose of this article to reduce the loss to the Town of Concord of its agricultural resources by limiting the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

§ 150-204. Definitions and word usage.

- A. As used in this article, the following terms shall have the meanings indicated:

AGRICULTURAL PRACTICES — All activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm and the on-farm production, processing and marketing of agricultural products, including, but not limited to, the collection, transportation and use of equipment for

tillage, planting, harvesting, irrigation, fertilization, and pesticide application; storage and use of legally permitted fertilizers, limes and pesticides all in accordance with local, state and federal law and regulations and in accordance with manufacturers' instructions and warnings; storage, use, and application of animal feed and foodstuffs; construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products, and livestock for the sale of agricultural products and for the use of a farm labor as permitted by local and state building codes and regulations; including the construction and maintenance of fences.

AGRICULTURAL PRODUCTS — Those products as defined in Section 301(2) of Article 25-AA of the Agriculture and Markets Law.

FARM — The land, buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.

FARMER — Any person, organization, entity, association, partnership, or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock, poultry, fur-bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

GENERALLY ACCEPTED AGRICULTURAL PRACTICES — Those practices which are feasible, lawful, inherent, customary, necessary, reasonable, normal, safe and typical to the industry or unique to the commodity as they pertain to the practices listed in the definition of "agricultural practices."

RESOLUTION COMMITTEE — Made up of the Chairman of the Planning Board or designee, and a member of one other standing committee of the Town designated by the Town Supervisor. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]**

- B. Unless specifically defined, the above words or phrases used in this article shall be interpreted so as to give them meanings they have in common usage, and to give this article its most reasonable application.

§ 150-205. Right-to-farm declaration.

- A. Farmers, as well as those employed, retained or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within the Town of Concord at all such times and in all such locations as are reasonably necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place and methodology of such practice, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge and improved technologies.
- B. Agricultural practices conducted on farmland shall not be found to be a public or private nuisance if such agricultural practices are:
- (1) Reasonable and necessary to the particular farm or farm operation;
 - (2) Conducted in a manner which is not negligent or reckless;
 - (3) Conducted in conformity with generally accepted agricultural practices;

- (4) Conducted in conformity with all local, state, and federal laws and regulations;
 - (5) Conducted in a manner which does not constitute a threat to public health and safety or cause injury to the health or safety of any person; and
 - (6) Conducted in a manner which does not unreasonably obstruct the free passage or use of navigable waters or public roadways.
- C. Nothing in this article shall be construed to prohibit any aggrieved party from recovering damages for bodily injury or wrongful death due to failure to follow sound agricultural practices, as set forth in this section.

§ 150-206. Duty of Town to consider impact of farm operations.

The legislative intent and purposes of this article shall be taken into consideration by each Town officer and/or board in processing any application requesting rezoning, subdivision approval, temporary conditional permit approval, site plan approval and/or special use permit approval when the property which is the subject of such application is located within one mile of an existing farm. Such Town officer and/or board shall, as part of its review of such application, determine whether appropriate and reasonable conditions may be prescribed or required which would further the purposes and intent of this article as part of an approval of the application. Such appropriate and reasonable conditions shall be determined on a case-by-case basis and may include, but not be limited to, requiring declaration, deed restrictions and/or covenants which run with the land which would notify future purchasers and owners of the subject property that owning and occupying such property might expose them to certain discomforts or inconveniences resulting from the conditions associated with agricultural practices and operations in the Town.

§ 150-207. Informal resolution of disputes.

- A. Should any controversy arise regarding any inconveniences or discomforts occasioned by agricultural operations, including, but not limited to, noise, odors, fumes, dust, the operation of machinery, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and/or pesticides, the parties may submit the controversy to the resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.
- B. Any controversy between the parties may be submitted to the resolution committee, whose decision shall be advisory only, within 30 days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.
- C. The effectiveness of the resolution committee as a forum for resolution of grievances is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
- D. The controversy shall be presented to the committee by written request of one of the parties within the time limits prescribed above. Thereafter, the committee may

investigate the facts of the controversy but must, within 30 days, hold a meeting to consider the merits of the matter and within 20 days of the meeting must render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each party considers to be the pertinent facts.

ARTICLE XXXIX

Solar Energy Systems ¹³

[Added 3-9-2017 by L.L. No. 1-2017; amended 6-13-2019 by L.L. No. 2-2019; 6-10-2021 by L.L. No. 1-2021]

§ 150-208. Authority.

This Solar Energy Local Law is adopted pursuant to §§ 261-263 of the Town Law for the State of New York, which authorizes the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor."

§ 150-209. Statement of purpose.

The Town finds that restrictions of regulations in regard to the use of land within the Town for solar power projects or private solar projects are appropriate to properly address community impact, concerns or issues in a manner in which is meaningful and consistent with the Comprehensive Plan of the Town.

- A. The Town Board of the Town of Concord recognizes that solar energy is a clean, readily available and renewable energy source and the Town of Concord intends to responsibly consider the use of solar energy systems. The Town of Concord also desires to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and "to make provision for," so far as conditions may permit, the accommodation of solar energy systems and equipment.
- B. This chapter is adopted to advance and protect the public health, safety, and welfare of the Town of Concord, including:
 - (1) Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;
 - (2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and

13. Editor's Note: The Town of Concord passed L.L. No. 4-2024 on 7-22-2024, which imposed a one-year moratorium on solar energy systems. For a period of one year following the effective date of the adoption of this local law, no application may be processed, and no permits, certificates of occupancy, approvals, denials, determinations or interpretations may be issued or granted for any land uses relating to energy, including, but not limited to, solar farms. On 6-12-2025, the Town passed L.L. No. 3-2025, extending the temporary moratorium on the issuance of applications and the granting of permits, licenses or approvals for all solar energy system facilities in the Town of Concord in order to allow for the consideration and possible adoption of appropriate amendments to existing regulations pertaining to such land uses. Said local laws are available for review in the Town office.

- (3) Increasing employment and business development in the region by furthering the installation of solar energy systems.

C. However, the Town Board finds a need to properly site solar energy systems within the boundaries of the Town of Concord to protect residential, business areas, agriculture and other land uses, to preserve the overall beauty, nature and character of the Town of Concord, 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 of Concord.

§ 150-210. Definitions.

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

APPLICANT — 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; or any person legally authorized to act on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term "applicant," "owner," or "operator" is used in this chapter, said term shall include any person legally authorized to act on behalf of an applicant, owner or operator.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM — A combination of solar panels and solar energy equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for on-site consumption.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS — A solar energy system that is affixed to the side(s) of a building either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate energy primarily for on-site consumption.

CONCORD UNIFIED SOLAR PERMIT — This is the adopted Concord Unified Solar Permit (USP), form, instructions, and online guidance which is promulgated by NYSERDA and/or other New York State agencies and provides for the expedited permitting process for certain classes of private Tier 1 solar energy systems which are 25 kW or less in capacity. The Concord USP allows for private roof-mounted, building-mounted and building-integrated systems.

DWELLING UNIT — Any residence/house/apartment that may be occupied or vacant.

FARMLAND OF STATEWIDE IMPORTANCE — Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

GLARE — The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for on-site or off-site consumption.

HOST COMMUNITY AGREEMENT — A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

NATIVE PERENNIAL VEGETATION — Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

NET ENERGY METERING — Use of a net energy meter to measure the net amount of electricity supplied to the premises equipped with a solar energy system less the electricity provided by the solar energy system to the electric corporation (NYSEG for the case of Concord). Net metering shall be in accordance with the New York Public Service Law § 66-j. Net energy metering for a private solar energy system is allowed and permitted as long as the excess energy produced falls within 110% of historical demand for the lot on which the private solar energy system is installed.

