

Chapter 1

GENERAL PROVISIONS

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

ARTICLE I

Adoption of Code

[Adopted 5-3-2004 by L.L. No. 1-2004]

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Village of Plandome Heights, as codified by General Code Publishers Corp., and consisting of Chapters 1 through 140, together with an Appendix, shall be known collectively as the "Code of the Village of Plandome Heights," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Village of Plandome Heights" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law, ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Board of Trustees of the Village of Plandome Heights, and it is the intention of said Board that each such provision contained within the Code is hereby reaffirmed as it appears in said Code. Only such provisions of former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

§ 1-3. Repeal of enactments not included in Code.

All local laws and ordinances of a general and permanent nature of the Village of Plandome Heights in force on the date of the adoption of this local law and not contained in such Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this local law.

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local laws and ordinances provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, rights and obligations, which are hereby expressly saved from repeal:

A. Any right or liability established, accrued or incurred under any legislative provision of the Village of Plandome Heights prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.

B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Village of Plandome Heights or any penalty, punishment or forfeiture which may result therefrom.

C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law, brought pursuant to any legislative provision of the Village of Plandome Heights.

D. Any agreement entered into or any franchise, license, right, easement or privilege heretofore granted or conferred by the Village of Plandome Heights.

E. Any local law or ordinance of the Village of Plandome Heights providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Village of Plandome Heights or any portion thereof.

F. Any local law or ordinance of the Village of Plandome Heights appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Village of Plandome Heights or other instruments or evidence of the Village's indebtedness.

G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property, or any lawful contract, agreement or obligation.

H. The levy or imposition of special assessments or charges.

I. The annexation or dedication of property.

J. Any local law or ordinance relating to salaries and compensation.

K. Any local law or ordinance amending the Zoning Map.

L. Any local law or ordinance relating to or establishing a pension plan or pension fund for municipal employees.

M. Any local law or ordinance or portion of a local law or ordinance establishing a specific fee amount for any license, permit or service obtained from the Village.

N. Any local law adopted subsequent to 2-15-2003.

§ 1-5. Severability.

If any clause, sentence, paragraph, section, article, chapter or part of this local law or of any local law, ordinance or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, chapter or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-6. Copy of Code on file.

A copy of the Code, in loose-leaf form, has been filed in the office of the Village Clerk of the Village of Plandome Heights and shall remain there for use and examination by the public until final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified by the Village Clerk of the Village of Plandome Heights by impressing thereon the Seal of the Village of Plandome Heights, and such certified copy shall remain on file in the office of said Village Clerk to be made available to persons desiring to examine the same during all times while said Code is in effect. The enactment and publication of this local law, coupled with the availability of a copy of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Village of Plandome Heights" or any new local laws or resolutions, when enacted or adopted in such form as to indicate the intention of the Board of Trustees to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Board of Trustees deems desirable.

§ 1-8. Code book to be kept up-to-date.

It shall be the duty of the Village Clerk to keep up-to-date the certified copy of the book containing the Code of the Village of Plandome Heights required to be filed in the office of the Village Clerk for use by the public. All changes in said Code and all local laws and resolutions adopted by the Board of Trustees subsequent to the enactment of this local law in such form as to

indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws or resolutions until such changes, local laws or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-9. Sale of Code book; supplementation.

Copies of the Code, or any chapter or portion of it, may be purchased from the Village Clerk, or an authorized agent of the Clerk, upon the payment of a fee to be set by resolution of the Board of Trustees. The Clerk may also arrange for procedures for the periodic supplementation of the Code.

§ 1-10. Penalties for tampering with Code.

Any person who, without authorization from the Village Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Village of Plandome Heights or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Village of Plandome Heights to be misrepresented thereby or who violates any other provision of this local law shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-11. Changes in previously adopted legislation; new provisions.

A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Village of Plandome Heights, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection B hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. It is the intention of the Board of Trustees that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.

B. In addition, the amendments and/or additions as set forth in Schedule A attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)

§ 1-12. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Village of Plandome Heights, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-13, inclusive.

§ 1-13. When effective.

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

ARTICLE II

Fees

[Adopted 5-3-2004 by L.L. No. 1-2004]

§ 1-14. Schedule of Fees and Payments.

The Board of Trustees shall establish and amend by resolution a Schedule of Fees and Payments for all items for which the Village charges a fee or is entitled to payment. The Schedule shall be maintained in the Village Clerk's office and is hereby declared to be a part of this Code.

ARTICLE III

General Penalty

[Adopted 5-3-2004 by L.L. No. 1-2004]

§ 1-15. Penalties for offenses.

Except where specifically provided elsewhere, any person who shall violate any provision of the Code of the Village of Plandome Heights shall be punishable for each day said violation continues by a fine of not more than \$250 or imprisonment for a period not to exceed 15 days, or both such fine and imprisonment.

ARTICLE IV

Boards

[Adopted 5-3-2004 by L.L. No. 1-2004]

§ 1-16. Number of members.

Each appointed board of the Village shall consist of 5 members and up to 2 alternate members, appointed by the Mayor and subject to the approval of the Board of Trustees.

§ 1-17. Terms of office.

The appointment of members to each board shall be of terms so fixed that 1 member's term shall expire at the end of the Village official year in which such members were initially appointed, and the remaining members' terms shall be so fixed that 1 member's term shall expire at the end of each official year thereafter. At the expiration of each original member's appointment, the

reappointed member or the replacement member shall be appointed for a 5-year term. The alternate members shall be appointed for a 1-year term.

ARTICLE V

Residency of Clerk, Deputy Clerk and Treasurer

[Adopted 1-10-2005 by L.L. No. 1-2005]

§ 1-18. Residency requirements.

The Village Clerk, the Deputy Village Clerk, and the Village Treasurer shall not be required to be residents of the Village, provided that they are residents of the County of Nassau, in the State of New York.

Chapter 4

ARCHITECTURAL REVIEW BOARD

[HISTORY: Adopted by the Board of Trustees 2-7-2000 by L.L. No. 1-2000; amended in its entirety 5-1-2000 by L.L. No. 4-2000. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Boards — See Ch. 1, Art. IV.

Building construction — See Ch. 43.

Zoning — See Ch. 140.

§ 4-1. Findings and purpose.

It is the purpose of this chapter to preserve and promote the character and appearance, and conserve the property values of the Village by providing procedures for an architectural review of buildings and structures henceforth erected, reconstructed or altered in the Village, and thereby to encourage good qualities of exterior building design and good appearances and to relate such design and appearances to existing buildings and structures on the site and to surrounding buildings and structures, and to prevent such design and appearances as are inappropriate by reason of poor quality of exterior design, monotonous similarity or visual discord in relation to existing buildings or structures on the site or on surrounding sites.

§ 4-2. Creation; terms and qualifications of members.

A. There is hereby created an Architectural Review Board (ARB). The terms and appointment of members and alternate members shall be as set forth in Chapter 1,

General Provisions, Article IV, Boards, of this Code. [Amended 5-3-2004 by L.L. No. 1-2004]

B. Alternate members may serve in the absence of any member. Alternate members shall attend regularly scheduled meetings of the ARB or such meetings as determined by the ARB, and shall be without vote in regard to any application unless he/she is serving in the absence of another member.

C. All members of the ARB shall be persons deemed specially qualified by reason of training, experience or civic interest and by reason of sound judgment to judge the effects of a proposed building or exterior alteration on the nature and character of the community and of the immediate neighborhood, as provided in this chapter.

§ 4-3. Architectural consultant.

The Mayor will designate an architect, licensed in the state of New York, subject to the approval of the Board of Trustees, to serve as a consultant to the ARB. The term of the architectural consultant shall be for 1 official year. An architect so retained shall be without vote in regard to any application.

§ 4-4. Board procedures.

A. The ARB shall meet monthly as needed. All such meetings shall be open to the public in accordance with the Open Meetings Law.

B. A majority of the ARB shall constitute a quorum for the transaction of business.

C. The ARB shall keep a record of its proceedings. The ARB shall designate a recording secretary to prepare such records. Such records shall be kept in the Village office.

D. A vote of the majority of the 5 members of the ARB shall be necessary to take any action.

§ 4-5. Application and review procedures.

A. As soon as practicable, and in any event within 10 business days after receipt of an application for a permit involving the exterior appearance of a new or existing building or structure, or a group of such buildings or structures by the Building Inspector, the Building Inspector shall refer said application to the Village Clerk, who shall promptly transmit the same to the Chair of the ARB or, in the absence of the Chair, to the Deputy Chair of the ARB. Any permit application that does not comply with the zoning regulations must be approved by the Board of Appeals prior to submission to the Architectural Review Board. The Building Inspector shall only refer to the Village Clerk permit applications that

are complete and which comply in all respects to Plandome Heights Building and Zoning Code. The Chair or Deputy Chair shall review the application and determine within 15 business days whether further review by the ARB is required or appropriate. [Amended 5-3-2004 by L.L. No. 1-2004]

B. Such further review shall be required by the Chair or Deputy Chair if the application is for construction of any new building or structure, or for an addition to or reconstruction or alteration of any existing building or structure in such manner as to change the exterior character or appearance of the building or structure. Such further review may be required by the Chair or Deputy Chair in all other instances. Any determination by the Chair or Deputy Chair not to conduct further review shall be communicated to the members of the Board of Trustees, including the Mayor, any one of whom may, within 10 days after such communication, overrule such determination and require further review.

C. Where further review by the ARB is to be conducted, the ARB shall meet with the applicant to consider the plans within 15 days of the Chair or Deputy Chair's determination. Such review shall be in accordance with the standards set forth in this chapter. Upon completion of such review, the ARB may approve, approve with modifications, or disapprove any matter referred to it by a concurring vote of a majority of the entire ARB. If the applicant disagrees with the ARB's decision, it may request a public hearing on the application.

D. The ARB shall conduct a public hearing within 28 days after receipt of the applicant's request. At least 10 days prior to such public hearing, the applicant for such permit shall give written notice of such public hearing to all owners of property within 200 feet of the property which is the subject of the application, as indicated on the most recent assessment roll of the Village, by certified mail, return receipt requested. Proof of mailing of such notice shall be filed with the Village Clerk no later than five days prior to such public hearing, and returned certified mail receipts shall be filed with the Village Clerk no later than one day before the public hearing. [Amended 3-6-2006 by L.L. No. 3-2006]

E. Regular meetings of the ARB shall be posted on the Village public bulletin board and on the local government access channel.

F. In addition to any plans, applications and specifications required by the Building Inspector, applications must be accompanied by plans showing elevations of all proposed new buildings and structures and all affected elevations in the case of additions or alterations to existing buildings and structures. All plans shall be signed and sealed by an architect or engineer licensed in New York State. The plans shall identify the colors and types of materials proposed and, unless waived by the ARB, material and color samples shall be brought to the hearing by the applicant. Photographs of the existing structure shall also be submitted.

G. The Building Inspector or ARB shall be entitled to require the applicant to provide any additional plans deemed necessary for a proper review of the application.

H. Final approved maps or plans, materials and specifications may not be altered in any way without the express prior approval of the ARB. Any requested changes of the approved plans or maps must be submitted for review at least 7 days prior to the next regularly scheduled meeting of the ARB and no construction work involving such changes shall be commenced or continued until approval of the ARB is granted and a building permit is issued. The ARB shall promptly act upon the revised application.

I. The Building Inspector shall, in cases of violation of the procedure in Subsection H of this section, order all work to be halted and, if necessary, revoke the building permit until such time that amended plans or maps are approved by the ARB.

§ 4-6. Standards for actions.

A. In considering an application for a permit, the ARB shall take into account the natural features of the site and surrounding areas, the exterior design and appearance of existing buildings and structures, the character of the site and area, the fact that the Village is a community of traditional homes and the peculiar suitability of the site or area for particular purposes, all with a view toward conserving the values of property, encouraging the most appropriate and consistent uses of land in the Village and maintaining the traditional nature of the Village.

B. The ARB may approve an application upon finding that the building or structure for which the permit is requested, if erected or altered in accordance with the submitted plan:

(1) Would be in harmony with the purposes of this chapter as enumerated in Subsection A;

(2) Would not be visually offensive or inappropriate by reason of incompatible color, material, poor quality of exterior design or appearance, or visual or architectural discord in relation to the site or surrounding properties in the immediate vicinity;

(3) Would not mar or adversely affect the appearance of the area; and

(4) Would not be detrimental to the character of the neighborhood.

C. In approving an application, the ARB may impose appropriate conditions and safeguards, including a requirement that an applicant plant bushes, shrubs or other

landscaping, designed to prevent or minimize adverse effects of the proposed construction or alteration. [Amended 5-3-2004 by L.L. No. 1-2004]

D. The ARB may disapprove any application for a permit, provided that it finds and states that the building or structure for which the permit is requested would, if erected or altered as proposed:

(1) Cause 1 or more of the enumerated effects in Subsection B to be violated.

E. Prior to disapproving any application, the ARB shall afford the applicant an opportunity to meet with it and discuss suggestions for changes in the application. The applicant will thereafter have a period of 30 days to submit a revised application in conformity with the ARB's suggested changes.

§ 4-7. Guidelines.

A. Purpose. These guidelines are intended to facilitate the design review process by encouraging certain design characteristics which are deemed appropriate in achieving the standards set forth in § 4-6.

B. Massing.

(1) Large undifferentiated volumes and/or wall surfaces should be avoided.

(2) Abrupt transitions between volumes of a building should be avoided.

(3) Pitched roofs are preferred over flat roofs.

(4) Pitched roofs should consist of at least 2 sloped surfaces, except when adjoining higher vertical surfaces (e.g., shed roofs).

(5) Pitched roofs shall have a minimum pitch of 1 to 3 (1:3), except at dormers.

C. Materials.

(1) Designs should rely on a limited palette of materials. It is preferred that 1 material, such as brick or wood, be used for the body of the building. The use of trim, trim colors and decorative elements such as shutters, molding or other decorative ornamentation, are encouraged.

(2) The ARB strongly encourages the use of durable and enduring materials with proven performance. In particular, cladding and roofing will be reviewed for durability and appearance.

(3) Compatibility of finishing materials with the construction and surrounding dwellings will be a specific consideration in evaluating the applicant's proposed improvements.

D. Garages. If located in a front elevation of a residential building, the door or doors of a garage shall not have a total horizontal dimension which exceeds 50% of the horizontal dimension of the front elevation of the residential building.

E. Mechanical equipment. Exterior mechanical equipment should be excluded from the front elevation, indicated on all drawings, and shielded from view of all streets and adjacent properties.

F. Color. The ARB encourages the use of colors, singly or in combination, which are consistent with the visual character of the existing buildings and landscape of the Village. Strident color schemes or colors which compete with those of the natural landscape are strongly discouraged.

G. Design compatibility.

(1) In general, adjacent structures shall not be identical nor mirror images of one another.

(2) The massing and style chosen for structures should match the architectural characteristics of the applicant's house, and should be suitable and appropriate within the context of adjacent existing buildings and the neighborhood.

(3) With any submitted design, the massing, size and shape of all openings, decorative trim and ornamentation should be stylistically consistent.

H. Impact on neighbors. Consideration of the proposed improvement will be given to both visual and functional impacts on neighbors. Visual impact refers to the aesthetic appearance of the property which includes design quality, massing and architectural style. Functional impact refers to such concerns as view, sunlight, ventilation and drainage. Examples of functional impacts include structural additions, which would cause a loss of sunlight to a neighboring dwelling, and an alteration in topography, which would change natural drainage to the detriment of a neighboring property.

§ 4-8. Failure of ARB to act.

If, within 28 days after the date on which an application has been referred to the ARB, or after a revised application has been submitted in accordance with § 4-6E, or such longer period as may be consented to by the applicant, the ARB has not acted on the application, the application shall be deemed approved.

§ 4-9. Action by Building Inspector.

The Building Inspector shall not issue any permit unless the application has been approved by the ARB. In the event that the ARB approves an application on conditions, the Building Inspector shall not issue any permit until all changes in the plans have been made to conform to such conditions and unless all such conditions have been met or complied with. Unless otherwise extended by the ARB, the approval expires 90 days from the date that the decision is filed in the Village Clerk's Office, and, thereafter, the Building Inspector shall not issue a building permit. A request by the applicant for an extension of time to obtain the permit shall be made within the initial ninety-day period in which to obtain the permit.

§ 4-10. Fees. [Added 4-2-2001 by L.L. No. 2-2001]

The applicant shall be responsible for the payment of all fees set forth in the Schedule of Fees and Payments maintained by the Village Clerk.

Chapter 8

ASSESSMENT

[HISTORY: Adopted by the Board of Trustees 1-9-1989 by L.L. No. 1-1989. Amendments noted where applicable.]

GENERAL REFERENCES

Taxation — See Ch. 115.

§ 8-1. Intent.

The intent of the Board of Trustees is to implement New York State Real Property Tax Law § 1402(3) providing for the voluntary termination of the Village's status as an assessing unit, as now provided in the New York State Village Law and the New York State Real Property Tax Law. It is also the intent of this chapter to abolish the position of Assessor and to terminate any and all responsibility as provided by law for the review of the assessments of real property located within the Village.

§ 8-2. Cessation of Village as assessing unit.

On or after the effective date of this chapter, the Village shall cease to be an assessing unit.

§ 8-3. Assessor's position abolished.

The position of Assessor in the Village is hereby abolished.

§ 8-4. Board of Assessment Review Abolished.

The Board of Assessment Review in the Village is hereby abolished.

§ 8-5. Taxes to be levied on county assessment roll.

On or after the effective date of this chapter, taxes in the Village shall be levied on a copy of the applicable part of the assessment roll of the County of Nassau with the taxable status date of such County controlling for Village purposes.

§ 8-6. Copy to be filed with county and state.

Within 5 days of the effective date of this chapter, the Board of Trustees shall file a copy of such chapter with the Clerk and Assessor (or Board of Assessors) of the County of Nassau and with the State Board of Real Property Services.

§ 8-7. When effective.