NONPARTICIPATING PROPERTY — A property that is not affiliated with a solar energy system project in any way.

PARCEL(S) — A tract of land owned by an individual or entity leased or otherwise controlled by an applicant upon which a solar energy system is proposed to be constructed.

PARTICIPATING PROPERTY — A property that is being leased for solar usage, or a property that has an agreement or lease but is not having solar-related improvements constructed upon it.

POLLINATOR — Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

PRIME FARMLAND — Land, designated as "Prime Farmland" or "Prime Farmland where drained" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

QUALIFIED SOLAR INSTALLER — A person or organization who has the skills and knowledge related to the construction and operation of solar energy systems and installation and who has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA) shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on the NYSERDA list of eligible installers may be deemed to be qualified solar installers if the Concord Code Enforcement Officer or the Concord Town Board determines such persons have training to perform the installation appropriately and safely. Such training shall include the proper use of precautionary techniques and personal protective equipment as well as the skills and techniques necessary to distinguish exposed energized parts or other parts of electrical equipment on the site and to determine the nominal voltage of exposed live parts.

ROOF-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system located on the roof of any legally permitted building or structure that produces electricity for on-site or off-site consumption.

SOLAR ACCESS — Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive solar energy systems on individual properties.

ENERGY EQUIPMENT — Electrical material, hardware, inverters, conduit, storage devices, fencing or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM — The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, solar panels and solar energy equipment. A solar energy system in the Town of Concord is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 solar energy system as follows:

- A. Tier 1 solar energy systems include the following:
 - (1) Roof-mounted and building-mounted solar energy systems.
 - (2) Building-integrated solar energy systems.
- B. Tier 2 solar energy systems include ground-mounted solar energy systems up to 1,500 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months.
- C. Tier 3 solar energy systems are systems that do not meet the definition of a Tier 1 or Tier 2 solar energy system and do not meet the requirements of a Tier 4 solar energy system (50 acres or less - defined as the fenced in area that encloses the panels and other related solar energy equipment).
- D. Tier 4 solar energy systems meet the definition of a Tier 3 solar energy system but are over 50 acres in size (defined as the fenced in area that encloses the panels and other related solar energy equipment).

SOLAR PANEL — A photovoltaic device capable of collecting and converting solar energy into electricity.

STORAGE BATTERY — A device that stores energy and makes it available in an electrical form.

USP — The abbreviation for the Concord Unified Solar Permit process, form, instructions, and implementation of the unified solar permit process in the Town. Forms and details are available from the Concord Town Clerk and online at the Town's website.

WETLANDS — Any areas designated as such by the New York State Department of Environmental Conservation or the United States Army Corps of Engineers.

§ 150-211. Applicability.

- A. The requirements of this article shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this article, excluding general maintenance and repair.

- B. Solar energy systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- C. Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this article.
- D. All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the New York State Uniform Fire Prevention and Building Code ("Building Code"), the New York State Energy Conservation Code ("Energy Code"), and the Town Code.

§ 150-212. General requirements.

- A. A building permit shall be required for installation of all solar energy systems.
- B. Issuance of approvals by the Town Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").
- C. This article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Concord.
- D. All permitted solar energy systems are required to be installed by a qualified solar installer.
- E. This article shall not apply to any lot owned by a municipality.

§ 150-213. Permitting requirements for Tier 1 solar energy systems.

All Tier 1 solar energy systems shall be permitted in all zoning districts through a building permit or Concord Unified Solar Permit (USP) and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of solar energy system:

- A. Roof-mounted, building-integrated and building-mounted solar energy systems.
 - (1) Roof-mounted solar energy systems shall incorporate, when feasible, the following design requirements:
 - (a) Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface the highest edge of the system.
 - (b) Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - (c) Height. Tier 1 solar energy systems shall have the following height restrictions for all zoning districts: two feet above roof of highest existing structure but shall not be higher than the allowed height in the underlying zoning district, unless a variance is received.

- (d) Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
 - (2) Glare. All solar panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.
 - (3) Fire safety. All roof-mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code standards.
- B. Building-integrated solar energy systems. Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for the building containing the system.
- C. Building-mounted solar energy systems. Building-mounted solar energy systems (non-rooftop) shall not be more than 18 inches from the building wall and in no instance shall any part of the system extend beyond the eave line or top of a parapet wall. All proposed installations must be accompanied by a set of drawings sealed by a New York State licensed professional engineer or registered architect, verifying the structural integrity of the building and with the New York State Code Compliance checklist. They must also meet the requirements listed in Subsection A(2) and (3) for roof-mounted systems. The approval of any building-mounted systems shall be by the building permit method as they are not eligible for consideration under Concord's Unified Solar Permit method regardless of capacity of the system.

§ 150-214. Permitting requirements for Tier 2 solar energy systems.

All Tier 2 solar energy systems shall be permitted in all zoning districts as an accessory use and require site plan review in accordance with the Town of Concord Zoning Code and other Town land use regulations. The site plan application shall include a site plan and address the following requirements:

- A. Glare. All solar panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.
- B. Setbacks. Tier 2 solar energy systems shall be set back a minimum of 50 feet from any side or rear property line. All ground-mounted solar energy systems shall only be installed in the side or rear yards. In all cases, the solar panels shall be located a minimum of 75 feet from any dwelling unit on an adjoining nonparticipating property. For Tier 2 systems, the setback requirement is from any panel or other related solar energy system equipment.
- C. Installations in residential districts. The total surface area of said solar energy system on a lot shall not exceed 800 square feet per acre in R-1, R-2, R-RB, R-E, R-M, R-12, and R-AG.
- D. Height. Tier 2 solar energy systems shall be less than 12 feet in height in any residential district. Height shall be less than 15 feet for all remaining districts. Height shall be measured at maximum tilt.
- E. Screening and visibility.

- (1) All Tier 2 solar energy systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan process).
 - (2) Solar energy equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.
- F. Additional site plan requirements. Submit a site plan in accordance with the Town of Concord's site plan requirements and also drawn in sufficient detail as set forth below:
- (1) Plans and drawings of the solar energy system installation signed by a New York State certified professional engineer or registered architect showing the proposal layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any stormwater or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and clearly showing the direction of surface water flow from the site.
 - (2) The site plan will illustrate all property lot lines and the location and dimensions of all existing structures and uses within 500 feet of the solar panels.
 - (3) Any proposed fencing and/or screening for said project.
 - (4) Any such additional information as may be required by the Town's professional engineer or consultant, the Town Planning Board, the Town Board, the Town Attorney, the Code Enforcement Officer, or other Town entity.
 - (5) A public hearing on said site plan may be waived by the Town Board at the Town Board's discretion.
 - (6) If solar storage batteries are included as part of any solar energy system, they shall be placed in a secure container or enclosure meeting the requirements of the New York State Building Code and any Town of Concord battery energy storage law.¹⁴

§ 150-215. Permitting requirements for Tier 3 solar energy systems.

All Tier 3 solar energy systems are permitted through the issuance of a special use permit (in accordance with Article XXXIV of the Town Zoning Code and this article) within Residential-Agricultural (R-AG) Zone, General Commercial Zone (C-2), and Industrial Zone (M), and subject to site plan application requirements set forth in this section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Concord requires the applicant to enter into a solar energy system PILOT and host community agreement with the Town of Concord. In reviewing and considering Tier 3 solar proposals, the Town will give deference to those sites that are New

14. Editor's Note: See Art. XL, Battery Energy Storage Systems, of this chapter.

York State brownfield sites and sites that are nonagricultural in nature. The Town values its agricultural land and the farming that takes place on that land.