This chapter shall take effect immediately upon filing with the Secretary of State; provided, however, that such chapter is subject to a permissive referendum and the Village Clerk shall forthwith proceed to notice such fact and conduct such referendum if required by petition. This chapter shall remain in full force and effect unless and until rescinded by enactment of a subsequent local law under New York State Real Property Tax Law § 1402(3), as may be amended from time to time, subject to the referendum and notice provisions set forth therein.

Chapter 19

DEFENSE AND INDEMNIFICATION

[HISTORY: Adopted by the Board of Trustees 5-3-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

§ 19-1. Legislative intent.

The purpose of this chapter is to provide legal and financial protection for those individuals serving the Village from losses which may be sustained by them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this chapter, the Board of Trustees finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees and further finds that such security is also required for local personnel. By enactment of this chapter, the Board of Trustees does not intend to limit or otherwise abrogate any existing right or responsibility of the Village or its employees with regard to indemnification or legal defense. It is solely the intent of this chapter to provide similar coverage for local employees as presently provided for state employees, so as to continue to attract qualified individuals to local government service.

§ 19-2. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE —% Any person holding a position by election, appointment or employment in the service of the Village whether or not compensated or a volunteer expressly authorized to participate in a municipally sponsored volunteer program, but the term shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

§ 19-3. Entitlement to defense.

A. Upon compliance by the employee with the provisions of § 19-5, the Village shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties or which is brought to enforce a provision of the United States Code Title 42, §§ 1981 or 1983. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the Village.

B. Subject to the conditions set forth in Subsection A, the employee shall be entitled to be represented by the Village Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Village Attorney determines, based upon his investigation and review of the facts, that representation by the Village Attorney would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The Village Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel of his choice. The Village Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the Village Attorney shall so certify to the Board of Trustees. Reasonable attorneys' fees and litigation expenses shall be paid by the Village to such private counsel from time to time during the pendency of the civil action or proceedings, subject to certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Village Treasurer. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

C. Where the employee delivers process and a request for defense to the Village Attorney as required by § 19-5, the Village Attorney shall take the necessary steps, including the retention of private counsel under the terms and conditions provided in Subsection B on behalf of the employee, to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§ 19-4. Entitlement to indemnification.

A. The Village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

B. An employee represented by private counsel shall cause to be submitted to the Board of Trustees any proposed settlement which may be subject to the indemnification by the Village, and if not inconsistent with the provisions of this section, the Mayor shall certify such settlement and submit such settlement and certification to the Village Attorney. The Village Attorney shall review such proposed settlement as to form and amount and shall give his approval if in his judgment the settlement is in the best interest of the Village. Nothing in this subsection shall be construed to authorize the Village to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Village Attorney.

C. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within 30 days of the date of entry or settlement, upon the Mayor, and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such Mayor. If the Village Attorney concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Village Treasurer.

D. Nothing in this chapter shall authorize the Village to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Village shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties; has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State of New York or of the United States.

§ 19-5. Responsibility of employee.

The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Village Attorney or his assistant at his office, by the employee, of the original or a copy of any summons, complaint, process, notice, demand or pleading within 5 days after he is served with such document and upon the full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding against the state based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the Village provide for his defense pursuant to this chapter.

§ 19-6. Rights of other parties.

The benefits of this chapter shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provisions of this section be construed to affect, alter or repeal any provision of the New York State Workers' Compensation Law.

§ 19-7. Entitlement to statutory benefits.

Pursuant to the provisions of New York State Public Officers Law § 18, the Village hereby confers upon its employees and officers, and agrees to be liable for the costs and expenses of, the benefits of said § 18, which benefits shall supplement and be available in addition to defense or indemnification protection conferred by this chapter.

§ 19-8. Rights of insurers.

The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

§ 19-9. Applicability.

The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

§ 19-10. Legal rights preserved.

Except as otherwise specifically provided in this chapter, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the Village, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with or by reason of any other provision of state or federal statutory or common law.

Chapter 23

ETHICS, CODE OF

[HISTORY: Adopted by the Board of Trustees 5-3-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

§ 23-1. Purpose.

Pursuant to the provisions of New York State General Municipal Law § 806, the Board of Trustees recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government. It is the purpose of this chapter to promulgate these rules of ethical conduct for the officers and employees of the Village. These rules shall serve as a guide for official conduct of the officers and employees of the Village. The rules of ethical conduct of this chapter as adopted shall not conflict with, but shall be in addition to, any prohibition of New York State General Municipal Law Article 18 or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

§ 23-2. Definitions.

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

INTEREST —% A direct or indirect pecuniary or material benefit accruing to a Village employee as the result of a contract with the Village. For purposes of this chapter, a Village employee shall be deemed to have an interest in the contract of:

- A. His spouse, minor children and dependents, except a contract of employment with the Village.
- B. A firm, partnership or association of which such Village employee is a member or employee.
- C. A corporation of which such Village employee is an officer, director or employee.
- D. A corporation, any stock of which is owned or controlled directly or indirectly by such Village employee.

MUNICIPAL OFFICER OR EMPLOYEE —% An officer or employee of the Village, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

§ 23-3. Standards of conduct.

Every officer or employee of the Village shall be subject to and abide by the following standards of conduct:

A. Gifts. He shall not directly or indirectly, solicit any gift; or accept or receive any gift having a value of \$75 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.

B. Confidential information. He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.

C. Representation before one's own agency. He shall not receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.

D. Representation before any agency for a contingent fee. He shall not receive, or enter into any agreement, express or implied for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

E. Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Board of Trustees and any officer or employee of the Village, whether paid or unpaid, who participates in the discussion or gives official opinion to the Board of Trustees on any legislation before the Board of Trustees shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.

F. Investments in conflict with official duties. He shall not invest or hold any investment directly or indirectly in any financial, business, commercial or other private transaction, which creates a conflict with his official duties.

G. Private employment. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.

H. Future employment. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Village in relation to any case, proceeding or application in which he personally

participated during the period of his service or employment or which was under his active consideration.

§ 23-4. Survival of claims.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the Village, or any agency thereof on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 23-5. Distribution of Code of Ethics.

A. The Mayor shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Village 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 office or employment.

B. 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 the enforcement provisions thereof.

§ 23-6. Penalties for offenses.

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this code may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

Chapter 35

Chapter 35

ANIMALS

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

ARTICLE I

Use of Buildings and Premises

[Derived from Secs. 8.4 and 8.5 of the General Ordinances]

§ 35-1. Housing of domestic animals.

No building or structure or part thereof shall be used for housing of fowl or domestic animals other than domestic cats and dogs.

§ 35-2. Harboring of other animals.

No premise shall be used or occupied and no structure may be erected or maintained for the harboring of pigeons, swine, goats, horses, donkeys, rabbits, foxes, minks, skunks, or other similar fur-bearing animals or for the keeping of bees.

§ 35-3. Penalties for offenses. [Added 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation of this article shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

ARTICLE II

Dogs and Cats

[Adopted 7-1-1957]

§ 35-4. Restraint of dogs. [Amended 4-7-1980 by L.L. No. 1-1980; 5-3-2004 by L.L. No. 1-2004]

It shall be unlawful for a dog to be on public property or on private property other than its owner's property unless the dog is effectively restrained in the immediate custody and control of its owner or possessor by a chain or leash not exceeding 6 feet in length. A person owning or possessing a dog which is not so restrained with or without the knowledge, consent or fault of such person shall be guilty of a violation of this article. It shall be presumed that the presence of a dog on private property of a person other than the dog's owner or possessor is without the consent of the owner or person in possession of such private property.

§ 35-5. Seizure and confinement of dogs. [Amended 4-7-1980 by L.L. No. 1-1980; 5-3-2004 by L.L. No. 1-2004]

Any dog found on public property or on private property without the consent of the owner or person in possession of such private property which is not effectively restrained by a chain or leash as provided in § 35-4 of this article or any dog unidentified or unlicensed as provided in New York State Agriculture and Markets Law Article 7 shall be seized by any duly appointed Animal Control Officer or Peace Officer and thereafter confined in the Town of North Hempstead Animal Shelter. Any such dog that cannot be safely seized may be destroyed by any duly appointed Animal Control Officer or Peace Officer or duly authorized officer of the Village.

§ 35-6. Town impounding, redemption and disposal regulations applicable.

The impounding of, redemption of, the destroying of, and the disposal of a dog or dogs shall be in accordance with the regulations and laws of the Town of North Hempstead pertaining thereto.

§ 35-7. Defecation on public property. [Added 5-6-1991 by L.L. No. 2-1991; amended 5-3-2004 by L.L. No. 1-2004]

No person owning, harboring or possessing any dog or cat shall allow it to defecate on any common thoroughfare, sidewalk, play area, park or on any public property, nor on any private property without the permission of the owner of said property. The foregoing restriction shall not apply to that portion of any street lying between the curblines, so long as all feces deposited by such dog or cat shall be immediately removed and disposed of by any sanitary method. No dog or cat feces shall be deposited in the Village storm drains.

§ 35-8. Ownership and harboring of dogs and cats. [Added 4-6-1992 by L.L. No. 1-1992; amended 5-3-2004 by L.L. No. 1-2004; 7-2-2007 by L.L. No. 3-2007]

A. No person shall own, harbor or possess more than 3 dogs or cats, of any sex or breed, on any one residential property within the Village. For purposes hereof, "harbor" or "harboring" shall mean providing shelter, food, sustenance or recreational facilities, or any combination of same for any dog or cat. By way of example, and not in limitation, "harboring" shall include permitting or suffering the presence of any dog or cat on any residential property within the Village, inside of any primary or accessory structure on any such residential property, or in any temporary or makeshift structure or cover, comprised of any combination of materials, designed or reasonably likely to be used, for the purpose of providing shelter to any dog or cat; or providing food, water or any consumable liquid, in any containers designed for use, or reasonably likely to be used by, a dog or cat; or providing on any residential property within the Village play materials or devices or recreational materials or devices used to attract, or reasonably likely to attract, domestic dogs or cats on to any residential property within the Village.

B. The presence on any one residential property of more than 3 dogs or cats at any one time shall be presumptive evidence that the owner of said property is in violation of this section. It shall be an affirmative defense to any alleged violation of this section that all persons residing at such property own, in the aggregate, not more than 3 dogs or cats, and that no person residing at such property has caused, suffered or permitted to exist any of the instances of "harboring" set forth in Subsection A of this section.

C. For the purposes of this section, it shall be presumed that any dog or cat harbored in a residential dwelling is owned, harbored and possessed by all adults residing in the residential dwelling wherein the dog or cat is being harbored.

D. Violations; appearance tickets.

(1) The Animal Control Officer of the Town of North Hempstead observing a violation of any provision of this section shall be authorized to issue and serve an appearance ticket for such violation.

(2) Any person observing a violation of any provision of this section may personally appear before the Village Clerk and report such violation. Said person may also sign and swear to the appropriate accusatory instrument

as required by law and thereby commence prosecution of the alleged violator.

E. Any person or persons who shall violate any provision of this section shall, upon conviction, be punishable as set forth in § 35-9 below.

F. All persons subject to this section shall have 90 days from the effective date hereof to comply with this section.

§ 35-9. Penalties for offenses. [Amended 9-12-1988 by L.L. No. 2-1988; 5-3-2004 by L.L. No. 1-2004; 7-2-2007 by L.L. No. 3-2007]

In addition to or as an alternative to any penalty provided herein or by law, any person who violates any provision of this Article II shall be guilty of a violation punishable by a fine not to exceed \$1,000 for conviction of a first offense; upon conviction for a second offense, both of which were committed within a period of 5 years, punishable by a fine not less than \$1,000 nor more than \$3,000; and upon conviction for a third or subsequent offense, all of which were committed within a period of 5 years, punishable by a fine not less than \$3,000 nor more than \$5,000.

Chapter 43

Chapter 43

BUILDING CONSTRUCTION

[HISTORY: Adopted by the Board of Trustees 11-27-1967. Amendments noted where applicable.]

GENERAL REFERENCES

Architectural Review Board — See Ch. 4.

Flood damage prevention — See Ch. 65.

Landscaping and construction contractors — See Ch. 72.

Trees — See Ch. 122.

ARTICLE I

Building Code

§ 43-1. Adoption of standards.

The Village has adopted by resolution the New York State Building Construction Code as contained in New York State Executive Law Article 18 and amendments as may be made thereto

to control building construction and equipment in the interest of public health, safety and welfare and the same shall be fully complied with as a minimum standard.

ARTICLE II

Supplements to the Building Construction Code

§ 43-2. Pile foundations installations.

A. Inspection and control. The owner shall maintain a competent licensed professional engineer experienced in pile foundation installation on the site during pile installation to insure and certify pile installation.

B. Identification of piles. A plan showing clearly the designation of all piles by an identity system shall be kept. A record of pile driving shall be kept by owners representative of the total penetration of every pile and behavior of such pile during driving. Any deviation from the design location, alignment or load carrying capacity of any pile shall be promptly reported to the design engineer of record and adequate corrective measures shall be taken. Plans showing such deviations and corrective measures shall be filed with the Building Inspector. Upon completion of the pile driving, all pile driving records, together with the records of such additional borings or other subsurface information that were obtained during the installation of the piles shall be filed with proper certification with the Village Clerk.

§ 43-3. Property and road elevations.

The cellar or basement finish floor shall be not less than 10 feet above Nassau County Datum Zero. Any openings in the foundation walls shall be not less than 5 feet above the basement or cellar floor level. Finished first floor on ground, when approved by the Board of Appeals, shall be not less than 15 feet above Nassau County Datum Zero. Public or private roads shall be not less than 13 feet above Nassau County Datum Zero. Attached, detached and built-in garage area shall have floor level not less than 13 feet above Nassau County Datum Zero.

§ 43-4. Cellars or basements. [Amended 4-7-1969]

No residence shall be erected unless a cellar or basement occupies at least 40% of the gross area of the residence, and the remaining outside wall or walls shall have a foundation of at least 3 1/2 feet below finished exterior grade.

§ 43-5. Heating.

A. The construction and installation of all equipment, accessories and appurtenances shall comply with the published standards, requirements and recommendations of the National Fire Protective Association, National Board of

Fire Underwriters, American Standards Association and the American Society of Mechanical Engineers.

B. Labeling of equipment and accessories by the Underwriters Laboratories, Inc., American Gas Association or the American Society of Mechanical Engineers or Commercial Standard labeling will be accepted as conforming with design standards.

C. The materials, equipment and installation shall comply generally with the National Board of Fire Underwriters Building Code, Appendix 1, and specifically with the National Fire Protection Association Standard #54 when gas-fired; National Fire Protection Association Standard #70 (National Electrical Code) when electrical heating is used. [Amended 5-3-2004 by L.L. No. 1-2004]

§ 43-6. Drywells. [Added 5-3-2004 by L.L. No. 1-2004]

Every property shall have installed and maintained a sufficient number of drywells capable of retaining at least a 2 3/4 inch rainfall, and which are located at least 10 feet from any dwelling and 10 feet from any property line. Any application for a building permit shall include a survey showing the calculations for the drywells and their location. After the inspection of the installation of the drywells by the Building Inspector, an as-built survey indicating the actual location of the drywells and any on-site sanitary system must be submitted prior to the issuance of a certificate of occupancy or completion.

§ 43-7. Central air conditioning; in-window and in-wall air conditioners. [Added 5-3-2004 by L.L. No. 1-2004]

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

CENTRAL AIR CONDITIONING — An air-conditioning system designed and installed to cool an entire building or major portion thereof from an interior location, although components may be installed outside the building walls.

WALL AIR CONDITIONER — A self-contained air-conditioning unit installed in the exterior wall of a building.

WINDOW AIR CONDITIONER — A self-contained air-conditioning unit installed in a window of a building.

B. Central air-conditioning systems may be installed only in accordance with the following:

- (1) Manufacturer's approved base under condenser.
- (2) Sound level not to exceed 55 decibels.

(3) Unit completely screened by evergreen shrubs which are minimum height of 6 inches above the highest point of the system or unit being screened.

(4) No exposed pipe or electric wires on exterior of building unless in conduit.

(5) National Electric Code.

(6) All exterior components must be installed on either the side or rear yards.

(7) Compressors shall not exceed 5 tons.

(8) The location of all exterior components, including the disconnect switch, and the type, size and location of all screening shrubbery for external components shall be depicted on a site plan.

(9) An affidavit from the installer certifying that the installation complies with this chapter and with all manufacturer's standards.

C. In-window and in-wall air conditioners may be installed only on the side and rear windows or walls of a building.

§ 43-8. Conversion of oil heating system to gas heating system. [Added 5-3-2004 by L.L. No. 1-2004]

A. A permit must be issued by the Building Inspector for the conversion of an oil heating system to a gas heating system. Prior to the issuance of a certificate of completion for such system a mercury test must be performed by a licensed plumber with the Building Inspector present.

B. A permit shall be required for the removal or abandonment of an in-ground oil tank. A site plan indicating the location of the in-ground oil tank shall be submitted as part of the permit application, in addition to the name and license number of the contractor who will perform the work. In-ground oil tanks with a capacity of more than 1,100 gallons must be removed in accordance with all applicable regulations. Tanks with a capacity of 1,100 gallons or less may remain in place provided they are drained, cleaned and filled with approved material with Health Department certification.

ARTICLE III

Administration and Enforcement

THIS SECTION OF OUR CODE (Chapter 43, Article III)

HAS BEEN RECENTLY AMENDED,
PLEASE CALL OR VISIT OUR OFFICE FOR UPDATED INFO

§ 43-9. Building Inspector. [Amended 5-3-2004 by L.L. No. 1-2004]

A. The Building Inspector shall be either a licensed professional engineer, registered architect, building contractor or construction superintendent of at least 5 years' practical experience or with such combination of experience as, in the opinion of the Board of Trustees, is equivalent, and shall be a certified Code Enforcement Officer by the New York State Department of State, or obtain such certification within 1 year of appointment.

B. The Building Inspector shall be appointed by the Mayor and approved by the Board of Trustees for a term of 1 year at a compensation to be fixed by the Board. He shall not be removed from office except for cause after a public hearing on specific charges before the Board of Trustees.

C. In the Absence of the Building Inspector, or in the case of his inability to act for any reason, the Mayor shall have the power, with the consent of the Board of Trustees, to designate a person to act on behalf of the Building Inspector and to exercise all the powers conferred upon him by this chapter. The Mayor shall have the power, with the consent of the Board of Trustees, to appoint an auxiliary code enforcer.