A. Applications (process) for the installation of Tier 3 solar energy system shall be: Tier 3 applications for solar energy systems will be required to proceed via the Concord special use permit procedures and process in order for the solar energy conversion system to be considered for site plan approval and building permit approval. Applications under this article shall be made as described in this section. Applicants for a special use permit to place, construct, and make a major modification to a Tier 3 solar energy system, or other solar energy conversion system which is required to proceed via the special use permit method, within the boundaries of the Town of Concord shall submit 12 sets of the materials identified in this article and follow the following process:

- (1) Received by the Code Enforcement Officer (CEO) and checked to make sure the appropriate documents have been submitted. No such application shall be deemed filed until any required application fee has been paid by the applicant. The CEO will then forward to the Town Board, by having it placed on the next available agenda, for it to determine completeness of the application and refer to the Planning Board and/or a professional engineer or consultant for an initial review. Applicants shall be advised within 10 business days of the first Planning Board meeting of the completeness of their application or any deficiencies that must be addressed prior to substantive review of the special use permit and site plan.
- (2) Once the application is deemed complete and while the Planning Board is completing their reviews and recommendations, the project/application shall be referred back to the Town Board to begin completion of the host community agreement. This agreement will need to be finalized before the special use permit is issued.
- (3) The Planning Board shall complete their reviews and issue an advisory recommendation for consideration by the Town Board. The Planning Board may make such additional referrals to experts, consultants, or applicable engineering professionals as it deems appropriate (these costs shall be paid by the applicant through an escrow fund to be set up with the Town).
- (4) The Town Board shall review the advisory report and set a public hearing in accordance with the special use permit law to hear all comments for and against the application. The Town Clerk shall complete all public notice requirements in accordance with the special use requirements of the Town.
- (5) If required, the application shall also be referred to the Erie County Department of Environment and Planning (ECDEP) pursuant to General Municipal Law § 239-m.
- (6) The special use permit shall be acted upon by the Town Board, once the required steps are completed and the Town Board has completed the SEQR process.
- (7) The Town Board may grant a special use permit, deny a special use permit, or grant a special use permit with written stated conditions. Denial of a special use permit shall be by written decision based upon substantial evidence and advisory recommendations considered by the Town Board. Upon issuance of a special use

permit, the applicant shall obtain a building permit for the Tier 3 or Tier 4 solar energy system.

(8) The Town Board then can proceed with acting on the site plan.

B. Design and application requirements. Applications for Tier 3 solar projects shall address and include the following:

- (1) Vehicular paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- (2) Signage.
 - (a) No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.
 - (b) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- (3) Glare. All solar panels shall have anti-reflective coating(s) and proof of such submitted at application and at the building permit stage.
- (4) Lighting. Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.
- (5) Noise. Information on any noise-producing equipment (as determined by the Town based on application materials) shall be submitted. If necessary, the Planning Board will require analysis of the noise on any sensitive receptors, including single-family homes.
- (6) Tree cutting. Removal of existing trees larger than six inches in diameter should be minimized to the extent possible (or, if allowed by the Town, replace as necessary on the site).
- (7) Decommissioning.
 - (a) Solar energy systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity for a period of at least six months) shall be removed at the owner and/or operator's expense, which at the owner's option may come from any security made with the Town as set forth in this article.
 - (b) A decommissioning plan (see Appendix 1¹⁵) signed by the owner and/or operator of the solar energy system shall be submitted by the applicant, addressing the following:

15. Editor's Note: Said appendix is on file in the Town offices.

- [1] The methodology and the cost of removing the solar energy system. The Town strongly encourages the recycling of all materials (and should be reflected in the decommissioning plan), but there will be no allowance for recycle value in the cost estimate (as they are too speculative).
 - [2] The time required to decommission and remove the solar system and any ancillary structures.
 - [3] Restoration of the property to the original condition of the site, in accordance with New York State Department of Agriculture and Markets (NYSDAM) standards or as determined through Town input.
 - [4] The time required to repair any damage caused to the property by the installation and removal of the solar energy system.
- (c) Security.
- [1] The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 solar energy system and restoration of the property with an escalator of 2% annually for the life of the solar energy system. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the solar energy system. The security amount shall be reviewed on a regular basis (as set by the Town) and the amount of the security may change based on any new figures.
 - [2] In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
 - [3] In the event of default or abandonment of the solar energy system, the system shall be decommissioned as set forth in this article.
- (8) Application fees. All applications for Tier 3 (and Tier 4) solar energy systems shall include the appropriate fees as set by the Concord Town Board. The applicant shall also be responsible for any costs incurred by the Town for consulting and legal services.
 - (9) Maintenance plan. Applications shall include a maintenance plan for all leased lands (including required setbacks/buffers). The maintenance plan shall also include the minimum guarantee period on the plantings (10 years). The maintenance plan shall address the maintenance of the equipment, the access roads (condition and plowing), plantings, buffer areas and the area under the

panels. With regards to maintenance, the Town will not allow the use of herbicides, pesticides and other chemicals. The maintenance plan should include environmentally friendly maintenance procedures including the use of animal grazing and the use of pollinator species and low-maintenance vegetation.

- (10) Safety. Applications shall include a safety plan (including communication with emergency service providers).
 - (11) Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC mapping system and by the Town of Concord. This includes resources such as wetlands, viewsheds, scenic byways, forestry lands, habitats, etc.) on the subject property and surrounding properties.
 - (12) A property owner who has installed, or intends to install, a Tier 3 solar energy system or private solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit by the Town does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code.
- C. Site plan application requirements. For any solar energy system requiring a special use permit, site plan approval shall be required. This required site plan application shall include a site plan in accordance with the Town of Concord's site plan requirements and this article, and include the following additional information:
- (1) A plan illustrating property lines and physical features, including roads, for the project site.
 - (2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
 - (3) A one- or three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
 - (4) Plans must also illustrate all off-site infrastructure, including transmission lines, points of grid interconnection, poles and electric lines servicing the project. These "off-site" improvements will be considered part of the project and considered in the project review.
 - (5) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
 - (6) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the solar energy system. Such information of the final system installer shall be submitted prior to the issuance of building permit.

- (7) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the solar energy system.
- (8) Zoning district designation for the parcel(s) of land comprising the project site and adjoining lands.
- (9) Property operation and maintenance plan. Such plan shall describe continuing photovoltaic and other equipment maintenance and property upkeep, such as mowing and trimming (or other methodologies).
- (10) Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board or Town Engineer.
- (11) Engineering documents must be signed and sealed by a New York State (NYS) licensed professional engineer or NYS registered architect.
- (12) A completed SEQR full environmental assessment form.
- (13) A landscape plan in accordance with the special use permit requirements of this article.
- (14) Proposed fencing and screening of the project.
- (15) Any such additional information as may be required by the Town Planning Board, a Town professional engineer or consultant, the Concord Town Board, the Town Attorney, the Town Code Enforcement Officer, or other Town entity.

§ 150-216. Special use permit standards and requirements.

In addition to the general requirements for the issuance of a special use permit in the Town of Concord, the following additional standards and requirements will be utilized to make a decision on the approval of the special use permit for these projects.

A. Specific standards.

- (1) The total surface area of a Tier 3 solar energy system situated in a Residential-Agricultural (R-AG) Use District, on a lot which is greater than 15 acres, is determined by the size of the parcel, as indicated below:
 - (a) For parcels 15 acres or less, a Tier 3 solar energy system shall not exceed 50% of the total square footage of the entire lot.
 - (b) For parcels greater than 15 acres, a Tier 3 solar energy system shall not exceed 40% of the total square footage of the entire lot.
- (2) The total surface area of a Tier 3 solar energy system, on a lot which is greater than 15 acres, situated in a Commercial (C) Use or Industrial Use District, shall not exceed 20% of the total square footage of the entire lot.

- (3) **Setbacks.** All Tier 3 solar energy systems shall be set back a minimum of 100 feet (all setbacks are measured from the fence surrounding the solar panels and all equipment) to all nonparticipating property lines and to the edge of any road ROW. Additionally, the setback from the fence line shall be a minimum of 300 feet from the side or rear of a dwelling unit on an adjoining nonparticipating property. The setback to any off-site participating dwelling unit shall be 100 feet from the side or rear of the dwelling unit. For participating properties with proposed solar panels, the setback from a property line is not required. Additional setback requirements are as follows:
- (a) If parcel/lot is in a Residential-Agricultural (R-AG) Zoning, but is shown on the current Town of Concord Zoning Map as a parcel/lot which has the first 300 feet of depth from the road frontage zoned as R-1, R-2, R-E, R-M, R-12, R-AG or R-RB, then no portion or component of the Tier 3 solar energy system may be located within that frontage zoning (R-1, R-2, R-RB, R-E, R-M, R-12, and R-AG) except for any existing overhead or proposed buried electrical wire infrastructure associated with the solar energy system as proposed by the applicant.
 - (b) From railroads: a minimum of 100 feet from any railroad (measured from the railroad right-of-way).
 - (c) From an inactive railroad's rail bed right-of-way corridor that is part of the rail-banking system: a minimum of 100 feet from any railroad roadbed in the rail-banking system (as measured from the rail bed's right-of-way).
 - (d) From schools, public parks: a minimum of 750 feet from all property lot lines bordering a school or public park.
- (4) **Height.** The Tier 3 solar energy systems shall be less than or equal to 20 feet. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.
- (5) **Fencing requirements.** All mechanical equipment, including any structure for storage batteries, shall be enclosed by a fence, and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing.
- (6) **Screening and visibility.**
- (a) Solar energy systems smaller than five acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 - (b) Solar energy systems larger than five acres shall be required to:
 - [1] Conduct a visual assessment of the visual impacts of the solar energy system on public roadways and adjacent properties. At a minimum, a

line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.

- [2] Submit a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of solar panels and solar energy equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
 - [3] The screening and landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of one evergreen tree, at least six feet high at time of planting, plus two supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the solar energy system. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species should be provided by the Town. This minimum screening requirement will be reduced if adjoining properties are participating properties.
 - [4] For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, buildings can be made to look like agricultural structures such as barns.
- (c) If a Tier 3 or 4 solar energy system is situated on a parcel/lot which is at the edge of a zoning boundary [for example, the last parcel in an R-AG Zoning District which abuts to a residential parcel (R-1, R-2, R-E, R-RB, R-M, R-12)], then additional screening via retaining existing trees, suitable vegetation, plantings, or the topography, shall be included in the site plan so as to screen the boundary parcel from the visual impact of the solar energy system.

B. Other standards.

- (1) All Tier 3 or 4 solar energy systems, if located within 1,000 feet of a public or private airfield/airport must, at the time of special use permit submission, include results of the federal Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower (if any) and for the final approach aircraft flight paths, consistent with the current policy of the FAA for review of solar energy projects, and any similar regulatory mandates which include private airfields near the solar energy system's area.

- (2) A Tier 3 or 4 solar energy system shall adhere to all applicable federal, state, county and Town of Concord laws and regulations, and all building, plumbing, electrical, and fire codes. The applicant is also required to obtain all necessary formal regulatory approvals and/or permits from any federal, state, county, or local agency having jurisdiction and approval requirements related to the completion of a Tier 3 or 4 solar energy system.
- (3) Artificial lighting of Tier 3 or 4 solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded (down cast and dark sky compliant) from all neighboring properties and public roads.
- (4) Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- (5) After completion of construction of a Tier 3 or 4 solar energy system, the applicant shall provide a postconstruction certification from a professional engineer (PE), registered in New York State, that the project complies with applicable codes and industry practices, and that it has been constructed and is operating according to the design plans.
- (6) Clearing, grading, stormwater and erosion control:
 - (a) It has been determined that much of the soil type classification within the Town of Concord consists of highly and moderately erodible soils types; erosion control and prevention are a critical component of any solar energy system project. Therefore, the Town will require formal documentation that any proposed solar energy project will not cause a negative impact on the Town's soil resources. This is especially true for Tier 3 or 4 solar energy systems; therefore, Concord requires a determination that erosion will be addressed in any development for solar energy systems.
 - (b) Before the Town of Concord shall issue a clearing, grading, stormwater, or building permit for a Tier 3 or 4 solar energy system, the applicant shall prepare an acceptable New York State Pollutant Discharge Elimination System (SPDES), filed and issued in accordance with Environmental Conservation Law, which fully defines the measures to be taken during and after the construction phase(s) of the solar energy system as required by law. When the permit coverage is received by the applicant, a copy should be filed within five days with the Concord Code Enforcement Officer for review.
 - (c) Before the Town of Concord shall issue a clearing, grading, stormwater or building permit for a Tier 3 or 4 solar energy system, the applicant shall submit a complete New York State stormwater pollution prevention plan (SWPPP) to the Town for review and approval by the Planning Board and/or their designated consultant or professional engineer, the Concord Environmental Board, and the Concord Code Enforcement Officer whom will all supply advisory recommendations to the Town Board when they determine approval status.

- (d) The applicant's SWPPP shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.
 - (e) To assist in processing, if not mandated elsewhere, the SWPPP should include a copy of the filed New York State Environmental Quality Review Act (SEQRA) document(s), so that efficient review of both submittals may be done by the Town's advisory boards as well as the Town Board.
- C. Agricultural resources. Due to the importance of agricultural lands and the economy of farming, projects proposed to be located on agricultural lands shall have the following additional requirements:
- (1) Any Tier 3 solar energy system located in areas that consist of prime farmland soils or farmland soils of statewide importance shall not exceed 50% of the area of prime farmland or farmland of statewide importance on the parcel upon which panels and other solar energy equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm-related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on a Planning Board's determination that these lands are being used for actual agricultural uses.
 - (2) Tier 3 solar energy systems located on prime farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See NYS Agriculture and Markets Guidelines).
 - (3) Tier 3 solar energy system owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged. Input from the local farmers and Town Agricultural Committee will be needed to make these determinations.
 - (4) Agricultural restoration requirements. Once the system is decommissioned, the site shall be restored and remediated in accordance with the New York State Department of Agriculture and Markets (NYS DAM) Guidelines (this will be a condition of the special use permit).
- D. Noise. The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (use of NYSDEC regulations concerning noise).
- E. Hazardous materials. The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium or other hazardous materials). Any equipment containing liquids must show adequate spill containment requirements. Proof of these requirements must be provided with the application.

F. Solar energy system liability insurance.

- (1) The holder of a special use permit for a solar energy system shall agree to secure and maintain for the duration of the permit, public liability insurance as follows:
 - (a) Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence (\$10,000,000 aggregate) which shall specifically include the Town of Concord and its officers, councils, employees, attorneys, agents and consultants as additional named insured;
 - (b) Umbrella coverage: \$10,000,000.
- (2) Insurance company. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with at least a Best's rating of "A."
- (3) Insurance policy cancellation. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Concord with at least 30 days' prior written notice in advance of cancellation.
- (4) Insurance policy renewal. Renewal or replacement policies shall be delivered to the Town of Concord at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- (5) Copies of insurance policy. No more than 15 days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Concord a copy of each of the policies or certificates representing the insurance in the required amounts.
- (6) Certificate of insurance. A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Concord shall not be deemed to comply with this article.
- (7) Indemnification. Any application for a solar energy system within the Town of Concord shall contain an indemnification provision. The provision shall require the applicant/owner/operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town of Concord and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said solar energy system, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Concord or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Concord.