§ 43-10. Relief from personal responsibility.

The Building Inspector shall not, while acting pursuant to the provisions of this chapter, be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties, providing that such acts are performed in good faith and without gross negligence.

§ 43-11. Duties and powers of the Building Inspector.

A. Except as otherwise specifically provided by law, ordinance or regulation, or except as herein otherwise provided, the Building Inspector shall administer and enforce all of the provisions of laws, ordinances and regulations applicable to the construction, alterations, repair, removal and demolition of buildings and structures, and installation and use of materials and equipment therein, and the location, use, occupancy and maintenance thereof.

B. The Building Inspector shall have the power to adopt rules with the consent of the Board of Trustees to secure the intent and purpose of this chapter and a proper

enforcement of laws, ordinances and regulations governing building construction in any building or structure.

C. The Building Inspector shall receive applications and issue permits through the Village Clerk for the erection, alteration, removal and demolition of buildings or structures or parts thereof and shall examine the premises for which such applications have been received or such permits have been issued for the purpose of insuring compliance with such laws, ordinances and regulations governing building construction.

D. The Village Clerk shall keep permanent official records of all transactions and activities of the Building Inspector, including all applications received, permits and certificates issued, fees charged and collected.

E. The Village Clerk shall, annually, submit to the Board of Trustees a written report and summary of all business conducted by the Building Inspector, including building permits and certificates of occupancy issued and fees collected.

F. The Building Inspector may request and shall receive, so far as may be necessary in the discharge of his duties, the assistance and cooperation of the Police, Fire and Health Departments and of all other municipal officials exercising any jurisdiction over the construction, use or occupancy of buildings or the installation of equipment therein.

§ 43-12. No legalization due to delinquency.

No oversight or dereliction of duty on the part of the Building Inspector, or a person acting on behalf of the Building Inspector, shall legalize the erection, construction, alteration, removal of, use or occupancy of a building or structure that does not conform to the applicable building laws, ordinances or regulations, or that does not conform with the provisions of an application, plans, or specifications, on the basis of which a building permit was issued, or that does not conform to the applicable provisions of the Building Code.

§ 43-13. Permits.

A. Fences. No person, firm or corporation shall erect, construct, enlarge, alter, improve, convert or change any fence or permit or cause the same to be done without first obtaining a separate building permit from the Village Clerk for such fence; except that no building permit shall be required for the performance of ordinary repairs to any fence. [Amended 5-6-1991 by L.L. No. 3-1991; 5-3-2004 by L.L. No. 1-2004]

B. Buildings and structures. No person, firm or corporation shall erect, construct, enlarge, alter, remove, improve, demolish, convert or change the nature of or the occupancy of any building or structure, or permit or cause the same to be done,

without first obtaining a separate building permit from the Village Clerk for each building or structure. [Added 5-3-2004 by L.L. No. 1-2004]

C. Application for a building permit shall be made to the Village Clerk on forms provided and shall contain the following:

- (1) A description of the land on which the proposed work is to be done.
- (2) A statement of the use or occupancy of all parts of the land and of the building or structure.
- (3) The valuation of the proposed work.
- (4) The full name and address of the owner and of the applicant, and names and addresses of their responsible officers if any of them are corporations.
- (5) A brief description of the nature of the proposed work.
- (6) Plans and specifications, including plot plan as set forth in Subsection D, and such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work with the requirements of the applicable building laws, ordinances and regulations.
- (7) Board of Appeals and Architectural Review Board decisions, if any. Where Board of Appeals and/or Architectural Review Board approvals have been granted for the proposed work, no building permit shall be issued later than 180 days from the date that the Board of Appeals' decision is filed in the Village Clerk's office, or 90 days from the date that the Architectural Review Board's decision is filed in the Village Clerk's office, whichever is later, unless such time periods have been extended by the respective boards. [Added 6-26-2000 by L.L. No. 6-2000]

D. Applications shall be made by the owner or lessee, or agent of either, or by the architect, engineer or builder employed in connection with the proposed work. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner or applicant that the proposed work is authorized by the owner and that the applicant is authorized to make such application.

E. Each application for a building permit shall be accompanied by 2 copies of plans and specifications, including plot plans drawn to scale, showing the location and size of all proposed new construction and all existing structures on the site, the nature and character of the work to be performed and the materials to be incorporated, distance from lot lines, relationship of structures on adjoining property, width and grades of adjoining streets, walks and alleys, and, where

required by the Building Inspector, details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data. [Amended 5-3-2004 by L.L. No. 1-2004]

F. Plans and specifications shall bear the signature of the person responsible for the design and drawings. The Building Inspector may waive the requirements for filing plans and specifications for minor alterations.

G. The Village shall not issue a building permit unless the applicant has provided proof of workers' compensation insurance and disability benefits coverage or an affidavit that the applicant has not engaged an employer or any employees to perform work relating to the building permit. [Added 5-3-2004 by L.L. No. 1-2004]

H. Amendments to the application or to the plans and specification accompanying the same shall be filed at any time prior to the completion of the work, subject to the approval of the Building Inspector and payment of specified fee.

I. Nothing in this chapter shall prevent the Building Inspector from requiring such additional information as may be necessary to an intelligent understanding of any proposed work.

§ 43-14. Issuance of building permit.

A. The Building Inspector shall examine or cause to be examined all applications for building permits and plans, specifications and documents filed therewith. He shall approve or disapprove the application within a reasonable time.

B. Upon approval of the application, all sets of plans and specifications shall be endorsed with the word "APPROVED." One set of approved plans and specifications shall be retained in the files of the Village, 1 set shall be sent by the Village Clerk to the Nassau County Board of Assessors and 1 set shall be returned to the applicant together with the building permit and shall be kept at the building site open to inspection by the Building Inspector or authorized representative at all reasonable times.

C. If the application together with plans, specifications and other documents filed therewith the described proposed work which does not conform to all of the requirements of the applicable building regulations, the Building Inspector shall disapprove same and shall return the plans and specifications to the applicant. Upon the request of the applicant, the Building Inspector shall cause such disapproval, together with the reasons therefore, to be transmitted to the applicant on the plans or in writing.

§ 43-15. Expiration of building permit.

A. A building permit shall be effective to authorize the commencing of work in accordance with the application, plans and specifications on which it is based for a period of 6 months after the date of its issuance. For good cause, the Building Inspector may allow extension for a period not to exceed 3 months. [Amended 4-7-1969]

B. Any project which is not completed within 1 year from the date of issuance of a building permit shall be deemed abandoned and it shall be the duty of the holder of the building permit or the owner of the premises, his agent, or duly authorized representative to backfill any open excavation up to the existing ground level. In case the construction of the building or structure has proceeded beyond the cellar excavation, all incompleated structures or openings shall be completely boarded up so as to prevent access to the building or structure in order to limit and prevent danger to persons or property and possible fire hazards.

C. The issuance of a building permit shall constitute authority to the applicant to proceed with the work in accordance with the approved plans and specifications and in accordance with the applicable building laws, ordinances or regulations.

D. It shall be unlawful to reduce or diminish the area of any lot or plot of which a plot diagram has been filed and has been used as a basis for a building permit, unless amended by a revised plot diagram showing the proposed change and shall have been filed and approved by the Building Inspector.

E. The location of a new building or structure, or an extension of an existing building or structure, shown on an accepted and approved plot diagram or an approved amendment thereof shall be strictly adhered to.

§ 43-16. Fees. [Amended 4-7-1969; 3-28-1977 by L.L. No. 2-1977; 9-12-1988 by L.L. No. 2-1988; 5-3-2004 by L.L. No. 1-2004]

The applicant shall be responsible for the payment of all fees set forth in the Schedule of Fees and Payments maintained by the Village Clerk.

§ 43-17. Revocation of building permit.

The Building Inspector shall have authority to revoke permits theretofore issued in the following instances:

A. Where he finds that there has been a false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based;

B. Where he finds that the building permit was issued in error and should not have been issued in accordance with the applicable law;

C. Where he finds that the work performed under the building permit is not being prosecuted in accordance with the provisions of the application, plans or specifications; or

D. Where the person to whom a building permit has been issued fails or refuses to comply with a stop order issued by the Building Inspector.

§ 43-18. Stop orders.

Whenever the Building Inspector has reasonable grounds to believe that the work on any building or structure is being prosecuted in violation of the provisions of the applicable building laws, ordinances or regulations, or not in conformity with the provisions of an application, plans or specifications on the basis of which a building permit was issued, or in an unsafe and dangerous manner, he shall notify the owner of the property or the owner's agent, or the person performing the work, to suspend all work, and any such person shall forthwith stop such work and suspend all building activities until the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him, or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by registered mail.

§ 43-19. Certificate of occupancy.

A. No building hereafter erected shall be occupied in whole or in part until the Building Inspector has examined and approved the proposed building as complying with all the provisions of this chapter and until a certificate of occupancy has been issued by the Village Clerk. [Amended 5-3-2004 by L.L. No. 1-2004]

B. No building hereafter enlarged, extended or altered, or upon which work has been performed shall continue to be occupied or used within 45 days after the substantial completion of the work except for reasons beyond the owner's reasonable control unless a certificate of occupancy shall have been issued by the Village Clerk. Failure to submit required documentation for the issuance of a certificate of occupancy within 45 days after the final inspection of the work shall be a violation of this section and shall be punishable as set forth in Chapter 1, General Provisions, Article III. [Amended 3-12-2001 by L.L. No. 1-2001; 5-3-2004 by L.L. No. 1-2004]

C. No change shall be made in the use or type of occupancy of an existing building unless a certificate of occupancy shall have been issued by the Village Clerk.

§ 43-20. Inspection prior to issuance of certificate. [Amended 4-7-1969; 4-2-2001 by L.L. No. 3-2001]

A. Before issuing a certificate of occupancy, the Building Inspector shall examine or cause to be examined all buildings, structures and sites for which an application has been filed for a building permit to construct, enlarge, alter, repair, remove, demolish or change the use or occupancy; and he may conduct such inspection as he deems appropriate from time to time during and upon completion of the work for which a building permit has been issued.

B. Before the Building Inspector shall examine or cause to be examined a new structure or new building, the applicant shall file with the Building Inspector:

(1) A certificate by a licensed architect or licensed engineer certifying that the construction of said new structure or new building has been completed in accordance with and in conformity to the application, plans and specifications filed in connection with the issuance of the building permit.

(2) A survey by a licensed surveyor showing the exterior of the new and or altered building and the location of said structure or building with relation and distance from the lot lines.

§ 43-21. Issuance of certificate of occupancy.

A. When, after final inspection by the Building Inspector, it is found that the proposed work has been completed in accordance with the applicable building laws, ordinances and regulations; and also in accordance with the application, plans and specifications filed in connection with the issuance of the building permit, the Village Clerk shall issue a certificate of occupancy. If it is found that the proposed work has not been properly completed, the Village Clerk shall refuse to issue a certificate of occupancy and the Building Inspector shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations.

B. The certificate of occupancy shall certify that the work has been completed, and that the proposed use and occupancy is in conformity with the provisions of the applicable building laws, ordinances and regulations, and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put.

§ 43-22. Temporary certificate of occupancy.

Upon request, the Building Inspector may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the building permit shall have been completed, provided such portion or portions as have been completed may be occupied safely without endangering life or the public welfare. A temporary certificate of occupancy may be issued for a period of 2 months from the date of issuance and shall be void thereafter, except that for due cause the Building Inspector may allow 1 extension for a period of 1 month.

§ 43-23. Tests.

Whenever there are reasonable grounds to believe that any material, construction, equipment or assembly does not conform with the requirements of the applicable building laws, ordinances or regulations, the Building Inspector may require the same to be subject to tests in the field by experienced persons or by accredited and authorized laboratories and/or service bureau or agencies in order to furnish proof of such compliance.

THIS ABOVE SECTION OF OUR CODE (Chapter 43, Article III)

HAS RECENTLY BEEN AMENDED,

PLEASE CALL OR VISIT OUR OFFICE FOR UPDATED INFO

ARTICLE IV

Unsafe Buildings and Areas

§ 43-24. Unsafe buildings defined.

All buildings or structures which are structurally unsafe, unsanitary or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment are, severally, for the purpose of this chapter, unsafe buildings. All such unsafe buildings are hereby declared to be illegal and shall be abated by repair and rehabilitation or by demolition in accordance with the procedure of this section.

§ 43-25. Examination by Building Inspector.

The Building Inspector shall examine or cause to be examined every building or vacant area reported as unsafe or damaged, and shall make a written record of such examination.

§ 43-26. Written notice of defects.

Whenever the Building Inspector shall find any building or structure, or portion thereof, or any area, to be unsafe as defined in this chapter, he shall, in the same manner as provided for the stop orders in § 43-18 of this chapter, give to the owner, agent or person in control of such building or structure or area, written notice stating the defects thereof. This notice shall require the owner within a stated time either to complete specified repairs or improvements, or to demolish and remove the building, or structure, or portion thereof.

§ 43-27. Notice to vacate.

A. If the Building Inspector finds that there is actual and immediate danger of failure or collapse so as to endanger life, such notice shall also require the building, structure or portion thereof to be vacated forthwith and not reoccupied until the specific repairs and improvements are completed, inspected, and approved by the Building Inspector. The Building Inspector shall cause to be posted at each entrance of such a building a notice: THIS BUILDING IS UNSAFE AND ITS USE OF OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING INSPECTOR.

B. Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation, or their agents to remove such notice without written permission of the Building Inspector or for any person to enter the building except for the purpose of making repairs or of demolishing same.

§ 43-28. Action by Village to compel compliance.

In case the owner, agent or person in control cannot be found within the stated time limit, or if such owner, agent or person in control shall fail, neglect, or refuse to comply with notice to repair, rehabilitate, or to demolish and remove said building, or structure, or portion thereof, the Village Counsel shall be advised of all the facts in the case and shall institute an appropriate action in the court to compel compliance.

§ 43-29. Emergency situations.

In case of emergency in connection with any building or structure, or portion thereof, or any area which, in the opinion of the Building Inspector, involves imminent danger to human life or health, he shall promptly cause such building, structure or portion thereof, or any area, to be made safe or be removed. For this purpose he may at once enter such structure or land on which it stands, or abutting land or structure with such assistance and at such cost as may be necessary. He may protect the public by appropriate barricades or such other means as may be necessary, and for this purpose may close a public or private way.

§ 43-30. Payment and recovery of costs.

Cost incurred under §§ 43-25 through 43-30 of this chapter shall be paid out of the Village treasury. Such cost shall be charged to the owner of the premises involved and shall be collected in a manner provided by law.

§ 43-31. Protection of Village trees. [Added 5-3-2004 by L.L. No. 1-2004]

All construction shall comply with the requirements of Chapter 122, Trees.

§ 43-32. Penalties for offenses. [Added 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

Chapter 65

Chapter 65

FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the Board of Trustees 3-3-1997 by L.L. No. 1-1997. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 43.

ARTICLE I

Findings; Purpose; Definitions

§ 65-1. Findings.

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

§ 65-2. 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 and maintain participation in the National Flood Insurance Program.

§ 65-3. Objectives.

The objectives of this chapter are to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. 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. 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. Provide that developers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 65-4. Definitions.

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

APPEAL —% A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING —% A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an

average annual depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD —% The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE or V1-V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

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

BASEMENT —% That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL —% A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING —% See "structure."

CELLAR —% The same meaning as "basement."

COASTAL HIGH-HAZARD AREA —% An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V1-V30, VE, VO or V.

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 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. A nonbasement building:

- (1) Built, in the case of a building in Zone 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 Zone V1-30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and

(2) 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.

B. In the case of Zone 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.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION —% A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is complete before the effective date of the floodplain management regulations adopted by the community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION —% The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

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

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) Overflow of inland or tidal waters; or

(2) Unusual and rapid accumulation or runoff of surface waters from any source.

B. "Flood or flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1), above.

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

FLOODPROOFING —% Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY —% The same meaning as "regulatory floodway."

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

HIGHEST ADJACENT GRADE —% The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE —% Any structure that is:

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

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a

district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior; or

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

LOCAL ADMINISTRATOR —% The person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Code Enforcement Officer, Building Inspector or employee of an engineering department.

LOWEST FLOOR —% The 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 nonelevation design requirements of this chapter.

MANUFACTURED HOME —% A structure, transportable in 1 or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION —% A parcel (or contiguous parcels) of land divided into 2 or more manufactured home lots for rent or sale.

MEAN SEA LEVEL —% For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME —% The same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD) —% As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

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.

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

ONE-HUNDRED-YEAR FLOOD —% The same meaning as "base flood."

PRIMARY FRONTAL DUNE —% A continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

PRINCIPALLY ABOVE GROUND —% That at least 51% of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE —% A vehicle which is:

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

REGULATORY FLOODWAY —% The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 65-6 of this chapter.

SAND DUNES —% Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

START OF CONSTRUCTION —% Includes substantial improvement and means the initiation, excluding planning and design, of any phase of a project, physical alteration of the property and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of the temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the actual start means affixing of the manufactured home to its permanent site.

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:

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of 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.

ARTICLE II

General Provisions

§ 65-5. Lands to which this chapter applies.

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

§ 65-6. Basis for establishing areas of special flood hazard.

A. The areas of special flood hazard for the Village (Community No. 360468) are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

(1) A scientific and engineering report entitled "Flood Insurance Study, Nassau County, New York (all jurisdictions)," dated April 2, 1997.

(2) Flood Insurance Rate Map for Nassau County, New York (all jurisdictions) as shown on Index No. 36059C0000, and Panel 0112, whose effective date is April 2, 1997.

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 with the Village Clerk.

§ 65-7. Interpretation; conflict with other laws.

A. This chapter includes all revisions to the National Flood Insurance Program through November 1, 1989, 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.

§ 65-8. Penalties for offenses. [Amended 5-3-2004 by L.L. No. 1-2004]

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 found guilty of a violation of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article VI of this chapter will be declared noncompliant, and notification sent to the Federal Emergency Management Agency.