§ 150-217. Permitting requirements for Tier 4 solar energy systems.

- A. All Tier 4 solar energy systems are permitted through the issuance of a special use permit within the Residential-Agricultural (R-AG) Zone, and subject to site plan and special use permit requirements set forth in this article for Tier 3 projects (all requirements in §§ 150-215 and 150-216). They are also subject to all of the requirements for Tier 3 projects and as revised below. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Concord shall require all Tier 4 applicants to enter into a solar energy system PILOT and host community agreement.
- B. These Tier 4 systems are very large systems that have a potential to significantly impact the Town of Concord, its citizens and the economy of the community. Therefore, the Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements or revisions to Tier 3 requirements:
- (1) Submittal of an agricultural impact statement (in addition to any other requirements such as agricultural data statements and notice of intents) to determine the impact to agriculture in the Town. The Planning Board, on a project-by-project basis, will work with the applicant on finalizing the requirements of this agricultural impact statement. It will not only include the direct impacts on the subject properties and surrounding agricultural properties, but also include analysis of the loss of leased lands and the impact on other leased lands.
 - (2) Submittal of an economic impact analysis to determine the impact to the economy of the Town. This includes the agricultural impacts in the agricultural impact statement and information as noted by the Town Planning Board (Town to provide scoping of this study).
 - (3) Any Tier 4 solar energy system located on lands that consist of prime farmland soils or farmland soils of statewide importance shall not exceed 50% of the area of prime farmland or farmland of statewide importance on the parcel or project site as a whole (if multiple parcels are included) upon which panels and other solar energy equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm-related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on a Planning Board's determination that these lands are being used for actual agricultural uses.
 - (4) For Tier 4 systems, if the project proposes to impact more than 50% of these prime or statewide important soils, the applicant may purchase or lease (for the lease period of the proposed project) development rights, of an equal amount of land over the 50% threshold, of another active farm within the Town of Concord with prime or statewide important soils located on that land to offset the farmland used or leased in the primary project area.
 - (5) For Tier 4 systems, the setback and other bulk requirements for Tier 3 projects must be met.

§ 150-218. Ownership changes.

If the owner or operator of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the solar energy system shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

§ 150-219. Safety.

- A. Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local Fire Department and, if the Tier 3 solar energy system is located in an ambulance district, the local ambulance corps.
- C. If storage batteries are included as part of the solar energy system, they shall meet the requirements of any applicable local law, fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

§ 150-220. Permit time frame and abandonment.

- A. The special use permit and site plan approval for a solar energy system shall be valid for a period of 18 months, provided that construction has commenced. In the event construction is not completed in accordance with the final site plan as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
- B. Upon cessation of electricity generation of a solar energy system on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of the solar energy system to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
- C. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the solar energy system and restoration of the site in accordance with the decommissioning plan.
- D. Inspections. Upon reasonable notice, the Concord Code Enforcement Officer, or his designee, may enter a lot on which a solar energy system has been approved for the purpose of compliance verification with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Tier 3 or Tier 4 solar energy system shall be inspected annually by a New York State licensed professional engineer that has

been approved by the Town or at any other time, upon a determination by the Town's Code Enforcement Officer that damage may have occurred. A copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder. The Town may also set up a yearly fee for the special use permits for Tier 3 and 4 projects.

- E. General complaint process. During construction, the Town Code Enforcement Officer can issue a stop-work order at any time for any violations of a special use or building permit. After construction is complete, the permit holder of a Tier 3 or Tier 4 solar energy system shall establish a contact person, including name, e-mail address and phone number, for receipt of any complaint concerning any permit requirements.
- F. Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Code Enforcement Officer shall also have the right to request documentation from the owner of a solar energy system regarding the system's usage at any time.
- G. Changes after approval of the SUP. If after approval of the SUP or after construction, changes are proposed to the approved plan; location of the panels/equipment, equipment types, number of units, etc., the applicant will need to reappear before the Planning Board for consideration of amending the SUP.

§ 150-221. Enforcement.

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

§ 150-222. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

ARTICLE XL

Battery Energy Storage Systems¹⁶

[Added 2-10-2022 by L.L. No. 2-2022]

§ 150-223. Authority.

This Battery Energy Storage System Law is adopted pursuant to Article IX of the New York State Constitution, § 2(c)(6) and (10), New York Statute of Local Governments, § 10(1) and (7); §§ 261-263 of the Town Law, § 10 of the Municipal Home Rule Law of the State of New York, which authorize the Towns to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

§ 150-224. Statement of purpose.

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Concord by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
- B. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
- C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.

§ 150-225. Definitions.

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

ANSI — American National Standards Institute.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM — An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM — One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a

16. Editor's Note: The Town of Concord passed L.L. No. 3-2024 on 7-22-2024, which imposed a one-year moratorium on battery energy storage systems. No applications shall be accepted or considered by the Planning Board or the Town Board of the Town of Concord for any battery energy storage system facilities, or stand-alone, during this time. On 6-12-2025, the Town passed L.L. No. 2-2025, extending the moratorium for one additional year. Said local laws are available for review in the Town office.

standalone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2 or Tier 3 battery energy storage system as follows:

- A. Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area.
- C. Tier 3 battery energy storage systems (utility grade system) are systems that are designed independent of a user, with a purpose to store energy and then put that energy back into the power grid.

BATTERY(IES) — A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this article, batteries utilized in consumer products are excluded from these requirements.

CELL — The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

COMMISSIONING — A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING — A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

- A. The building's only use is battery energy storage, energy generation, and other electrical-grid-related operations.
- B. No other occupancy types are permitted in the building.
- C. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- D. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
 - (1) The areas do not occupy more than 10% of the building area of the story in which they are located.
 - (2) A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

ENERGY CODE — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

FIRE CODE — The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL) — A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC — National Electric Code.

NFPA — National Fire Protection Association.

NON-DEDICATED-USE BUILDING — All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

NONPARTICIPATING PROPERTY — Any property that is not a participating property.

NONPARTICIPATING RESIDENCE — Any residence located on nonparticipating property.

OCCUPIED COMMUNITY BUILDING — Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, day-care facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

PARTICIPATING PROPERTY — A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

UL — Underwriters Laboratory, an accredited standards developer in the United States.

UNIFORM CODE — The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

§ 150-226. Applicability.

- A. The requirements of this article shall apply to all battery energy storage systems permitted, installed, or modified in Town of Concord after the effective date of this article, excluding general maintenance and repair.
- B. Battery energy storage systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- C. Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed duration or power rating shall be subject to this article.

§ 150-227. General requirements.

- A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- B. Issuance of permits and approvals by the Concord Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].
- C. All battery energy storage systems, all dedicated-use buildings, and all other buildings or structures that: 1) contain or are otherwise associated with a battery energy storage system; and 2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.

§ 150-228. Permitting requirements for Tier 1 battery energy storage systems.

Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Uniform Code and the "battery energy storage system permit," and exempt from site plan review.

§ 150-229. Permitting requirements for Tier 2 battery energy storage systems. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

Tier 2 battery energy storage systems are permitted through the issuance of a special use permit within all nonresidential zoning districts and shall be subject to the Uniform Code and the site plan application requirements set forth in this section. Tier 2 battery energy storage systems associated with a wind energy project shall also only be allowed in conformance with the Town laws associated with these type projects (only allowed in the zoning districts that allow the particular wind project).

- A. Applications for the installation of Tier 2 battery energy storage system shall be:
 - (1) Reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this article including, but not necessarily limited to: i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code; and ii) matters relating to the proposed battery energy storage system and floodplain, utility lines and electrical circuitry, signage, lighting, vegetation and tree cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, and permit time frame and abandonment. Applicants shall be advised within 10 business days (of the first Planning Board meeting on the application) of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
 - (2) Subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have a notice printed in a newspaper of general circulation in the Town in accordance with the Town's special use permit

requirements. Applicants shall also have delivered the notice by first class mail to adjoining landowners or landowners within 200 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.

- (3) Referred to the County Planning Board pursuant to General Municipal Law § 239-m if required.
 - (4) Upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing (or after the SEQR process is completed, if not completed on the day of the public hearing), which can include approval, approval with conditions, or denial. The sixty-two-day period may be extended upon consent by both the Planning Board and applicant.
- B. Utility lines and electrical circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
- C. Signage.
- (1) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and twenty-four-hour emergency contact information, including reach-back phone number.
 - (2) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- D. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- E. Vegetation and tree cutting. Areas within 10 feet on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
- F. Noise. The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 45 dBA as measured at the outside wall of any nonparticipating residence or occupied community building. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

G. Decommissioning.

- (1) Decommissioning plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
 - (a) A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
 - (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
 - (c) The anticipated life of the battery energy storage system;
 - (d) The estimated decommissioning costs and how said estimate was determined;
 - (e) The method of ensuring that funds will be available for decommissioning and restoration;
 - (f) The method by which the decommissioning cost will be kept current;
 - (g) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
 - (h) A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- (2) Decommissioning fund. The owner and/or operator of the energy storage system shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Attorney, for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant.

H. Site plan application. For a Tier 2 battery energy storage system requiring a special use permit, site plan approval shall be required. Any site plan application shall include the following information:

- (1) Property lines and physical features, including roads, for the project site.
- (2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.

- (3) A one- or three-line (as determined by the Town) electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- (4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- (5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- (6) Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
- (7) Zoning district designation for the parcel(s) of land comprising the project site.
- (8) Commissioning plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.
- (9) Fire safety compliance plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
- (10) Operation and maintenance manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- (11) Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established in the Town of Concord and by the Planning Board through the approval process.
- (12) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State licensed professional engineer.

- (13) Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local Fire Department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
- (a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe startup following cessation of emergency conditions.
 - (b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - (c) Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to Fire Department personnel for potentially hazardous conditions in the event of a system failure.
 - (d) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the Fire Department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
 - (e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
 - (f) Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
 - (g) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
 - (h) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.
- I. Special use permit standards.
- (1) Setbacks. Tier 2 battery energy storage systems shall comply with the setback requirements of the underlying zoning district for principal structures.
 - (2) Height. Tier 2 battery energy storage systems shall comply with the building height limitations for principal structures of the underlying zoning district.
 - (3) Fencing requirements. Tier 2 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-

locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.

- (4) Screening and visibility. Tier 2 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.
- J. Ownership changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town of Concord of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Town in the required time frame. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this article.

§ 150-230. Permitting requirements for Tier 3 battery energy storage systems.

Tier 3 battery energy storage systems are permitted only in the industrially zoned areas of the Town through the issuance of a special use permit and shall be subject to the conditions established for the special use permit, the Uniform Code and the site plan application requirements set forth in the Tier 2 section¹⁷ and other applicable sections of these regulations and the Town Code.

§ 150-231. Safety.

- A. System certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and equipment) with subcomponents meeting each of the following standards as applicable:
- (1) UL 1973 (standard for batteries for use in stationary, vehicle auxiliary power, and light electric rail applications).
 - (2) UL 1642 (standard for lithium batteries).
 - (3) UL 1741 or UL 62109 (inverters and power converters).
 - (4) Certified under the applicable electrical, building, and fire prevention codes as required.

17. Editor's Note: See § 150-229.

- (5) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- B. Site access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local Fire Department and, if the Tier 2 battery energy storage system is located in an ambulance district, the local ambulance corps.
- C. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

§ 150-232. Permit time frame and abandonment.

- A. The special use permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and/or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approvals, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 battery energy storage system and restoration of the site in accordance with the decommissioning plan.

§ 150-233. Enforcement.

Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Town.

§ 150-234. Severability.

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

PART III
POLICIES

Chapter 157
(RESERVED)

[Former Ch. 157, Drug and Alcohol Testing Policy, adopted 12-11-1995, as amended 6-9-2005 by L.L. No. 2-2005, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I). The Town of Concord will follow New York State Department of Transportation guidelines for Drug and Alcohol Testing Policies, as well as the Town of Concord Employee Manual.]

Chapter 162
(RESERVED)

[Former Ch. 162, Fee Schedule, was repealed 10-12-2017 by L.L. No. 2-2017. Building permits and fees are set forth in Ch. 68. The fee schedule shall be available at the Town Clerk's office and on the Town's website at www.townofconcordny.gov.]

Chapter 163
FIRE PERSONNEL

ARTICLE I
Injuries and Compensation

§ 163-2. Failure to report; nonpayment of claim.

§ 163-3. Required information.

§ 163-1. Report of injuries required.

[HISTORY: Adopted by the Town Board of the Town of Concord as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Injuries and Compensation
[Adopted 3-9-1998]

§ 163-1. Report of injuries required.

In the event of an injury (no matter how minor), it is the responsibility of the volunteer fire company chief or officer in charge to inform the Town Supervisor's office within 24 hours of the occurrence.

§ 163-2. Failure to report; nonpayment of claim.

Failure to comply will result in New York State Compensation not recognizing or paying the claim. Therefore, it is imperative that this office be notified as soon as possible.

§ 163-3. Required information.

If the injury occurs on a weekend or holiday, please notify us on the next business day. The following information is required:

- A. Name of injured party.
- B. Address of injured party.
- C. Phone number of injured party.
- D. Phone number of person reporting incident.
- E. Nature of injury.
- F. Action taken on individual (first aid, hospitalization, etc.).
- G. Corrective measures taken to avoid recurrence.
- H. Place of injury (full address).

Chapter 166

GOOD SAMARITAN ACTS

§ 166-1. Assistance to coworkers not required.

§ 166-3. Assistance deemed "Good Samaritan" act.

§ 166-2. Self-administration of first aid.

[HISTORY: Adopted by the Town Board of the Town of Concord. Amendments noted where applicable.]

§ 166-1. Assistance to coworkers not required.

It is not required of an employee of the Town of Concord to assist a coworker in a medical emergency. Appropriate medical assistance is available within a reasonable time by calling the phone numbers posted at each division location.

§ 166-2. Self-administration of first aid.

An employee who is injured may use the materials in the first-aid kits, supplied in our buildings and trucks, for self-administration.

§ 166-3. Assistance deemed "Good Samaritan" act.

Please note that if an employee uses a first-aid kit to assist a coworker (although such action is not required as anyone's duty), we would view this activity as a "Good Samaritan" act.

Chapter 173

INVESTMENT POLICY

- | | |
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| § 173-1. Scope. | § 173-8. Collateralizing of deposits. |
| § 173-2. Objectives. | § 173-9. Safekeeping and collateralization. |
| § 173-3. Delegation of authority. | § 173-10. Permitted investments. |
| § 173-4. Prudence. | § 173-11. Authorized financial institutions and dealers. |
| § 173-5. Diversification. | § 173-12. Purchase of investments. |
| § 173-6. Internal controls. | |
| § 173-7. Designation of depositories. | |

[HISTORY: Adopted by the Town Board of the Town of Concord 1-3-2002. Amendments noted where applicable.]