§ 65-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood 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 Village, 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 III

Administration

§ 65-10. Function of local administrator.

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

§ 65-11. Floodplain development permits.

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 § 65-6, without a valid floodplain development permit. Application for a permit shall be made on forms furnished local administrator and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures; fill; storage of materials; drainage facilities; and the location of the foregoing.

B. Fees and deposits. All applications for a floodplain development permit shall be accompanied by an application fee in an amount hereafter stipulated as determined by the Board of Trustees. In addition, the applicant shall be responsible for reimbursing the Village for any additional costs necessary for review, inspection and approval of the project. The local administrator may require a deposit of no more than \$500 to cover these additional costs.

§ 65-12. Application for permit.

The applicant shall provide at least the following information, where applicable. 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, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of any new or substantially improved structure to be located in Zone V1-V30 or VE or Zone V 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.

C. 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.

D. A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 65-19C, Utilities.

E. A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 65-22, Nonresidential structures except coastal high-hazard areas.

F. 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 § 65-6, 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.

G. 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.

H. In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or 5 acres.

I. In Zones V1-V30 and VE and also Zone V if base flood elevation are available, designs and specifications, certified by a licensed professional engineer or architect, for any breakaway walls in a proposed structure with design strengths in excess of 20 pounds per square foot.

J. In Zones V1-V30 and VE and also Zone V if base flood elevation are available, for all new and substantial improvements to structures, floodplain development permit applications shall be accompanied by design plans and specifications, prepared in sufficient detail to enable independent review of the foundation support and connection components. Said plans and specifications shall be developed or reviewed by a licensed professional engineer or architect and shall

be accompanied by a statement, bearing the signature of the architect or engineer, certifying that the design and methods of construction to be used are in accordance with accepted standards of practice and with all applicable provisions of this chapter.

§ 65-13. Duties and responsibilities of the 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 § 65-12, 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 IV and, in particular, § 65-18B.

(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 IV, 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 § 65-12H, 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.

C. Alteration of watercourses.

(1) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification shall be submitted to the Regional Director, 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) In Zones V1-V30 and VE and also Zone V if base flood elevation data are available, upon placement of the lowest floor of a new or substantially improved structure, the permit holder shall submit to the local administrator a certificate of elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns). For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. An elevation certificate must also be submitted for a recreational vehicle if it remains on a site 180 consecutive days or longer (unless it is fully licensed and ready for highway use).

(3) 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.

§ 65-14. 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.

§ 65-15. Stop-work orders.

A. 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 § 65-8 of this chapter.

B. 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 § 65-8 of this chapter.

§ 65-16. Certificate of compliance.

A. In areas of special flood hazard, as determined by documents enumerated in § 65-6, 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.

B. A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.

C. Issuance of the certificate shall be based upon the inspections conducted as prescribed in § 65-14, 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.

§ 65-17. Information to be retained.

The local administrator shall retain and make available for inspection copies of the following:

- A. Floodplain development permits and certificates of compliance;
- B. Certifications of as-built lowest floor elevations of structures, required pursuant to § 65-13D(1) and (2) and whether or not the structures contain a basement;
- C. Floodproofing certificates required pursuant to § 65-13D(1) and whether or not the structures contain a basement;
- D. Certifications required pursuant to § 65-21N and § 65-12J;
- E. Variances issued pursuant to Article V; and
- F. Notices required under § 65-13C.

ARTICLE IV

Construction Standards

§ 65-18. 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 § 65-6.

- A. Coastal high-hazard areas. The following requirements apply within Zones V1-V30, VE and V:
 - (1) All new construction, including manufactured homes and recreational vehicles on site 180 days or longer and not fully licensed for highway use, shall be located landward of the reach of high tide.
 - (2) The use of fill for structural support of buildings, manufactured homes or recreational vehicles on site 180 days or longer is prohibited.
 - (3) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
- B. Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):
 - (1) Proposals shall be consistent with the need to minimize flood damage;

(2) Public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed so as to minimize flood damage; and

(3) Adequate drainage shall be provided to reduce exposure to flood damage.

C. 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 1 foot at any location; or

(b) The Village 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 Village for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Village 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 § 65-6, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:

(a) A technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood levels during occurrence of the base flood; or

(b) The Village 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 Village for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Village for all costs related to the final map revisions.

§ 65-19. Standards for all structures.

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) For enclosed areas below the lowest floor of a structure within Zone A1-A30, AE or AH and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria: A minimum of 2 openings have a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding; and the bottom of all such openings no higher than 1 foot above the lowest adjacent finished grade. Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(4) Within Zones V1-V30 and VE and also within Zone V if base flood elevation are available, new construction and substantial improvements shall have the space below the lowest floor either free from obstruction or constructed with nonsupporting breakaway walls, open wood latticework or insect screening intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. The enclosed space below the lowest floor shall be used only for parking vehicles, building access or storage. Use of this space for human habitation is expressly prohibited. The construction of stairs, stairwells and elevator shafts are subject to the design requirements for breakaway walls.

C. Utilities.

(1) Machinery and equipment servicing a building must either be elevated to or above the base flood level or designed to prevent water from entering or accumulating within the components during a flood. This includes heating, ventilating, air-conditioning equipment, hot-water heaters, appliances, elevator-lift machinery and electrical junction and circuit breaker boxes. When located below the base flood elevation, a professional engineer's or architect's certification of the design is required.

(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.

(4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

§ 65-20. Residential structures except in coastal high-hazard areas.

The following standards, in addition to the standards in §§ 65-18B and C and 65-19, apply to structures located in areas of special flood hazard as indicated:

A. 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 the base flood level.

B. Within Zone A, when no base flood elevation data are available, new and substantially improved structures shall have the lowest floor (including basement) elevated at least 3 feet above the highest adjacent grade.

C. Within Zone AO, new and substantially improved structures 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 § 65-6 (at least 2 feet if no depth number is specified).

D. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.

§ 65-21. Residential structures in coastal high-hazard areas.

The following standards, in addition to the standards in §§ 65-18B and C and 65-19, apply to structures located in areas of special flood hazard shown as Zones V1-V30, VE or V on the community's Flood Insurance Rate Map designated in § 65-6.

A. Elevation. New construction and substantial improvements shall be elevated on pilings, columns or shear walls such that the bottom of the lowest horizontal structural member supporting the lowest elevated floor (excluding columns, piles, diagonal bracing attached to the piles or columns, grade beams, pile caps and other members designed to either withstand storm action or break away without imparting damaging loads to the structure) is elevated to or above the level of the base flood so as not to impede the flow of water.

B. Determination of loading forces. Structural design shall consider the effects of wind and water loads acting simultaneously during the base flood on all building components.

(1) The structural design shall be adequate to resist water forces that would occur during the base flood. Horizontal water loads considered shall include inertial and drag forces of waves, current drag forces and impact forces from waterborne storm debris. Dynamic uplift loads shall also be considered if bulkheads, walls or other natural or man-made flow obstructions could cause wave runup beyond the elevation of the base flood.

(2) Buildings shall be designed and constructed to resist the forces due to wind pressure. Wind forces on the superstructure include windward and leeward forces on vertical walls, uplift on the roof, internal forces when openings allow wind to enter the house and upward force on the underside of the house when it is exposed. In the design, the wind should be assumed to blow potentially from any lateral direction relative to the house.

(3) Wind loading values used shall be those required by the Building Code.

C. Foundation standards.

(1) The pilings or column foundation and structure attached thereto shall be adequately anchored to resist flotation, collapse or lateral movement due to the effects of wind and water pressures acting simultaneously on all building components. Foundations must be designed to transfer safely to the underlying soil all loads due to wind, water, dead load, live load and other loads (including uplift due to wind and water).

(2) Spread footings and fill material shall not be used for structural support of a new building or substantial improvement of an existing structure.

D. Pile-foundation design.

(1) The design ratio of pile spacing to pile diameter shall not be less than 8 to 1 for individual piles. (This shall not apply to pile clusters located below the design grade). The maximum center-to-center spacing of wood piles shall not be more than 12 feet on center under load bearing sills, beams or girders.

(2) Pilings shall have adequate soil penetration (bearing capacity) to resist the combined wave and wind loads (lateral and uplift) associated with the base flood acting simultaneously with typical structure (live and dead) loads and shall include consideration of decreased resistance capacity caused by erosion of solid strata surrounding the piles. The minimum penetration for foundation piles is to an elevation of 5 feet below mean sea level (msl) datum if the base flood elevation (BFE) is plus 10 msl or less or to be at least 10 feet below msl if the BFE is greater than plus 10 msl.

(3) Pile-foundation analysis shall also include consideration of piles in column action from the bottom of the structure to the stable soil elevation of the site. Pilings may be horizontally or diagonally braced to withstand wind and water forces.

(4) The minimum acceptable sizes for timber piles are a tip diameter of 8 inches for round timbers piles and 8 inches by 8 inches for square timber piles. All wood piles must be treated in accordance with requirements of EPEE-C3 to minimize decay and damage from fungus.

(5) Reinforced-concrete piles shall be cast of concrete having a twenty-eight-day ultimate compressive strength of not less than 5,000 pounds per square inch and shall be reinforced with a minimum of 4 longitudinal steel bars, having a combined area of not less than 1% nor more than 4% of the gross concrete area. Reinforcing for the precast piles shall have a concrete cover of not less than 1 1/4 inches for No. 5 bars and smaller and not less than 1 1/2 inches for No. 6 through No. 11 bars. Reinforcement for piles cast in the field shall have a concrete cover of not less than 2 inches.

(6) Piles shall be driven by means of a pile driver or drop hammer, jettied or augered into place.

(7) Additional support for piles in the form of bracing may include lateral or diagonal bracing between piles.

(8) When necessary, piles shall be braced at the ground line in both directions by a wood timber grade beam or a reinforced-concrete grade beam. These at-grade supports should be securely attached to the piles to provide support even if scoured from beneath.

(9) Diagonal bracing between piles, consisting of 2-inch-by-8-inch (minimum) members bolted to the piles, shall be limited in location to below the lowest supporting structural member and above the stable solid elevation and aligned in the vertical plane along pile rows perpendicular to the shoreline. Galvanized-steel rods (minimum diameter of 1/2 inch) or cable-type bracing is permitted in any plane.

(10) Knee braces, which stiffen both the upper portion of a pile and the beam-to-pile connection, may be used along pile rows perpendicular and parallel to the shoreline. Knee braces shall be 2-by-8 lumber bolted to the sides of the pile/beam, or 4-by-4 or larger braces framed into the pile/beam. Bolting shall consist of 2 five-eighths-inch galvanized-steel bolts (each end) for 2-by-8 members or 1 five-eighths-inch lag bolt (each end) for square members. Knee braces shall not extend more than 3 feet below the elevation of the base flood.

E. Column-foundation design. Masonry piers or poured-in-place concrete piers shall be internally reinforced to resist vertical and lateral loads and be connected with a movement-resisting connection to a pile cap or pile shaft.

F. Connectors and fasteners. Galvanized metal connectors, wood connectors or bolts of size and number adequate for the calculated loads must be used to connect adjoining components of a structure. Toe nailing as a principal method of connection is not permitted. All metal connectors and fasteners used in exposed locations shall be steel, hot-dipped galvanized after fabrication. Connectors in protected interior locations shall be fabricated from galvanized sheet.

G. Beam-to-pile connections. The primary floor beams or girders shall span the supports in the direction parallel to the flow of potential floodwater and wave action and shall be fastened to the columns or pilings by bolting, with or without cover plates. Concrete members shall be connected by reinforcement, if cast in place, or, if precast, shall be securely connected by bolting and welding. If sills, beams or girders are attached to wood piling at a notch, a minimum of 2 five-eighths-inch galvanized steel bolts or 2 hot-dipped galvanized straps 3/16 inch by 4 inches by 18 inches, each bolted with 2 one-half-inch lag bolts per beam member, shall be used. Notching of pile tops shall be the minimum sufficient to provide ledge support for beam members without unduly weakening pile connections. Piling shall not be notched so that the cross section is reduced below 50%.

H. Floor and deck connections.

(1) Wood 2-by-4-inch (minimum) connectors or metal joist anchors shall be used to tie floor joists to floor beams/girders. These should be installed on alternate floor joists, at a minimum. Cross bridging of all floor joists shall be provided. Such cross bridging may be one-by-three-inch

members, placed 8 feet on center maximum or solid bridging of same depth as the joist at the same spacing.

(2) Plywood should be used for subflooring and attic flooring to provide good torsional resistance in the horizontal plane of the structure. The plywood should not be less than three-fourths-inch total thickness and should be exterior grade and fastened to beams or joists with 8d annular- or spiral-thread galvanized nails. Such fastening shall be supplemented by the application of waterproof industrial adhesive applied to all bearing surfaces.

I. Exterior wall connections. All bottom plates shall have any required breaks under a wall stud or an anchor bolt. Approved anchors will be used to secure rafters or joists and top and bottom plates to studs in exterior and bearing walls to form a continuous tie. Continuous 15/32-inch or thicker plywood sheathing, overlapping the top wall plate and continuing down to the sill, beam or girder may be used to provide the continuous tie. If the sheets of plywood are not vertically continuous, then 2-by-4 nailer blocking shall be provided at all horizontal joints. In lieu of the plywood, galvanized-steel rods of one-half-inch diameter or galvanized-steel straps not less than 1 inch wide by 1/16 inch thick may be used to connect from the top wall plate to the sill, beam or girder. Washers with a maximum diameter of 3 inches shall be used at each end of the one-half-inch round rods. These anchors shall be installed no more than 2 feet from each corner rod, no more than 4 feet on center.

J. Ceiling joist/rafter connections.

(1) All ceiling joists or rafters shall be installed in such a manner that the joists provide a continuous tie across the rafters. Ceiling joists and rafters shall be securely fastened at their intersections. A metal or wood connector shall be used at alternate ceiling joist/rafter connections to the wall top plate.

(2) Gable roofs shall be additionally stabilized by installing 2-by-4 blocking on 2-foot centers between the rafters at each gable end. Blocking shall be installed a minimum of 8 feet toward the house interior from each gable end.

K. Projecting members. All cantilevers and other projecting members must be adequately supported and braced to withstand wind and water uplift forces. Roof eave overhangs shall be limited to a maximum of 2 feet and joist overhangs to a maximum of 1 foot. Larger overhangs and porches will be permitted if designed or reviewed by a registered professional engineer or architect and certified in accordance with § 65-12J of this chapter.

L. Roof sheathing.

(1) Plywood or other material, when used as roof sheathing, shall not be less than 15/32 inch in thickness and shall be of exterior sheathing grade or equivalent. All attaching devices for sheathing and roof coverings shall be galvanized or be of other suitable corrosion-resistant material.

(2) All corners, gable ends and roof overhangs exceeding 6 inches shall be reinforced by the application of waterproof industrial adhesive applied to all bearing surfaces of any plywood sheet used in the sheathing of such corner, gable end or roof overhang.

(3) In addition, roofs should be sloped as steeply as practicable to reduce uplift pressures, and special care should be used in securing ridges, hips, valleys, eaves, vents, chimneys and other points of discontinuity in the roofing surface.

M. Protection of openings. All exterior glass panels, windows and doors shall be designed, detailed and constructed to withstand loads due to the design wind speed of 75 miles per hour. Connections for these elements must be designed to transfer safely the design loads to the supporting structure. Panel widths of multiple-panel sliding glass doors shall not exceed 3 feet.

N. Breakaway wall design standards.

(1) The breakaway wall shall have a design safe-loading resistance of not less than 10 and not more than 20 pounds per square foot, with the criterion that the safety of the overall structure at the point of wall failure be confirmed using established procedures. Grade beams shall be installed in both directions for all piles considered to carry the breakaway wall load. Knee braces are required for front row piles that support breakaway walls.

(2) Use of breakaway-wall strengths in excess of 20 pounds per square foot shall not be permitted unless a registered professional engineer or architect has developed or reviewed the structural design and specifications for the building foundation and breakaway-wall components and certifies that: the breakaway walls will fail under water loads less than those that would occur during the base flood; and the elevated portion of the building and supporting foundation system will not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values shall be those required by the Building Code.

§ 65-22. Nonresidential structures except in coastal high-hazard areas.

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures, in addition to the requirements in §§ 65-18B and C and 65-19:

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, together with attendant utility and sanitary facilities, shall either:

(1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation; or

(2) Be floodproofed so that the structure is watertight below the base flood level 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 (at least 2 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 § 65-22A(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 or practice for meeting the provisions of § 65-22A(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 3 feet above the highest adjacent grade.

§ 65-23. Nonresidential structures in coastal high-hazard areas.

In Zones V1-V30, VE and also Zone V if base flood elevations are available, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall have the bottom of lowest member of the lowest floor elevated to or above the base flood elevation. Floodproofing of structures is not an allowable alternative to elevating the lowest floor to the base flood elevation in Zones V1-V30, VE and V.

§ 65-24. Manufactured homes and recreational vehicles.

The following standards, in addition to the standards in §§ 65-18 and 65-19, apply, 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 placed on sites within Zones A1-A30, AE, AH, V1-V30, V and VE shall either be on site fewer than 180 consecutive days; be fully licensed and ready for highway use; or meet the requirements for manufactured homes in § 65-24B, D and E. 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, AH, V1-V30 or VE that is on a site either: outside of an existing manufactured home park or subdivision as herein defined; in a new manufactured home park or subdivision as herein defined; in an expansion to an existing manufactured home park or subdivision as herein defined; or in an existing manufactured home park or subdivision as herein defined on which a manufactured home has incurred substantial damage as the result of a flood shall, within Zones A1-A30, AE and AH, be elevated on a permanent foundation such that the lowest floor is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement or, within Zones V1-V30 and VE, be elevated on a pile foundation such that the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) is elevated to or above the base flood elevation and securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Elevation on piers consisting of dry-stacked blocks is prohibited. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors.

C. A manufactured home to be placed or substantially improved in Zone A1-A30, AE, AH, V1-V30 or VE in an existing manufactured home park or subdivision that is not to be placed on a site on which a manufactured home has incurred substantial damage shall be:

- (1) Elevated in a manner such as required in § 65-24B; or

(2) Elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Elevation on piers consisting of dry-stacked blocks is prohibited.

D. Within Zones A or V, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the lowest adjacent grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Elevation on piers consisting of dry-stacked blocks is prohibited.

E. Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § 65-6 (at least 2 feet if no depth number is specified). Elevation on piers consisting of dry-stacked blocks is prohibited.

ARTICLE V

Variance Procedure

§ 65-25. Appeals Board.

A. The Board of Zoning Appeals shall hear and decide appeals and requests for variances from the requirements of this chapter. [Amended 5-3-2004 by L.L. No. 1-2004]

B. The Board of Zoning 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 Zoning 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 Zoning 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 and 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 § 65-25D and the purposes of this chapter, the Board of Zoning 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.

§ 65-26. 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, provided that the items in § 65-25D(1) through (12) have been fully considered.

As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

B. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:

(1) The proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure.

(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.

(2) The structure or other development is protected by methods that both minimize flood damages during the base flood and create no additional threat to public safety.

D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

F. Variances shall only be issued upon receiving written justification of:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing 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 the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

Chapter 72

Chapter 72

LANDSCAPING AND CONSTRUCTION CONTRACTORS

[HISTORY: Adopted by the Board of Trustees 2-1-1993 by L.L. No. 1-1993. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 43.

§ 72-1. Definitions.

For the purpose of this chapter, the following terms shall have the following meanings:

CONSTRUCTION CONTRACTOR —% Any person or entity who engages in the practice or activity of construction work for profit.

CONSTRUCTION WORK —% The erection, demolition, construction, enlargement, alteration, improvement, conversion, maintenance, or change of any lot, building or structure. [Amended 7-11-1994 by L.L. No. 1-1994]

GARDENING or LANDSCAPING —% The cultivation, fertilization, seeding, planting, cutting, trimming, pruning, leaf blowing or maintenance of grass, shrubs, plants, trees or other foliage.

LANDSCAPER —% Any person or entity who engages in the practice or activity of gardening or landscaping for profit.

§ 72-2. Days and hours landscaping is permitted. [Amended 5-3-2004 by L.L. No. 1-2004]

Gardening or landscaping may be conducted by a landscaper in the Village only during the hours of 8:00 a.m. through 6:00 p.m. on Monday through Friday and during the hours of 9:00 a.m. through 5:00 p.m. on Saturday, unless otherwise permitted in cases of urgent necessity in the interest of public safety and then only with the written permission of the Village Clerk or Mayor. No work shall be conducted on Sundays and federal holidays.

§ 72-3. Days and hours construction work is permitted. [Amended 5-3-2004 by L.L. No. 1-2004]

Construction work may be conducted in the Village by a construction contractor during the hours of 8:00 a.m. through 6:00 p.m. on Monday through Friday and during the hours of 9:00 a.m. through 5:00 p.m. on Saturday, unless otherwise permitted in cases of urgent necessity in the interest of public safety and then only with the written permission of the Village Clerk or Mayor. No work shall be conducted on Sundays and federal holidays.

§ 72-4. Penalties for offenses. [Amended 5-3-2004 by L.L. No. 1-2004]

Any landscaper or construction contractor violating the provisions of this chapter, and any resident of the Village who hires or permits any landscaper or construction contractor to perform landscaping or construction work in violation of the provisions of this chapter, shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

Chapter 78

Chapter 78

NOISE

[HISTORY: Adopted by the Board of Trustees 5-3-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

§ 78-1. Definitions.

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

ANIMAL — Any dog, cat, bird, chicken, rooster, cow, sheep, horse or any other livestock or animal.

COMMERCIAL LANDSCAPER — Any commercial gardener, landscaper, tree surgeon or other individual involved in lawn or ground maintenance business.

CONSTRUCTION MACHINERY — Any tractor, bulldozer, backhoe, earthmoving machine, cement mixer, crane or other similar construction machinery.

LANDSCAPING EQUIPMENT — Any powered leaf blower, mower, chain saw, grinder, trimmer or other internal-combustion engine apparatus or landscaping equipment used for lawn or ground maintenance.

LOUDSPEAKER — Any radio or television set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound.

MOTOR VEHICLE — Any vehicle capable of being operated or driven upon a public highway which is propelled by any power other than muscular power, except electrically driven mobility assistance devices operated or driven by a person with a disability, fire and police vehicles, ambulances and other emergency vehicles. "Motor vehicle" shall exclude farm-type tractors and vehicles used exclusively for agricultural purposes, or ground maintenance, other than for hire.

NOISEMAKING DEVICE — Any device of any design or manufacture that is designed to create unreasonable noise or designed for the purpose of scaring, frightening or disturbing a domestic animal or wildlife.

RECREATIONAL VEHICLE — Any self-propelled vehicle which is primarily for off-highway operation or competitions and only incidentally operated on a public highway, such as, but not limited to, a go-cart, all-terrain vehicle, unlicensed motorcycle, motorbike or snowmobile.

UNREASONABLE NOISE — Any loud, unnecessary, unusual or annoying, intermittent or prolonged noise which annoys, destroys, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivity. Factors to be considered in determining whether a sound is an unreasonable noise may include, but are not limited to, the following:

- A. The volume, intensity and nature of the noise.
- B. The volume and intensity of the background noise, if any.
- C. The time of day and duration of the noise.

VILLAGE — The Incorporated Village of Plandome Heights and all territory within its boundaries.

§ 78-2. Unreasonable noise prohibited.

No person shall make or cause to be made or continued, nor shall any owner, lessee or occupant of any land in the Village permit to be made or continued on his premises, any unreasonable noise within the Village.

§ 78-3. Acts which constitute unreasonable noise.

Without limiting the provision of § 78-2, the following acts are expressly declared to be unreasonable noise in violation of this chapter:

- A. Horn and signaling device. The sounding of any horn or signaling device on any boat, motor vehicle or recreational vehicle, except as a danger or warning signal.
- B. Loudspeaker for advertising or broadcasting. The playing, using or operating, or permitting to be played, used or operated, of any loudspeaker on the public street, public waterway or other public places for the purpose of advertising or broadcasting which is heard on private property, unless a permit therefor shall have been issued by the Board of Trustees.
- C. Unnecessary amplification. The playing, using or operating, or permitting to be played, used or operated, of any loudspeaker at a volume level sufficient to cause the sound produced or reproduced to be audible at a point 10 feet beyond the property boundary line of the property from which the sound is produced or reproduced.
- D. Animal.

(1) The keeping or allowing to be kept of any animal outdoors between the hours of 9:00 p.m. and 8:00 a.m. of the following morning which causes unreasonable noise.

(2) The keeping or allowing to be kept of any animal which creates or causes unreasonable noise at any time that is continuous for a period exceeding 30 minutes in duration.

E. Exhaust. The discharge of the exhaust of any internal-combustion engine, without a muffler or other device which will effectively prevent unreasonable noises emanating therefrom.

F. Noisemaking device. The using, operating, discharging, installing or causing to be used, operated, discharged or installed of any noisemaking device.

G. Construction and operation of construction machinery. The construction, demolition, alteration or repair of any building and the operation of construction machinery at any time on Sunday and federal holidays, and for all other days contrary to the provisions of Chapter 72, Landscaping and Construction Contractors, except pursuant to a permit issued by the Building Inspector or the Mayor in an emergency situation. Nothing herein shall be construed to prohibit minor alteration to a building which is entirely enclosed. The operation of a generator for emergency purposes shall not be prohibited under any provision of this chapter.

H. Commercial landscaper. The use of any landscaping equipment by commercial landscapers at any time on Sunday and federal holidays, and for all other days contrary to the provisions of Chapter 72, Landscaping and Construction Contractors, unless pursuant to a permit issued by the Mayor.

I. Alarm. A burglar alarm or other alarm system of any building, motor vehicle, recreational vehicle or boat which is continuous and exceeds 15 minutes in duration.

J. Tire. The intentional use and operation of a motor vehicle or recreational vehicle in such a manner as to cause excessive squealing or other excessive noise of the tires.

K. Recreational vehicle.

(1) The continuous use or operation of any recreational vehicle on private or public property for a period exceeding 30 minutes.

(2) The use or operation of any recreational vehicle on private or public property at any time on Sunday and Federal legal holidays, and for all

other days between the hours of 6:00 p.m. and 8:00 a.m. the following morning, unless pursuant to a permit issued by the Board of Trustees.

L. Noise standards.

(1) No person shall create, emit or issue, nor cause or suffer to be created, emitted or issued, any noises or sounds on property from which such noises or sounds may be heard on the property of another, as may unreasonably annoy, disturb or otherwise disrupt the quiet, comfort or repose of persons in any dwelling or place of temporary or permanent residence within the Village. The violation hereof shall constitute a nuisance.

(2) No person shall create or cause to be emitted any noise which, when measured at any or beyond any lot line of the property on which such noise is being generated in a residential district, exceeds the following standards:

(a) From 8:00 a.m. to 6:00 p.m.:

[1] Airborne sounds in excess of 65 dBA's; or

[2] Airborne sound which has an octave band sound pressure level in decibels which exceeds the values listed in 1 or more octave bands:

	Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
	31.5	78
	63	73
	125	67
	250	60
	500	55
	1,000	51
	2,000	46
	4,000	43
	8,000	40

(b) From 6:00 p.m. to 8:00 a.m.:

[1] Airborne sound which has a sound level in excess of 50 dBA's; or

[2] Airborne sound which has an octave band sound pressure level which exceeds the values listed below in 1 or more octave bands:

	Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
	31.5	75
	63	70
	125	64
	250	57
	500	52
	1,000	49
	2,000	43
	4,000	40
	8,000	37

(3) No person shall create or cause to be emitted any noise which, when measured at or beyond any lot line of the property on which such noise is being generated in a commercial district, exceeds the following standards:

(a) From 8:00 a.m. to 6:00 p.m.:

[1] Airborne noise in excess of 70 dBA's; or

[2] Airborne sound which has an octave band sound pressure level in decibels which exceeds the value listed below in 1 or more bands:

	Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
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	31.5	85
	63	80
	125	74
	250	67
	500	62
	1,000	58
	2,000	53
	4,000	50
	8,000	47

(b) From 6:00 p.m. to 8:00 a.m.:

[1] Airborne noise in excess of 55 dBA's; or

[2] Airborne sound which has an octave band sound pressure level in decibels which exceeds the value listed below in 1 or more bands:

	Octave Band Center Frequency (Hz)	Octave Band Sound Pressure Level (dB)
	31.5	78
	63	73
	125	67
	250	60
	500	55
	1,000	51
	2,000	46
	4,000	43

	8,000	40
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§ 78-4. Enforcement.

Upon receipt of a complaint, the Police Department, Building Inspector or Village representative shall conduct an investigation to determine if there is a probable violation of the provisions of this chapter. For the first occurrence, in lieu of issuing an appearance ticket, an appropriate warning may be issued to the violator to cease and desist from continuing such noise.

§ 78-5. Penalties for offenses.

Any person found guilty of a violation of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

Chapter 82

Chapter 82

NOTIFICATION OF DEFECTS

[HISTORY: Adopted by the Board of Trustees 5-3-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

§ 82-1. Written notice required.

No civil action shall be maintained against the Village for damages or injuries to person or to property, including those arising from the operation of any mechanical or transportation device or equipment, sustained by reason of any highway, street, crosswalk, bridge, culvert, street marking, sign or device or any other property owned, operated or maintained by the Village being defective, out of repair, unsafe, dangerous or obstructed, unless written notice of such defective, out-of-repair, unsafe, dangerous or obstructed condition of such highway, street, crosswalk, bridge, culvert, street marking, sign or device or any other property owned, operated or maintained by the Village was actually given to the Village Clerk 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, street, bridge, culvert or any other property owned by the Village unless written notice thereof specifying the particular place was actually given to the Village Clerk 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.

§ 82-2. Record of notices.

The Village Clerk shall keep an index record, in a separate book, of all written notices that the Village Clerk shall receive of the existence of a defective, out-of-repair, unsafe, dangerous or obstructed condition in or upon any highway, street, crosswalk, bridge, culvert, street marking, sign or device or any other property owned, operated or maintained by the Village or of any accumulation of snow or ice thereon, which record shall state the date of the 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. The record of such notice shall be preserved for a period of 5 years from the date it is received, and upon receipt of any notice, the Village Clerk shall notify the Mayor forthwith.

§ 82-3. Interpretation.

Nothing contained in this chapter shall be held to repeal or modify or waive any existing requirement or statute of limitations that is applicable to these causes of action, but, on the contrary, the provisions hereof shall be held to be additional requirements to the right to maintain any such action. Nothing herein contained shall be held to modify any existing rule of law relative to the question of contributory negligence or to impose upon the Village its officers and employees any greater duty or obligation than is otherwise presently imposed on the Village with respect to the maintenance of any highway, street, crosswalk, bridge, culvert, street marking, sign or device or any other property owned, operated or maintained by the Village.

Chapter 85

Chapter 85

PARKING AND VEHICLES

[HISTORY: Derived from Secs. 6.0 through 6.4, 6.6 and 6.7 of the General Ordinances. Amendments noted where applicable.]

GENERAL REFERENCES

Vehicles — See Ch. 126.

§ 85-1. Parking so as to obstruct traffic.

No person shall park or leave standing any vehicles in such a manner as to obstruct the traffic nor shall any person park or leave any vehicle standing on the left side of the road as measured by the direction in which said vehicle fronts or faces.

§ 85-2. Parking, standing and stopping. [Amended 1-4-1971; 2-11-1977 by L.L. No. 1-1977; 5-6-1985 by L.L. No. 2-1985; 8-4-1997 by L.L. No. 2-1997]

Street parking of vehicles shall be as follows:

Name of Street	Side	Restriction	Location
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Bourndale Road North	South	No parking at any time	From the east curblines of Plandome Road, east to curblines of Chester Drive
Bourndale Road North [Added 5-3-2004 by L.L. No. 1-2004]	South	No parking at any time	From the east curblines of Brookwold Drive east to the dead end
Bourndale Road South	Both	No parking or standing at any time	From the east curblines of Brookwold Drive, east to the end of Bourndale Road South
Chester Drive	East and west	No parking at any time	From north curb of Webster Avenue to south curb of Bourndale Road South
Cove Drive [Amended 3-6-2006 by L.L. No. 2-2006]	South	No stopping here to corner	Starting from the west curblines of Plandome Road, west for a distance of 66 feet
Plandome Court, northerly end	South	No parking at any time	From the east curblines of Plandome Road, east for a distance of 150 feet eastward
Plandome Road	East and west	No parking at any time	From the southerly boundary of the Village, north to the northerly boundary of the Village
Summit Circle	Both	No parking 9:00 a.m. to 5:00 p.m. except Sundays	From the south curblines of Summit Drive, south and then back to Summit Drive
Summit Drive	North	No parking at any time	From the West curblines of Plandome Road, west to the East curblines of Grandview Circle
Summit Drive	South	No parking at any time	From the west curblines of Plandome Road, west to a point opposite the East curblines of Grandview Circle
The Waterway	North	No stopping at any time	Starting from the west curblines of Plandome Road, west for a distance of 30 feet
Webster Avenue	North	90-minute parking, 9:00 a.m. to 7:00 p.m. except Saturday, Sunday and legal holidays	Starting at a point 66 feet east of the east curblines of Chester Drive, easterly to the west curblines of Winthrope Road and continuing easterly from the east curblines of Winthrope Road to the east curblines of Brookwold Drive
Webster	North	No parking at any	From the east curblines of Plandome Road

intersection or crossing within the Village which in its judgment will tend to protect the safety of pedestrians; and to direct the installation and erection of such stop or other signs or signals it may deem advisable or necessary to carry out the intention of this chapter.

§ 85-5. Driving over sidewalks.

No person shall drive any motor vehicle over any sidewalk or footpath for any purpose except over a driveway established for that purpose and except where the same may be necessary in order to reach land upon which a building is being erected where no driveway has been established.

§ 85-6. Parking prohibited certain hours.

Parking vehicles in any street, road, plaza, or other public place between the hours of 2:00 a.m. and 6:00 a.m. is prohibited.

§ 85-7. Limited-time parking. [Added 2-2-1987 by L.L. No. 2-1987]

Parking of vehicles in any street, road, plaza, or other public place during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, shall be limited to a maximum of 3 hours.

§ 85-8. Village speed limit. [Added 5-3-2004 by L.L. No. 1-2004]

No person shall drive or operate any vehicle, motor vehicle or motorcycle on any public highway at a rate of speed in excess of 30 miles per hour. The provisions of this section shall not apply to ambulance, fire or police vehicles when proceeding upon emergency calls.

§ 85-9. Penalties for offenses. [Amended 4-2-1979 by L.L. No. 10-1979; 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation § 85-2, 85-6 or 85-7 of this chapter shall be punishable by a fine of not more than \$100. Any person found guilty of a violation of the other sections of this chapter shall be punishable as provided in the New York State Vehicle and Traffic Law.

Chapter 88

Chapter 88

Peace and Good Order

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

ARTICLE I

Shopping Carts

[Derived from Secs. 8.2 and 8.7 of the General Ordinances]

§ 88-1. Written permission required; abandonment prohibited.

No person shall enter the Village with shopping carriages or carts not belonging to that person without possessing on his person written permission of the owner of said carriage or cart, and no person shall abandon any such carriage or cart within the Village limits.

§ 88-2. Penalties for offenses. [Amended 9-12-1988 by L.L. No. 2-1988; 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation of this article shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

ARTICLE II

Dumping in Manhasset Bay

[Adopted 4-2-1979 by L.L. No. 6-1979]

§ 88-3. Dumping prohibited.

No person shall dump, empty or throw, or permit to be dumped, thrown or emptied, any garbage, sewage or the contents of any cesspool, privy or vault into the water of Manhasset Bay, bordering lands within the Village limits or into any stream within the Village flowing into said Bay.

§ 88-4. Penalties for offenses. [Amended 9-12-1988 by L.L. No. 2-1988; amended 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation of this article shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

ARTICLE III

Nonresident Property Owners

[Adopted 5-3-2004 by L.L. No. 1-2004]

§ 88-5. Information to be filed with Village Clerk.