§ 173-1. Scope.

This investment policy applies to all moneys and other financial resources available for investment on its own behalf or on behalf of any other entity or individual.

§ 173-2. Objectives.

The primary objectives of the Town of Concord's investment activities are, in priority order:

- A. To conform with all applicable federal, state and other legal requirements;
- B. To adequately safeguard principal;
- C. To provide sufficient liquidity to meet all operating requirements; and
- D. To obtain a reasonable rate of return.

§ 173-3. Delegation of authority.

The Town Board's responsibility for administration of the investment program is delegated to the Supervisor, who shall establish written procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a data base or records incorporating description and amounts of investments, transaction dates, and other relevant information and regulate the activities of subordinate employees.

§ 173-4. Prudence.

- A. All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the Town of Concord to govern effectively.
- B. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal, as well as the probable income to be derived.
- C. All participants involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

§ 173-5. Diversification.

It is the policy of the Town of Concord to diversify its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

§ 173-6. Internal controls.

- A. It is the policy of the Town of Concord for all moneys collected by any officer or employee of the government to transfer those funds to the chief fiscal officer within three days of deposit, or within the time period specified in law, whichever is shorter.
- B. The chief fiscal officer is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly, and are managed in compliance with applicable laws and regulations.

§ 173-7. Designation of depositories. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

The banks and trust companies authorized for the deposit of monies are set forth annually by the Town Board at their Organizational Meeting; and reviewed, from time to time, by the Town Board.

§ 173-8. Collateralizing of deposits.

In accordance with the provisions of General Municipal Law § 10, all deposits of the Town of Concord, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured by a pledge of "eligible securities" with an aggregate "market value," as provided by General

Municipal Law § 10, at least equal to the aggregate amount of deposits from the categories designated in Appendix A to the policy.¹

§ 173-9. Safekeeping and collateralization.

- A. Eligible securities used for collateralizing deposits shall be held by a third-party bank or trust company subject to security and custodial agreements.
- B. The security agreement shall provide that eligible securities are being pledged by the bank or trust company as security for the public deposits, together with agreed-upon interest, if any, and any costs or expenses arising out of the collections of such deposits upon default. It shall also provide for the conditions under which the securities may be sold, presented for payment, substituted or released and the events of default which will enable the local government to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the local government, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Town of Concord or its custodial bank or trust company.
- C. The custodial agreement shall provide that pledged securities held by the bank or trust company, or agent of and custodian for the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the collateral. The agreement shall provide for the frequency of revaluation of collateral and for the substitution of collateral when a change in the rating of a security causes ineligibility according to General Municipal Law § 10, Subdivision 1f. Such agreement shall include all provisions deemed necessary and sufficient to secure in a satisfactory manner the local government's interest in the collateral.

§ 173-10. Permitted investments.

- A. As authorized by General Municipal Law § 11, the Town of Concord authorized the chief fiscal officer to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:
 - (1) Special time deposit accounts in a bank or trust company located and authorized to do business in New York State;
 - (2) Certificates of deposit issued by a bank or trust company located and authorized to do business in New York State;
 - (3) Obligations of the United States of America;
 - (4) Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America;
 - (5) Obligations of the State of New York;

1. Editor's Note: Appendix A is available from the Town office.

- (6) Obligations issued pursuant to Local Finance Law § 24.00 or 25.00 (with approval of the State Comptroller) by any municipality, school district or district corporation other than the Town of Concord;
 - (7) Obligations of this local government, but only with any moneys in a reserve fund established pursuant to General Municipal Law § 6-c, 6-d, 6-e, 6-g, 6-h, 6-j, 6-k, 6-l, 6-m, or 6-n.
- B. All investment obligations shall be payable or redeemable at the option of the Town of Concord within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable, in any event, at the option of the Town of Concord within two years of the date of purchase.

§ 173-11. Authorized financial institutions and dealers.

The Town of Concord shall maintain a list of financial institutions and dealers approved for investment purposes and establish appropriate limits to the amount of investments which can be made with each financial institution or dealer. All financial institutions with which the local government conducts business must be creditworthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the Town of Concord. Security dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers. The chief fiscal officer is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians. Such listing shall be evaluated at least annually.

§ 173-12. Purchase of investments.

- A. Such obligations, unless registered or inscribed in the name of the local government, shall be purchased through, delivered to, and held in the custody of a bank or trust company. Such obligations shall be purchased, sold, or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the local government by the bank or trust company. All obligations held in the custody of a bank or trust company pursuant to this subsection shall be held by such bank or trust company pursuant to a written custodial agreement pursuant to General Municipal Law § 10, Subdivision 3a.
- B. The custodial agreement shall provide that securities held by the bank or trust company, as agent of and custodian for the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement shall describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions deemed necessary and sufficient to secure in a satisfactory manner the local government's interest in the collateral.

Chapter 184
(RESERVED)

[Former Ch. 184, Grandfathered Lots, adopted 11-6-1995, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).]

Chapter 190
(RESERVED)

[Former Ch. 190, Personnel Policies, adopted 2-10-2005, as amended 6-9-2005 by L.L. No. 2-2005, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I). See the Town of Concord's Employee Manual.]

Chapter 194

PLANNING BOARD PROCEDURES

§ 194-1. Powers of Chair.

§ 194-5. Public involvement.

§ 194-2. Procedural practices; quorum.

§ 194-6. Appointment; terms; removal.

§ 194-3. Agendas.

§ 194-7. Conduct, eligibility and qualifications.

§ 194-4. Powers of members.

[HISTORY: Adopted by the Town Board of the Town of Concord 5-4-1998. Amendments noted where applicable.]

§ 194-1. Powers of Chair.

The Chair will preside according to the established rules of procedure. That means that he or she should call items to the floor as necessary, and should call for motions, seconds, discussion and votes when appropriate. The Chair is in general charge of procedural regularity, and should rule motions in or out of order, as well as control public input.

§ 194-2. Procedural practices; quorum.

The Board's procedural practice must adhere to certain statutory mandates. The Board cannot officially convene or meet unless a quorum is present. A quorum is a majority of the full membership of the Board, counting absentees and vacancies.

§ 194-3. Agendas.

Agendas are valuable tools to the preparation and conduct of a meeting, but they are not binding in the least. Even with a printed agenda in hand, a Board may take up matters as it chooses and in whatever order it chooses. The appearance of a particular item on a printed agenda does not guarantee its discussion, nor should an item's absence from an agenda prevent it from being brought up. But the agenda itself is nothing more than a procedural tool. The bottom line is that an agenda will help get through the meeting and assist the Board in staying organized.

§ 194-4. Powers of members.

Any Board member, including the Chairperson, may make or second motions, may take part in discussion, and may, of course, vote. Contrary to a popular misconception, the Chair is not required to abstain from voting except to break a tie. The Chair may vote on any motion, at any time.

§ 194-5. Public involvement.

The Open Meeting Law also requires that the public be allowed to be present at the meeting. In practical terms, this means that everyone must be able to hear and follow the official proceedings. All questions asked by the public must be directed to the Chairperson.

§ 194-6. Appointment; terms; removal.

Current state enabling law provides that members of the Planning Board are appointed by the governing board, for a term of years equal to the number of members of the Board. Terms should begin at the start of our municipality's official year, and end at the end of a future official year. At the end of your term, you may be replaced for any reason. During your term you may be removed by the appointing authority only "for cause," and only after sufficient notice, a statement of charges, and a hearing at which you are accorded an opportunity to defend yourself.

§ 194-7. Conduct, eligibility and qualifications.