Every person who owns a dwelling in the Village in which he or she does not reside shall provide the Village Clerk with his or her current business and residential telephone number, E-mail address and mailing address, and the telephone numbers of all tenants or other occupants of the dwelling.

Chapter 91

Chapter 91

PEDDLING AND SOLICITING

[HISTORY: Adopted by the Board of Trustees 5-3-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

§ 91-1. License required; prohibited activity.

A. It shall be unlawful for any person, organization, society, association, company or corporation or their agents or representatives to hawk, vend, peddle or solicit orders for the purchase or sale of goods, wares, merchandise or other commodities in the streets, offices of business buildings or in public places of the Village without a license issued pursuant to this chapter.

B. It shall be unlawful for any person, organization, society, association, company or corporation or their agents or representatives to hawk, vend, peddle or solicit orders for the purchase or sale of goods, wares, merchandise or other commodities by going from house to house upon public or private property within the Village.

C. It shall be unlawful for any person to solicit employment or work or services to be performed by going from house to house upon public or private property within the Village.

D. It shall be unlawful for any person, organization, society, association, company or corporation or their agents or representatives to employ any trick or device, or by any false or misleading statement or representation, to obtain or attempt to obtain admission to the house, garage or stable of any person or corporation in the Village, or obtain or attempt to obtain the consent or permission of the owner or occupant of any premises, house, garage or stable within the Village to enter in or upon the same, for the purpose of soliciting subscriptions for any book, publication, paper, magazine or periodical or for the purpose of seeking employment or for the purpose of soliciting orders for work, labor or services to be performed within or without the Village.

§ 91-2. Application for license.

A. Where such activities are permitted by this chapter, an application to hawk, vend, peddle or solicit orders for the purchase or sale of goods, wares, merchandise or other commodities as provided for in this chapter shall be in writing and addressed to the Mayor and shall contain the following information:

(1) Name and address of applicant and purpose for which the license is sought.

(2) Names and addresses of the persons, organization, society, association, company or corporation seeking such permission.

(3) Whether or not any commissions, fees, wages or emoluments are to be expended in connection with such activity.

(4) The dates upon which the hawking, vending, peddling or soliciting of orders for the purchase or sale of goods or wares, merchandise or other commodities will be conducted.

(5) Such other information as the Board of Trustees may require.

B. All applications must be accompanied by a processing fee in an amount established by resolution of the Board of Trustees, payable to the Village Clerk.

C. Upon receiving such application, the Mayor shall present same to the Board of Trustees at its next regular meeting. The Board of Trustees shall approve the application of all bona fide applicants who have complied with the above provisions.

D. Any license approval granted by the Board of Trustees is subject to the following restrictions:

(1) All hawking, vending, peddling or soliciting of orders for the purchase or sale of goods or wares, merchandise or other commodities must be conducted between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Fridays only, except that in particular cases the Board of Trustees, for good cause shown, may permit such activities on different days or at different times.

(2) Any license issued under the terms of this chapter shall be effective for a period not to exceed 10 days, except that the Board of Trustees, for good cause shown, may establish a longer or shorter period.

E. This chapter shall not be applicable to any state of facts under which it is in conflict with the laws or Constitution of the United States. Further, where a veteran or the widow or widower of a veteran lawfully possesses a license from the Nassau County Clerk pursuant to New York State General Business Law § 32, such license shall be valid in the Village and the activities permitted by such license shall be lawful activities within the Village.

§ 91-3. License required for charitable solicitation; application; regulations.

It shall be unlawful for any person, organization, society, association, company or corporation or their agents or representatives to proselytize, canvass or to distribute handbills, pamphlets or other written material or to solicit donations or contributions of money or property or financial

assistance of any kind upon the streets, in the offices of business buildings, upon private property, by house-to-house canvass or in public places in the Village without a license previously issued pursuant to this chapter, or to enter upon the premises of any Village resident who has noted objection to such entry and whose address has been provided to such person, organization, society, association, company or corporation or their agents or representatives as required by § 91-5.

A. Application for a license as provided for in this chapter shall be in writing and addressed to the Mayor and shall contain the following information:

- (1) Names, address and purpose of the cause for which the license is sought.
- (2) Names and addresses of the officers and directors of the organization, firm, society, association, company or corporation seeking such license.
- (3) Time for which permission is sought and localities and places of activity.
- (4) Legal and tax status of any organization, firm, society, association, company or corporation so applying.
- (5) Whether or not any commissions, fees, wages or emoluments are to be expended in connection with such activity.
- (6) Such other information as the Board of Trustees may require.

B. Upon receiving such application, the Mayor shall present same to the Board of Trustees at its next regular meeting. The Board of Trustees shall approve the application of all bona fide applicants who have complied with the above provisions.

C. Any license approval granted by the Board of Trustees is subject to the following restrictions:

- (1) All activity must be conducted between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Fridays only.
- (2) Any organization, society, association, company or corporation licensed under this section shall not have more than 6 individuals engaged in the activity within the Village at any one time.
- (3) The license granted hereunder shall be effective for no more than 10 days.

(4) All persons conducting any activity on behalf of any organization, society, association, company or corporation licensed under this section shall, at all times during such period, carry and prominently display an identification card issued by the organization, society, association, company or corporation licensed to conduct the activity. Each identification card shall plainly show the name of the person conducting the activity, his or her photograph and the name of the person, organization, society, association, company or corporation on whose behalf such activity is being conducted.

(5) No person conducting any activity on behalf of any organization, society, association, company or corporation shall enter upon the premises of any residents of the Village who have expressed a desire in writing not to be visited, canvassed, proselytized or solicited by such persons, organizations, societies, associations, companies or corporations and whose addresses have been provided pursuant to § 91-5.

§ 91-4. Revocation of license.

Any and all licenses which may be granted by the Board of Trustees pursuant to any part of this chapter may, for cause, be suspended by the Mayor and may be revoked by the Board of Trustees, after notice and hearing, for any of the following causes:

A. Fraud, misrepresentation or false statement contained in the application for the license.

B. Violation of any of the restrictions imposed on the issuance of such license or on the conduct of any activity so licensed.

§ 91-5. Listing of persons not to be visited by charitable solicitors.

The Village Clerk shall maintain a list of residents within the Village who have expressed in writing a desire not to be visited by any person, organization, society, association, company or corporation or their agents or representatives for the purpose of proselytizing, canvassing or distributing handbills, pamphlets or other written material or soliciting donations or contributions of money or property or financial assistance of any kind. Upon the issuance of any license hereunder, any person, organization, society, association, company or corporation shall be provided with a copy of the list of these Village residents who have expressed in writing a desire not to have any such person, organization, society, association, company or corporation or their agents or representatives enter upon their property. Every organization, society, association, company or corporation licensed under this chapter shall agree not to visit the premises so enumerated in the list provided to it by the Village.

§ 91-6. Penalties for offenses.

Any person violating any provision of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

Chapter 106

Chapter 106

STORMWATER AND STORM SEWERS

[HISTORY: Adopted by the Board of Trustees 5-7-2007 by L.L. No. 1-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 65.

Landscaping and construction contractors — See Ch. 72.

Zoning — See Ch. 140.

ARTICLE I

Stormwater Management and Erosion and Sediment Control

§ 106-1. Intent.

A. It is the intent of the Board of Trustees, in this article, to establish stormwater management and erosion and sediment controls that will satisfy the relevant part of the Phase II stormwater regulations adopted by DEC. The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the Village and to address the relevant findings of fact of the DEC set forth in this article.

B. The objectives of this article are the following:

(1) To meet the requirements of minimum measures 4 and 5 of the DEC's SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, including as amended or revised;

(2) To require land development activities to conform to the substantive requirements of SPDES General Permit for Construction Activities GP-02-01, including as amended or revised;

(3) To minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels, water courses and waterways;

(4) To minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;

(5) To minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and

(6) To reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 106-2. Findings of fact.

It has been determined by the DEC that:

A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, and/or sediment transport and deposition;

B. This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species;

C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;

D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation;

E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;

F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;

G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;

H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution

associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.

I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 106-3. Definitions.

A. For the purposes of this article, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular; the word "shall" is mandatory. Notwithstanding some references for definitional purposes to other chapters of the Village Code, the omission of such references in other instances shall not be taken as an intent not to use such definitions for specific terms that are not defined in this section and are defined in other chapters of said Code when it is deemed by the SMO, the Building Inspector or any other official, board, or committee of the Village to be appropriate to do so.

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

AGRICULTURAL ACTIVITY —% The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

APPLICANT —% A property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING —% Any structure, either temporary or permanent, having walls and a roof, designed for or used as a shelter of any person, animal, or property, and occupying more than 100 square feet of area.

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

CLEARING —% Any activity that removes any vegetative surface cover.

COUNTY CLERK —% The County Clerk of the County of Nassau, State of New York.

DEC —% The State Department of Environmental Conservation.

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

DESIGN MANUAL —% The version of the State Stormwater Management Design Manual, in effect from time to time, including applicable updates, which serves as the official state guide for stormwater management principles, methods and practices.

DEVELOPER —% A person who undertakes land development activities.

EPA —% The United States Environmental Protection Agency.

EROSION —% The removal of soil particles by the action of water, wind, ice or other geological agents.

EROSION CONTROL MANUAL —% The most recent version of the New York Standards and Specifications for Erosion and Sediment Control manual, commonly known as the "Blue Book."

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

IMPERVIOUS COVER —% Those surfaces, improvements, and structures that cannot effectively infiltrate rainfall, snow melt, and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT —% A SPDES permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION —% The process of percolating stormwater into the subsoil.

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

LAND DEVELOPMENT ACTIVITY —% Construction activity including, but not limited to, clearing, grading, excavating, soil disturbance, and placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

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

LICENSED/CERTIFIED PROFESSIONAL —% A person licensed to practice engineering in the state or a certified professional in erosion and sediment control.

MAINTENANCE AGREEMENT —% A document legally recorded in the Office of the Nassau County Clerk that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

MS4s —% Municipal separate stormwater sewer systems.

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

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

POLLUTANT —% Any of the following which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the pertinent standards promulgated by the federal government, the state, the Village, or any other municipality or department thereof, having legal jurisdiction to impose such standards: dredged spoil; filter backwash; solid waste; incinerator residue; treated or untreated sewage, garbage, and sewage sludge; munitions; chemical wastes; biological, radioactive, and hazardous materials; heat; wrecked or discarded equipment; industrial, municipal, and agricultural waste; ballast discharged into water; paints, varnishes, and solvents; oil and other automotive fluids; hazardous and nonhazardous liquid and solid wastes; yard wastes, including branches, grass clippings, and leaves; refuse, rubbish, garbage, litter, and other discarded or abandoned objects and accumulations so that same may cause or contribute to pollution; discharges of soaps, detergents, and floatables; pesticides, herbicides, and fertilizers; sewage, fecal coliforms, and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building, structure, or site improvements; cement, rock, gravel, sand, silt, mud, other soils; and all other noxious or offensive matter of any kind.

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

PROJECT —% Land development activity.

RECHARGE —% The replenishment of underground water reserves.

SEDIMENT CONTROL —% Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS —% Cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, and/or other habitats for threatened, endangered, or special concern species.

SMO —% The Stormwater Management Officer.

SMPs —% Stormwater management practices.

SPDES —% State Pollutant Discharge Elimination System.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 —% A DEC SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 —% A DEC SPDES permit issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA and/or DEC established water quality standards and/or to specify stormwater control standards.

STABILIZATION —% The use of practices that prevent exposed soil from eroding.

STATE —% The State of New York.

STOP-WORK ORDER —% An order issued which requires that all, or a specified portion of, construction activity on a site be stopped.

STORMWATER —% Rainwater, surface runoff, snowmelt, and drainage.

STORMWATER HOTSPOT —% A land use or activity that generates higher concentrations of hydrocarbons, trace metals, or toxicants than are found in typical stormwater runoff.

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

STORMWATER MANAGEMENT FACILITY —% One or a series of stormwater management practices installed, stabilized, and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER —% The Building Inspector, or his designee or such other person appointed by the Board of Trustees, as the designated officer of the Village, to accept and review stormwater pollution prevention plans, forward the plans to the applicable Village board or committee and inspect stormwater management practices.

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

STORMWATER POLLUTION PREVENTION PLAN —% A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF —% Flow on the surface of the ground resulting from precipitation.

STREAM CHANNEL —% A natural or artificial watercourse with a definite bed and banks, that conducts continuously or periodically flowing water.

STRUCTURE —% As defined in the Zoning Chapter of the Village Code.

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

SWPPP —% Stormwater pollution prevention plan.

VILLAGE —% Incorporated Village of Plandome Heights.

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

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

§ 106-4. Statutory authority.

In accordance with § 10 of the Municipal Home Rule Law of the State of New York, the Board of Trustees has the authority to enact and amend rules, regulations and/or local laws for the purpose of promoting the health, safety or general welfare of the Village and for the protection and enhancement of its physical environment. The Board of Trustees may include in any such rules, regulations and/or local laws provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer, and enforce such rules, regulations and/or local laws.

§ 106-5. Applicability.

A. This article shall be applicable to all land development activities, as defined in this article.

B. The Village shall designate a SMO who shall accept all stormwater pollution prevention plans and notify the applicable Village board. The SMO may either:

(1) Review the plans;

(2) Upon approval by the Board of Trustees, engage the services of a registered professional engineer to review the plans, specifications, and related documents, at a cost borne by the applicant; or

(3) Accept the certification of a licensed/certified professional, retained and paid by the applicant, that the plans conform to the requirements of this article.

C. All land development activities subject to review and approval by any board of the Village shall be reviewed by such board consistent with the standards contained in this article.

D. All land development activities not subject to review as stated in the preceding Subsection C shall be required to submit a SWPPP to the SMO who shall review and approve the SWPPP if the SMO determines that it complies with the requirements of this article.

§ 106-6. Exemptions.

A. Agricultural activity as defined in this article.

B. Routine maintenance activities that disturb less than 250 square feet and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

C. Repairs to any SMP or facility deemed necessary by the SMO.

D. Any part of a subdivision if a plat for the subdivision has been approved by the Village Planning Board on or before the effective date of this chapter, except where the Planning Board has reserved site plan review or other continuing jurisdiction.

E. Land development activities for which a building permit has been approved on or before the effective date of this chapter.

F. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

G. Emergency activity immediately necessary to protect life, property or natural resources.

H. Activities of an individual engaging in home gardening by growing flowers, vegetable and/or other plants primarily for use by that person and his or her family.

I. Landscaping and horticultural activities in connection with an existing structure.

§ 106-7. Stormwater pollution prevention plans.

A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed until the appropriate board has received a SWPPP prepared in accordance with the specifications in this chapter.

B. Contents of stormwater pollution prevention plans. All SWPPPs shall provide the following background information and erosion and sediment controls:

(1) Background information about the scope of the project, including location, type and size of project;

(2) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map shall show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow, or equipment storage areas; and location(s) of the stormwater discharges(s). The site map shall be at a scale no smaller than 1 inch equals 100 feet;

(3) Description of the soil(s) present at the site;

(4) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation, and any other activity at the site that results in soil disturbance. Consistent with the Erosion Control Manual, not more than 1 acre shall be disturbed at anyone time unless pursuant to an approved SWPPP;

(5) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;

(6) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;

(7) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project, from initial land clearing and grubbing to project close-out;

- (8) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (9) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- (10) Temporary practices that will be converted to permanent control measures;
- (11) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- (12) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
- (13) Name(s) of the receiving water(s);
- (14) Delineation of SWPPP implementation responsibilities for each part of the site;
- (15) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable;
- (16) Any existing data that describes the stormwater runoff at the site; and
- (17) The name, address, telephone and fax numbers, and e-mail address, if any, of the applicant's representative who will be in charge of monitoring compliance with this article on a daily basis.

C. Land development activities meeting Condition A or B below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth below, as applicable:

- (1) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either impaired water identified on the DEC's 303(d) list of impaired waters, or such superseding list as may be prepared by DEC, or a total maximum daily load designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
- (2) Condition B: stormwater runoff from land development activities disturbing 250 square feet or more.

D. SWPPP requirements for Conditions A and B:

- (1) All information in Subsection B of this section.
- (2) Description of each postconstruction SMP.
- (3) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction SMP.
- (4) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
- (5) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.
- (6) Dimensions, material specifications, and installation details for each postconstruction SMP.
- (7) Maintenance schedule to ensure continuous and effective operation of each postconstruction SMP.
- (8) Maintenance easements to ensure access to all SMPs at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
- (9) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with this article.

E. Plan certification. The SWPPP shall be prepared by a landscape architect, certified professional in erosion and sediment control, or professional engineer and must be signed by the licensed professional preparing the plan, who shall certify that the design of all SMPs meets the requirements in this article.

F. Other environmental permits. The applicant shall demonstrate that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

G. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or SMP installation shall sign and date a copy of the following certification statement before undertaking any land development activity:

"I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

(2) The certification must include the name and title of the person providing the signature, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(3) The certification statement(s) shall become part of the SWPPP for the land development activity.

H. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 106-8. Performance and design criteria.

All land development activities shall be subject to the following performance and design criteria:

A. Technical standards. For the purposes of this article, the following documents shall serve as the official guides and specifications for stormwater management. SMPs that are designed and constructed in accordance with those technical documents shall be presumed to meet the standards imposed by this article:

(1) The Design Manual.

(2) The Erosion Control Manual.

B. Equivalence to technical standards. Where SMPs are not in accordance with the technical standards, the applicant or developer must demonstrate equivalence to the technical standards in Subsection A of this section, and the SWPPP shall be prepared by a licensed/certified professional.

C. Water quality standards. No land development activity shall cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the state.

§ 106-9. Maintenance, inspection and repair of stormwater facilities.

A. Maintenance and inspection during construction.

(1) The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this

article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.

(2) For land development activities that meet Conditions A or B of § 106-7C, the applicant or developer shall have a licensed/certified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every 7 days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.

B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement shall be recorded by the grantor in the office of the County Clerk after approval of the form and substance thereof by counsel for the Village. The requirement established hereunder for a maintenance easement agreement may be waived by the Village board having jurisdiction over the land development activity or the SMO if, in the reasonable determination of the SMO or such Village board, said obligation is deemed not necessary for the purposes of this article.

C. Maintenance after construction. The owner or operator of permanent SMPs installed in accordance with this article shall be responsible for ensuring that they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes, as a minimum, the following:

(1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.

(2) Written procedures for operation and maintenance and training new maintenance personnel.

(3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 106-8 of this chapter.

D. Maintenance agreements. The Village shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners or benefited landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The

maintenance agreement shall be consistent with the terms and conditions of this article. The Village, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

§ 106-10. Subdivision.

In addition to any and all state and Village laws, rules and regulations governing the subdivision or partitioning of land within the Village, the following requirements shall apply to the subdivision or partitioning of land within the Village:

A. A SWPPP consistent with the requirements of this article shall be required for preliminary subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards of this article. The approved preliminary subdivision plat shall be consistent with the provisions of this article.

B. A SWPPP consistent with the requirements of this article and with the terms of preliminary plan approval shall be required for final subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards of this article. The approved final subdivision plat shall be consistent with the provisions of this article.

§ 106-11. Site plans.

In addition to any and all state and Village laws, rules and regulations governing site plan review in the Village, a stormwater pollution prevention plan consistent with the requirements of this article shall be required with respect to all applications for site plan review of properties within the Village. The SWPPP shall meet the performance and design criteria and standards of this article. The approved site plan shall be consistent with the provisions of this article.

§ 106-12. Construction inspection.

A. Erosion and sediment control inspection.

(1) The SMO may require such inspections as she or he deems necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, and/or as otherwise required by the SMO:

(a) Start of construction.

- (b) Installation of sediment and erosion control measures.
- (c) Completion of site clearing.
- (d) Completion of rough grading.
- (e) Completion of final grading.
- (f) Close of the construction season.
- (g) Completion of final landscaping.
- (h) Successful establishment of landscaping in public areas.

(2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until all violations are corrected and all work previously completed has received approval by the SMO.

B. Stormwater management practice inspections. The SMO is responsible for conducting inspections of SMPs. The SMO may fulfill the responsibility through a licensed/certified professional retained by the Village for such purpose, who shall report his or her findings to the SMO. All applicants are required to submit as-built plans for any SMPs located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

C. Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including, but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other SMPs. The inspection must be made by a licensed professional engineer or a certified professional in erosion and sediment control.

D. Submission of reports. The SMO may require monitoring and reporting from entities subject to this article as necessary to determine compliance with this article.

E. Right-of-entry for inspection. To the maximum extent permitted by law, when any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Village the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection B of this section.

§ 106-13. Guarantees and recordkeeping.

A. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Village in its approval of the SWPP, the Village may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit, in its discretion, in form satisfactory to the Village from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Village as the beneficiary. The security shall be in an amount to be determined by Village based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Village, provided that such period shall not be less than 1 year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a 1-year inspection has been conducted and the facilities have been found to be acceptable to the Village. Per annum interest on cash escrow deposits, if any, shall be reinvested in the account until the surety is released from liability.

B. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Village with security in the form of a cash escrow, a maintenance bond, or an irrevocable letter of credit, in form satisfactory to the Village, from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Village may draw upon the escrow, bond, or account, from time to time, to cover the costs of proper operation and maintenance, including engineering and inspection costs. To the extent that such escrow, bond, or letter of credit, because of such draw, is no longer sufficient to

ensure the proper operation and maintenance of the facilities, the Village may require an additional escrow, bond, or letter of credit.

C. Recordkeeping. The Village may require entities subject to this article to maintain records demonstrating compliance with this article.

§ 106-14. Fees for services.

The Village requires any person undertaking land development activities regulated by this chapter to reimburse the Village for costs of review of SWPPPs, inspections, or SMP maintenance performed by the Village or performed by a third party for the Village.

§ 106-15. Enforcement; penalties for offenses.

A. Notice of violation. When the SMO, his or her designee, or other designee of the Board of Trustees determines that a land development activity is not being carried out in accordance with the requirements of this article, the SMO or Village Clerk may issue a written notice of violation to the landowner. The notice of violation shall contain:

- (1) The name and address of the landowner, developer or applicant, if any.
- (2) The address, when available, or a description of the building, structure, or land upon which the violation is occurring.
- (3) A statement specifying the nature of the violation.
- (4) A description of the remedial measures necessary to bring the land development activity into compliance with this article and a time schedule for the completion of such remedial action.
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.
- (6) A statement that the determination of violation may be appealed to the Village Board of Trustees by filing a written notice of appeal within 15 days of service of notice of violation.
- (7) If abatement of a violation and/or restoration of affected premises are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, if the violator fails to remediate or restore within the established deadline, the work may be performed by the Village and the expense thereof shall be charged to the violator and, if unpaid within 30 days, become a lien upon the premises at which the violation exists, and collected in the same manner as Village real property taxes.

B. Stop-work orders. The Building Inspector or the Village Clerk, upon recommendation of the SMO, his designee, or other designee of the Board of Trustees, may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Village confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.

C. Injunctive relief. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.

D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates any provision of this article shall be guilty of a violation punishable by a fine not exceeding \$1,000 or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of 5 years, punishable by a fine not less than \$1,000 nor more than \$3,000 or imprisonment for a period not to exceed 15 days, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of 5 years, punishable by a fine not less than \$3,000 nor more than \$5,000 or imprisonment for a period not to exceed 15 days, or both. Violations of this article shall be deemed offenses, and not misdemeanors. Each week's continued violation shall constitute a separate violation.

E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the Building Inspector or the Village Clerk, upon recommendation of the SMO, may prohibit the occupancy of said building or land.

F. Abatement and restoration of lands. Any violator of any provision of this article may be required to abate a violation and/or restore land to its undisturbed condition or to such other condition as shall best protect the property and the adjacent properties from the problems of erosion and sediment deposits off the land that may be required as the result of actions of the violator, all in the discretion of the SMO. In the event that abatement and/or restoration is not undertaken within a reasonable time after notice, the SMO or the Building Inspector or the Village Clerk, upon recommendation of the SMO, may either:

- (1) Direct that the remediation and/or restoration work be performed with Village personnel and/or third-party contractors and the cost thereof shall constitute a lien, charge, and levy upon the real property in, on or upon which the violation exists until it is paid or otherwise satisfied or

discharged and shall be collected by the Village Treasurer. Such charge shall include, among other things, administrative, legal, and actual expenses incurred by the Village, and shall be collected in the same manner provided by law for the collection of delinquent taxes; or

(2) Seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property, at the cost and expense, including those of the litigation and the fees of witnesses and attorneys, of the violator.

§ 106-16. Appeal of notice of violation.

Any person or entity receiving a notice of violation with respect to any provision of this article may appeal same within 7 calendar days of the date of issuance of such notice, by submitting a written notice of appeal to the Board of Trustees. The appealing party shall be entitled to a hearing before the Board of Trustees or such other officer or employee or board of the Village designated by the Board of Trustees to conduct such hearing. The Board of Trustees or its designee shall consider such appeal within 30 days after the Village receives such notice of appeal, and shall render a decision with respect to such appeal within 5 business days after the close of the hearing conducted with respect to such appeal. A written decision shall be mailed to the appellant by the Village. At the hearing, the appellant shall have the right to present testimony and evidence relevant to the matter.

§ 106-17. Municipal search warrant available if access to premises is denied.

If the SMO or his or her designees are refused access to premises at which a violation of this article is suspected, the SMO, the Building Inspector or the Village Clerk, upon recommendation of the SMO, may seek a municipal search warrant in the Village Justice Court or other court of competent jurisdiction, for authority to enter upon such premises to determine whether a violation of this article is occurring or is reasonably likely to occur if immediate action is not taken. Upon any determination that a violation has occurred, exists, or is reasonably likely to occur if immediate action is not taken, the Village may seek a court order permitting the Village to take any and all measures reasonably necessary to abate the violation and/or to prevent the violation from occurring or continuing, and/or to restore the premises. The cost of implementing and maintaining such measures shall be the sole responsibility, jointly and severally, of the property owner, the developer and the applicant, if any. In any such action, the Village shall be entitled to its legal costs and expenses, including the fees of attorneys and witnesses, as may be awarded by the court, and, if such fees, costs and expenses are not paid to the Village within 30 days of demand therefore, such fees, costs and expenses shall become a lien upon the premises in, on or upon which such violation has occurred and shall be collected in the same manner as Village property taxes are collected.

§ 106-18. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided under this article, any condition caused or permitted to exist in violation of any provision of this article is a threat to public

health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

§ 106-19. Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state, or local law, rule or regulation, and it is within the discretion of the Village to seek cumulative remedies.

ARTICLE II

Illicit Discharges, Activities, and Connections to Separate Storm Sewer System

§ 106-20. Intent.

A. It is the intent of the Board of Trustees in this article to prohibit illicit discharges, activities, and connections to the Village's separate storm sewer system in order to satisfy the relevant part of the Phase II stormwater management requirements of the National Pollutant Discharge Elimination System regulations, administered by the state through the State Pollutant Discharge Elimination System (SPDES) regulations and to provide for the health, safety, and general welfare of the citizens of the Village through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for MS4s.

B. The objectives of this article are:

- (1) To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, including as amended or revised;
- (2) To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process, or discharge nonstormwater wastes;
- (3) To prohibit unauthorized and illicit connections, activities, and discharges to the Village's MS4;
- (4) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this article; and

(5) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, and other pollutants into the MS4.

§ 106-21. Word usage; definitions.

A. For the purposes of this article, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular include the plural, and words in the plural include the singular; the word "shall" is mandatory.

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

BEST MANAGEMENT PRACTICES —% Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage, leaks, sludge, water disposal, or drainage from raw materials storage.

BMPs —% Best management practices.

CLEAN WATER ACT —% The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY —% An activity requiring authorization under the SPDES Permit for Stormwater Discharges From Construction Activity, GP-02-01, as amended or revised, or covered by the Village's erosion and sediment control or pollution prevention plan laws, rules or regulations. These activities include construction projects resulting in land disturbance of 1 or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

COUNTY —% The County of Nassau, State of New York.

DEC —% The New York State Department of Environmental Conservation.

DESIGN PROFESSIONAL —% A professional engineer or registered architect licensed by the state.

EPA —% The Federal Environmental Protection Agency.

HAZARDOUS MATERIALS —% Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, a substantial present or

potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLCIT ACTIVITY —% Any action or condition, active or passive, which results in nonstormwater entering the Village's MS4, or into an MS4 that tributaries into the Village's MS4.

ILLCIT CONNECTIONS —% Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the Village's MS4, or into an MS4 that tributaries into the Village's MS4, including but not limited to:

- (1) Any conveyances which allow any nonstormwater discharge including, but not limited to, treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any drain or conveyance connected from a commercial or industrial land use to the Village's MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency; or
- (3) Any building or other structure's floor drain or trench drain; or
- (4) Any unauthorized connection as defined elsewhere in this article.

ILLCIT DISCHARGE —% Any discharge through an unauthorized connection, and any direct or indirect nonstormwater discharge to the Village's MS4, or into an MS4 that tributaries into the Village's MS4, except as exempted in this article.

INDUSTRIAL ACTIVITY —% An activity requiring a SPDES Permit for Discharges From Industrial Activities Except Construction, GP-98-03, including as amended or revised.

MS4 —% Municipal separate storm sewer system.

MUNICIPAL SEPARATE STORM SEWER SYSTEM —% A conveyance or system of conveyances and retention and infiltration facilities (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), that is:

- (1) Owned or operated by the Village or another municipal entity;
- (2) Designed or used for collecting, conveying, storing, infiltrating and/or managing stormwater;

(3) Which is not a combined sewer; and

(4) Which is not part of a publicly owned treatment works as defined at 40 CFR 122.2.

NYCRR —% New York Code, Rules, and Regulations.

NONSTORMWATER DISCHARGE —% Any discharge to an MS4 that is not composed entirely of stormwater.

PERSON —% Any individual, association, organization, partnership, firm, corporation or other entity recognized by law.

POLLUTANT —% Shall have the same meaning ascribed to such word in § 106-3 of this chapter.

PREMISES —% Any lot, parcel of land, or portion of land, whether improved or unimproved, and all buildings and structures thereon, including adjacent sidewalks and parking strips.

SMO —% The Stormwater Management Officer.

SPECIAL CONDITIONS

(1) Discharge compliance with water quality standards: a condition that applies when the Village has been notified that the discharge of stormwater authorized under its MS4 SPDES permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the Village must take necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

(2) 303(d) listed waters: a condition in the Village's MS4 SPDES permit that applies when the MS4 discharges to a DEC 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.

(3) Total maximum daily load strategy: a condition in the Village's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the Village shall be required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

(4) A condition in the Village's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges: Under such condition, the Village must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the Village must, within 6 months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

SPDES —% State Pollutant Discharge Elimination System.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 —% A DEC SPDES permit issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 —% A DEC SPDES permit issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

SPDES STORMWATER DISCHARGE PERMIT —% A permit issued by DEC that authorizes the discharge of pollutants to waters of the state.

STATE —% The State of New York.

STORMWATER —% Rainwater, surface runoff, subsurface drainage and snowmelt.

STORMWATER MANAGEMENT OFFICER —% The Building Inspector, or his designee, as the designated officer of the Village to enforce this article.

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

TMDL —% Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD —% The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water allocated among the sources of that pollutant.

UNAUTHORIZED CONNECTION —% A permanent or temporary unapproved direct or indirect conveyance to the Village's MS4. Any connection, pipe, hose, or other conveyance, whether permanent or temporary, that is not documented on plans, maps, or equivalent records

signed by the Superintendent, or that is not approved by a permit issued by the Superintendent, is considered unauthorized, regardless of whether the discharge is otherwise allowed by this chapter.

UNCONTAMINATED —% Not having any pollutants.

VILLAGE —% The Incorporated Village of Plandome Heights.

WASTEWATER —% Water that is not stormwater, is contaminated with pollutants, and is or will be discarded.

§ 106-22. Applicability.

This article of Chapter 106 of the Village Code shall apply to all discharge connections to the Village's MS4, including all activities that result in discharge, seepage or deposition into the Village's MS4, and all water entering the Village's MS4 generated on any developed and undeveloped premises unless explicitly exempted by an authorized enforcement agency and allowed by a discharge or connection permit or other document approved by the SMO. This article shall also apply to discharges and connections entering any other MS4 that is tributary to the Village's MS4.

§ 106-23. Responsibility for administration.

The SMO, or the Village Clerk, upon advice from the SMO, shall administer, implement, and enforce the provisions of this article. All references herein to actions that may be taken by the SMO shall be deemed also to refer to actions that may be taken by the Village Clerk upon advice from the SMO.

§ 106-24. Discharge and illicit connection prohibitions; exceptions.

A. Prohibition of illegal discharges. No person shall discharge, cause or allow to be discharged into the Village's MS4 any illicit discharge or any other materials other than stormwater. The commencement, conduct, or continuance of any illegal discharge to the MS4 is prohibited, except as follows:

(1) The following discharges are exempt from discharge prohibitions established by this article, unless DEC or the Village at any time determines them to be substantial contributors of pollutants: water line flushing or other potable water source flushing, uncontaminated landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater from foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, uncontaminated irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated

swimming pool discharges, residential street wash water, water from fire-fighting activities, and any other water source not containing pollutants.

(2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws, rules and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.

(3) Dye testing in compliance with applicable state, county and Village regulations is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

(4) Any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of DEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws, rules and regulations, and provided that written approval has been granted for any discharge to the Village's MS4 by the SMO.

B. Prohibition of illicit connections.

(1) The construction, use, maintenance, and continued existence of illicit connections to the MS4 are prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the Village's MS4, or causes or allows such a connection to continue.

(4) No person shall, or shall cause another, to construct, use, maintain or continue to use or maintain any unauthorized connection to the Village's MS4.

(5) No person shall permit, tolerate or allow any unauthorized connection from such person's premises to the Village's MS4.

§ 106-25. Failing individual sewage treatment systems prohibited.

No person shall operate a failing individual sewage treatment system in areas tributary to the Village's MS4. An individual sewage treatment system is failing if it has one or more of the following conditions:

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to a separate stormwater sewer system.
- D. Liquid level in the septic tank above the outlet invert.
- E. Contamination of off-site groundwater.
- F. Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.

§ 106-26. Activities contaminating stormwater prohibited.

A. The following activities are prohibited:

(1) Those types of activities that cause or contribute to:

- (a) A violation of the Village's MS4 SPDES permit; and/or
- (b) The Village being subject to special conditions.

(2) Failing individual sewage treatment systems;

(3) Improper management of pet waste; and

(4) Any other activity that causes or contributes to a violation of the Village's MS4 SPDES permit authorization.

B. Upon notification to a person that such person is engaged in activities that cause or contribute to violations of the Village's MS4 SPDES permit authorization, such person shall immediately commence and continue thereafter with all due diligence to take all reasonable actions to correct such activities such that such person no longer causes or contributes to violations of the Village's MS4 SPDES permit authorization, or causes or contributes to pollutants to be discharged or deposited into the Village's MS4.

§ 106-27. Prevention, control and reduction of stormwater pollutants.

A. Best management practices.

(1) Where the SMO has identified illicit discharges or activities contaminating stormwater, the Village may require implementation of BMPs to control those illicit discharges and activities.

(2) The owner, lessee or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from discharge, accidental or otherwise, of pollutants or other prohibited materials or wastes into the Village's MS4 through the use of structural and nonstructural BMPs.

(3) Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge or an activity contaminating stormwater, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the Village's MS4.

(4) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

B. Individual sewage treatment systems: response to special conditions requiring no increase of pollutants or requiring a reduction of pollutants. Where individual sewage treatment systems are contributing to the Village's MS4 being subject to special conditions, the owner, lessee and operator of the premises upon which such individual sewage treatment systems is located, or which are being serviced by such individual sewage treatment system, shall be required to:

(1) Maintain and operate individual sewage treatment systems as follows:

(a) Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within 3 inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within 10 inches of the bottom of the outlet baffle or sanitary tee.

(b) Avoid the use of septic tank additives.