- A. As a member of a Planning Board, you are a "public officer." All public officers must act and perform in an ethical fashion. What are the standards which govern ethical conduct under the enabling statutes? General Municipal Law, Article 18, establishes several requirements. First, it prohibits a public officer from having any interest in a private contract with his or her municipality, if he or she has the power or duty to "(a) negotiate, prepare authorize or approve the contract or authorize or approve payment thereunder; (b) audit bills or claims under the contract; or (c) appoint an officer or employee who has (any of those powers or duties)." An "interest" means "a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee services."
- B. Being a public officer means you are held to a number of legal requirements: You must be at least 18 years old, you must be a United States citizen, and a resident of the municipality on whose board you serve. Attendance is mandatory. Any member who is absent for four regular scheduled meetings will be dismissed, unless it has been for medical reasons.
- C. Every member of our Planning Board should be trained in the knowledge and skills required to review development proposals. These range from a grounding in legal procedure to the technical elements of map reading and the review of environmental data.

Chapter 199

SMOKING

§ 199-1. Smoking prohibited on Town property.

§ 199-2. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Concord 3-12-1990; amended in its entirety 5-9-2024 by L.L. No. 1-2024. Subsequent amendments noted where applicable.]

§ 199-1. Smoking prohibited on Town property.

- A. Purpose. The purpose of this chapter is to preserve the public health and welfare by creating a healthier community, and a cleaner environment by prohibiting the use of any tobacco products and smoking of any kind in all Town buildings and on Town properties, including but not limited to: Town parks, playgrounds, trails and athletic fields and regardless of whether such properties are owned or leased by the Town.
- B. The use of tobacco products and smoking of any kind, including but not limited to cigarettes, pipes, cigars, smokeless tobacco, cannabis, vaping and the use of electronic cigarettes, or other cartridge devices, is prohibited at or in all Town properties, buildings or structures. The use of any tobacco products and smoking is also prohibited during any event permitted or sponsored by the Town.
- C. It is unlawful for any person to dispose of any tobacco or smoking materials, including, but not limited to, cigarette/cigar butts and filters or vape cartridges within any Town building, Town park, Town playground, or Town athletic field in any manner other than in a trash receptacle.
- D. "No Use of Tobacco or Smoking" signs shall be placed at or near the entrance to Town properties and buildings.
- E. This tobacco and smoking law shall be prominently posted upon the Town Bulletin Board and in each separate building in which Town employees work.
- F. Employees, volunteers, students, guests, visitors, clients, caretakers, family members, vendors or other persons using or present in Town buildings or on Town properties who are violating this section of the law may be removed from said building or property if they fail to comply with a reasonable directive to refrain from such activities.

§ 199-2. Penalties for offenses.

- A. Any person who shall violate any provision of this chapter shall be punished by a fine not to exceed \$250 per occurrence.

- B. In addition to this penalty, the Town Supervisor, or the designee of the Town Supervisor, may revoke for a period of one year any and all Town-issued permits, licenses, and/or passes held by an individual or organization in violation of this chapter. Further, any individual or organization in violation of this chapter may be removed from, and refused admission to, any area stated in this chapter.

DISPOSITION LIST

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Concord reviewed for codification, indicating for each its inclusion in the Code or the reason for exclusion. The last legislation reviewed for the 2025 publication of the Code was L.L. No. 4-2025, adopted October 8, 2025.

§ DL-1. Disposition of legislation.

L.L. No.	Adoption Date	Subject	Disposition
1-2005	5-12-2005	Town Hall business hours	Repealed by L.L. No. 1-2006
2-2005	6-9-2005	Adoption of Code; Town Board amendment; zoning amendment; personnel policies amendment	Chs. 1, Art. I; 47; 150; 190
1-2006		Repeal of L.L. No. 1-2005	Repealer only
2-2006		Increase salary of Assessor	NCM
1-2007		Moratorium	NCM
1-2008	3-6-2008	Vehicles and traffic: parking amendment	Ch. 142, Art. I
2-2008	3-6-2008	Fire prevention and building construction: administration and enforcement	REP
3-2008	3-6-2008	Zoning amendment	Ch. 150
4-2008	8-14-2008	Taxation: Cold War veterans exemption	Ch. 134, Art. IV
1-2009	3-12-2009	Taxation: Grievance Day	Ch. 134, Art. V
2-2009	6-11-2009	Zoning amendment	Ch. 150
3-2009	10-8-2009	Animals: dog control amendment	Ch. 53, Art. II
4-2009	12-10-2009	Outdoor furnaces	REP
1-2010	4-8-2010	Parks and recreation areas repealer	Ch. 101, reference only
2-2010	12-9-2010	Animals: licensing and identification of dogs	Ch. 53, Art. III

L.L. No.	Adoption Date	Subject	Disposition
1-2011	3-11-2011	Change from elected Assessor to appointed Assessor	Not approved
1-2012	10-11-2012	Tax levy limit override	NCM
1-2013	3-14-2013	Taxation: gold star parents exemption	Ch. 134, Art. VI
2-2013	10-10-2013	Tax levy limit override	NCM
1-2014	2-13-2014	Contracts: best value	Ch. 9, Art. I
2-2014	6-12-2014	Zoning Map amendment	NCM
3-2014	7-10-2014	Animals: dog control amendment	Ch. 53, Art. II
1-2016	6-9-2016	Moratorium on siting of commercial solar power projects	NCM
1-2017	3-9-2017	Zoning amendment	Ch. 150
2-2017	10-12-2017	Fire prevention and building construction: administration and enforcement amendment; fee schedule repealer	Ch. 162, reference only

L.L. No.	Adoption Date	Subject	Disposition	Supp. No.
1-2018	2-8-2018	Taxation: Cold War Veterans Exemption Amendment	Ch. 134, Art. IV	3.1
2-2018	11-8-2018	Tax Levy Limit Override	NCM	3.1
1-2019	5-9-2019	Flood Damage Prevention	Ch. 76	3.1
2-2019	6-13-2019	Zoning Amendment	Ch. 150	3.1
3-2019	10-10-2019	Tax Levy Limit Override	NCM	3.1
1-2020	10-8-2020	Tax Levy Limit Override	NCM	3.1
1-2021	6-10-2021	Zoning Amendment	Ch. 150	3.1
1-2022	3-10-2022	Zoning Map Amendment	NCM	3.1
2-2022	2-10-2022	Zoning Amendment	Ch. 150	3.1
3-2022	10-13-2022	Tax Levy Limit Override	NCM	3.1
1-2023	3-29-2023	Property Tax Exemption	Ch. 134, Art. VII	
2-2023	4-13-2023	Assessor Amendment	Ch. 4	

L.L. No.	Adoption Date	Subject	Disposition	Supp. No.
3-2023	7-13-2023	Craneridge District	Ch. 150, Art. XXA	
4-2023	10-5-2023	Moratorium (Wind Energy Systems)	NCM; see footnote in Ch. 150	
1-2024	5-9-2024	Smoking Amendment	Ch. 199	
2-2024	6-13-2024	Rezoning	NCM	
3-2024	7-22-2024	Moratorium (Battery Energy Storage System Facilities)	NCM; see footnote in Ch. 150	
4-2024	7-22-2024	Moratorium (Solar Energy Facilities)	NCM; see footnote in Ch. 150	
5-2024	10-10-2024	Tax Levy Limit Override	NCM	
1-2025	2-13-2025	Zoning Map Amendment	NCM	
2-2025	6-12-2025	Moratorium Extension (Battery Energy Storage Facilities)	NCM; see footnote in Ch. 150	
3-2025	6-12-2025	Moratorium Extension (Solar Energy Facilities)	NCM; see footnote in Ch. 150	
4-2025	10-8-2025	Tax Levy Limit Override	NCM	

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