(c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and

(d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash, and other such items.

(2) Repair or replace individual sewage treatment systems as follows:

(a) In accordance with 10 NYCRR, Appendix 75-A, or, if applicable, the Nassau County Department of Health Manual of On-Site Sewage Disposal, as the same may be amended or superseded from time to time, to the maximum extent practicable.

(b) A design professional shall prepare design plans for any type of absorption field that involves:

[1] Relocating or extending an absorption area to a location not previously approved for such.

[2] Installation of a new subsurface treatment system at the same location.

[3] Use of alternate system or innovative system design or technology.

(c) A written certificate of compliance shall be submitted by the design professional to the Village at the completion of construction of the repair or replacement system.

§ 106-28. Emergency situations.

A. Suspension of access to MS4. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the Village's MS4. The SMO shall notify the person in writing within a reasonable time thereafter, as to the suspension and the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the Village may take such steps as the SMO deems necessary to prevent or minimize damage to the Village's MS4 or to minimize danger to persons or property.

B. Suspension due to the detection of illicit discharge. Any person discharging to the Village's MS4 in violation of this article may have its MS4 access terminated if such termination would abate or reduce an illicit discharge or remediate an unauthorized connection. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if the SMO finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to

recur. Any person who reinstates MS4 access to premises terminated pursuant to this subsection, without the prior approval of the SMO, shall be deemed in violation of this article.

§ 106-29. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the SMO prior to the allowing of discharges to the Village's MS4.

§ 106-30. Connection permits.

A. General. Any connection to the Village's MS4 requires a permit issued by the SMO. Applications for permits shall be made on forms provided by the Village. Permit applications shall be supplemented by any plans, specifications, analyses, calculations, or other information considered pertinent by the SMO. The Village considers connection to the Village's MS4 as a last resort to solve flooding problems. Before approving a connection, the Village may require that applicants use on-site BMPs to handle stormwater and other authorized nonstormwater discharges to the maximum extent practicable. The SMO may assess the adequacy of the applicant's on-site stormwater disposal BMPs and require additional practices if he/she deems it advisable.

B. Permit types.

(1) General permit. An authorization for a connection permit and the discharge of stormwater, or authorized nonstormwater, pursuant to § 106-24A of this article, from properties occupied by private dwellings.

(2) Connection permit. An authorization for a connection and a discharge, pursuant to § 106-24A of this article. A connection permit may be subject to special terms and conditions by the SMO. The permit will expire on, or before the expiration of the DEC SPDES permit, waiver, or order, or upon a change of ownership or use of the premises.

C. Permit fees. Permit fees shall be set from time to time by resolution of the Board of Trustees.

D. Inspection. All connections to the Village's MS4 shall be subject to the approval and inspection by the SMO. The applicant must notify the SMO at least 48 hours prior to commencing work and at least 48 hours prior to final restoration.

E. Indemnification.

(1) To the fullest extent permitted by law, the owner and the applicant, if different from the owner, shall, jointly and severally, indemnify and hold harmless the Village, the Mayor, the Board of Trustees and all of the Village's other elected and appointed officials, employees, agents, representatives, and volunteers (collectively, the "Indemnitees") from and against all claims, damages, losses, costs, and expenses, including, but not limited to, attorneys and expert witnesses' fees, arising out of or resulting from its installation and connection to the Village's MS4. Such obligation shall not be construed to negate, abridge, or to otherwise reduce any other right or obligation of indemnity to which such Indemnitee would otherwise be subject.

(2) Nothing in this section shall be deemed to provide indemnification which is otherwise prohibited by Article 5 of the General Obligations Law.

(3) In any and all claims against the Indemnitees by any employee of the owner or the applicant, if different from the owner, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation pursuant to this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the owner or the applicant, if different from the owner, under any workers' compensation acts, disability acts, or other employee benefit acts.

F. Acknowledgement. The owner and the applicant, if different from the owner, in making their application, acknowledge that the Village makes no guarantee that the Village's MS4 will not become surcharged or otherwise overburdened and that water from the Village's MS4 will not back up through the connection onto the owner's premises. By making a connection, the owner and the applicant, if different from the owner, assume all of the risk and liability to their premises that may arise from their connection to the Village's MS4.

G. Permit transfers. General permits may be transferred with the sale of residential premises, provided the use does not change. The new owner of the premises shall comply with the terms and conditions of the transferred permit. Special permits are not transferable without the approval of the Superintendent.

H. Work within Village roads. Any connection made within or involving work within a Village road must also comply with and be subject to any and all applicable laws, rules, and regulations pertaining to permits for work on and within Village roads. A permit under this article shall not relieve the applicant from the obligation to obtain all necessary permits under the foregoing laws, rules, and regulations.

I. Other permits required. A connection permit issued pursuant to this article does not relieve the applicant from obtaining any and all other applicable permits and permissions, nor from compliance with all other applicable laws, rules, and regulations.

J. Permit rules and regulations. The Superintendent may promulgate rules and regulations for the permitting process set forth within, and subject to the constraints of, this article.

§ 106-31. Access and monitoring of discharges.

A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this article or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this article.

B. Access to facilities.

(1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.

(2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records as may be required to implement this article.

(3) The Village shall have the right to set up on any facility subject to this article such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The Village has the right to require the facilities subject to this article to install monitoring equipment as is reasonably necessary to determine compliance with this article.

(5) The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(6) Unreasonable delays in allowing the Village access to a facility subject to this article is a violation of this article. Any person who is the operator of a facility subject to this article who denies the Village reasonable access

to the facility for the purpose of conducting any activity authorized or required by this article, shall be deemed in violation of this article.

(7) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and the SMO is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, then the Village may seek issuance of a search warrant from the Village Court or, at its option, any other court of competent jurisdiction.

§ 106-32. Notification of spills.

A. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the Village's MS4, said person shall take necessary steps to ensure the discovery, containment, and cleanup of such release.

B. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services, and, immediately thereafter, shall notify the SMO and the Village Clerk.

C. In the event of a release of nonhazardous materials, said person shall notify the Village in person or by telephone or facsimile no later than the next business day.

D. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Village within 3 business days of the telephone notice.

E. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years.

§ 106-33. Enforcement; penalties for offenses.

A. Notice of violation.

(1) When the SMO, his or her designee, or other designee of the Board of Trustees determines that a person has violated a prohibition or failed to meet a requirement of this article, the SMO, Village Clerk or such designee may order compliance by written notice of violation to the

responsible person. Such notice may require the violator, without limitation, to take any or all of the actions listed below, and/or such other action as the SMO, in his discretion, may deem appropriate:

- (a) The obtaining of any required permit;
- (b) The elimination of illicit or unauthorized connections or discharges;
- (c) The issuance of an order to cease and desist all violating discharges, practices, operations, activities or connections;
- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected premises;
- (e) The performance of monitoring, analyses, and reporting;
- (f) Payment of a fine and/or restitution for the damages that have occurred as a result of the violation or failure;
- (g) The implementation of source control or treatment BMPs.

(2) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the Village may perform or have independent contractors perform the remediation or restoration and the cost thereof shall become a lien upon the premises until paid, and if not paid, at the option of the Village, may be added to the current tax bill for the subject premises and collected in the same manner as, and with, the annual Village real estate taxes.

B. Injunctive relief. Any activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.

C. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$1,000 or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of 5 years, punishable by a fine not less than \$1,000 nor more than \$3,000 or imprisonment

for a period not to exceed 15 days, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of 5 years, punishable by a fine not less than \$3,000 nor more than \$5,000 or imprisonment for a period not to exceed 15 days, or both. Violations of this article shall be deemed offenses, and not misdemeanors. Each week's continued violation shall constitute a separate violation.

§ 106-34. Appeal of notice of violation.

Any person receiving a notice of violation with respect to any provision of this article may appeal the determination of the SMO to the Board of Trustees within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within 5 business days of making its decision, file its decision in the office of the Village Clerk and mail a copy of its decision by certified mail to the appellant.

§ 106-35. Corrective measures after appeal.

A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 5 business days of the decision of the Board of Trustees upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject premises to take any and all measures reasonably necessary to abate the violation and/or restore the property.

B. If refused access to the subject premises, the SMO may seek a warrant in the Village Court or, at the discretion of the SMO, in any other court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred.

C. Upon determination that a violation has occurred, or is reasonably likely to occur if immediate action is not taken, the SMO may either:

(1) Direct that the remediation and/or restoration work be performed with Village personnel and/or third-party contractors and the cost thereof shall constitute a lien, charge, and levy upon the real property in, on or upon the violation exists until it is paid or otherwise satisfied or discharged and shall be collected by the Village Treasurer. Such charge shall include, among other things, administrative, legal, and actual expenses incurred by the Village, and shall be collected in the same manner provided by law for the collection of delinquent taxes; or

(2) Seek a court order to take any and all measures reasonably necessary to abate the violation and/or to prevent the violation from occurring, and/or to restore the premises, at the cost and expense of the discharger. In any such action, the Village shall be entitled to payment from the violator of all of the legal fees, costs and expenses, including fees of attorneys and

witnesses, as may be awarded by the Court. The amount thereof shall constitute a lien, charge, and levy upon the real property in, on or upon which the violation exists until it is paid or otherwise satisfied or discharged and shall be collected by the Village Treasurer.

§ 106-36. Public nuisance and injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any condition caused or permitted to exist in violation of any requirement of this article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. If a person has violated or continues to violate the provisions of this article, the Village may petition for a temporary restraining order, preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 106-37. Alternative remedies.

A. Where a person has violated a provision of this article, such person may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Attorney for the Village and concurrence of the SMO, where:

- (1) The violation was unintentional;
- (2) The violator has no history of previous violations of this article;
- (3) Environmental damage was minimal;
- (4) The violator acted quickly to remedy violation; and
- (5) The violator cooperated in investigation and resolution.

B. Alternative remedies may consist of one or more of the following, or similar environmentally related activities:

- (1) Attendance at compliance workshops.
- (2) Storm drain stenciling or storm drain marking.
- (3) River, stream, or creek cleanup activities.
- (4) Such other appropriate remedy to which the Village's prosecuting attorney, the SMO, the violator and the court may agree.

§ 106-38. Remedies not exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

§ 106-39. Severability.

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this article shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this article.

Chapter 110

Chapter 110

STREETS, SIDEWALKS AND PRIVATE PROPERTY

[HISTORY: Derived from Secs. 2.0 through 2.13 and 6.5 of the General Ordinances. Amendments noted where applicable.]

§ 110-1. Accumulation of debris prohibited; exceptions. [Amended 4-2-1979 by L.L. No. 1-1979; 10-5-1998 by L.L. No. 2-1998; 5-3-2004 by L.L. No. 1-2004]

THIS SECTION OF OUR CODE (§-110-1) HAS BEEN RECENTLY AMENDED,

PLEASE CALL OR VISIT OUR OFFICE FOR UPDATED INFO

§ 110-2. Depositing debris in public places. [Amended 5-3-2004 by L.L. No. 1-2004]

No person shall scatter, drop or spill or permit to be scattered, dropped or spilled, any dirt, sand, gravel, clay, loam, stones or building rubbish or household waste or offensive liquids or matter therefrom, or permit the same to be blown or thrown off any vehicle in or upon any public place.

§ 110-3. Location of garbage receptacles. [Amended 4-2-1979 by L.L. No. 2-1979]

Receptacles for garbage shall not be kept nearer to any roadway or street than the wall of the residence fronting on an adjacent roadway or street, except receptacles for garbage may be placed in front of the wall of said residence after the sundown of the day preceding a day designated for garbage collection.

§ 110-4. Placement of debris for collection.

Debris or trash shall not be placed for collection in front of premises until sundown of the day before pickup.

§ 110-5. Maintenance of drainage systems.

Buildings and lots shall be kept and maintained in such condition that the sewerage and drainage systems installed or connected therein shall not constitute or contribute to the creation of a nuisance or menace to health.

§ 110-6. Maintenance and repair of sidewalks; removal of snow, ice and obstructions from sidewalks; parking on sidewalks. [Amended 4-2-1979 by L.L. No. 3-1979; 5-3-2004 by L.L. No. 1-2004; 3-6-2006 by L.L. No. 1-2006; 9-10-2007 by L.L. No. 4-2007]

A. Maintenance of sidewalks. Every owner or occupant of real property within the Village shall maintain in good repair and safe condition the sidewalk and curbing abutting property within the Village that is owned or occupied by him, her or it. The Board of Trustees shall provide for the enforcement of this clause (a) of § 110-6 by resolution, and it shall regularly require the Village Clerk to identify the owners and occupants of properties within the Village with respect to which abutting sidewalks and/or curbs are in unsafe condition or disrepair. The Village Clerk shall deliver to each such owner or occupant 30 days' prior written notice that said sidewalk or curb is in unsafe condition or disrepair, notifying such owner or occupant that failure of such owner or occupant to correct such unsafe condition or disrepair within such 30-day period shall constitute a violation of Chapter 110 of the Village Code. Upon the failure of any such owner or occupant to correct the unsafe condition or disrepair identified in such notice within such 30-day period, the Board of Trustees may elect to cause such unsafe condition or disrepair to be corrected, and to assess the expense thereof upon the real property abutting the sidewalk and/or curbing so corrected or repaired, and the charge therefor shall constitute a lien and charge upon such real property until paid or otherwise satisfied or discharged, and same shall be collected by the Village Treasurer in the manner provided by law for the collection of delinquent taxes.

B. Removal of snow, ice and obstructions from sidewalks. Every owner or occupant of property located within the Village shall keep and maintain the sidewalks and curbing abutting such property in a clean condition, free and clear of all snow, ice, dirt, refuse, debris, rubbish and other obstructions, and in a safe condition for public travel. Without limiting the foregoing, every owner or occupant of property located within the Village shall, within 12 hours after the cessation of any storm or weather event causing snow, ice or other frozen precipitation to be deposited upon any sidewalk abutting property within the Village owned by such owner or occupied by such occupant, remove or cause said snow or ice or other frozen precipitation to be removed or cleared entirely from the sidewalk abutting such property; provided, however, that the time between the hours 7:00 p.m. to 7:00 a.m. shall not be included in the period of 12 hours referred to above.

C. Parking on sidewalks. Parking of automobiles and all other types of motor vehicles on sidewalks within the Village is prohibited.

§ 110-7. Liability of abutting property owners for personal injury and property resulting from failure to comply with § 110-6. [Amended 3-6-2006 by L.L. No. 1-2006; 9-10-2007 by L.L. No. 4-2007]

If any owner or occupant of any property within the Village fails to comply in any respect with the provisions of § 110-6 of this Chapter 110, and any personal injury or property damage results from such failure, then each such owner or occupant shall be liable to each and every person injured, or whose property is damaged, directly or indirectly as a result of such failure, and shall be liable to the Village of Plandome Heights to the extent that the Village is required by law or by any court to respond in damages to any party whose person or property is injured or damaged as the result of the failure of such owner or occupant to comply with any provision of § 110-6 of this Chapter 110.

§ 110-8. Growth of grass and weeds. [Amended 5-3-2004 by L.L. No. 1-2004]

Every owner or occupant of property shall keep the grass, and grass plots and areas, cut and trimmed to a height of no more than 6 inches; at no time shall the owner or occupant permit noxious weeds, long grass or other rank growths thereon; the Village may direct and order such work or labor necessary to remove such condition by the owner or occupant and upon default thereof may have the same performed by or on behalf of the Village and charged and assessed against said property, The cost and expense thereof shall be certified by the Mayor and collected by suit in the name of the Village if not paid to the Village within 5 days after demand.

§ 110-9. Lowering curbs and changing grade of sidewalk.

No person shall lower the curb or change the grade of any sidewalk or place ramps at curbs in streets for the purpose of providing a way across said sidewalk except on the grant of written permission, upon written application to make such change to the Village Clerk, and any permission granted shall be upon condition that such change shall be made subject to the direction of the Building Inspector and shall provide, if said direction is not complied with, that said permission shall be revoked and the sidewalk and curb shall be restored at the expense of the applicant.

§ 110-10. Street opening permits. [Amended 4-2-1979 by L.L. No. 4-1979; 9-12-1988 by L.L. No. 2-1988; 5-3-2004 by L.L. No. 1-2004; 9-10-2007 by L.L. No. 4-2007]

A. No person, firm or corporation, public service, water, light or power company shall open or disturb any street, highway or sidewalk pavement or excavate in any street, highway or sidewalk in the Village for any purpose without first obtaining a permit from the Village Clerk as hereinafter provided.

B. Application for permit; security deposit; insurance requirements; bond.

(1) Upon application, in writing, filed with the Village Clerk, stating the purpose, extent and location and nature of a proposed excavation or other disturbance of a street or highway or sidewalk in the Village, the Village Clerk may grant or refuse a permit therefor. Except where such excavation or disturbance shall be directly authorized by law, the Village Clerk shall require the applicant to deposit with the Village Clerk a sum of money which shall be deemed by him or her to be adequate to pay all of the expenses that the Village may incur to replace or restore the street, highway or sidewalk, pavement, curb or gutter in proper condition. Every application for a permit hereunder shall be accompanied by certificates of insurance, in a form approved by the Village Clerk and issued by an insurance company authorized to do business within the state, evidencing the existence of the following insurance coverage:

(a) Comprehensive general liability insurance including the Village of Plandome Heights as an additional insured, providing such minimum limits of coverage for personal injury and property damage as are acceptable to the Village Clerk.

(b) Worker's compensation insurance.

(c) New York State disability benefits insurance.

(2) All evidence of insurance shall provide a 30-day notice of cancellation or change of coverage to be furnished to the Village of Plandome Heights.

(3) In the event that any applicant is a self-insurer, information regarding its insurance program shall be submitted to the Village. The applicant will be advised of any additional requirements of the Village as determined by the Board of Trustees in accepting such self-insurance program.

C. Notice to public utilities. No work shall be commenced under any permit granted pursuant to this section unless and until such notice as shall be directed by the Village Clerk shall have been given to public service corporations or utilities having lines, mains or other property in the streets for the protection of their property.

D. Protective barriers and lighting required. All excavations in streets or sidewalks shall be surrounded by suitable barriers or guards for the protection of persons using the streets in the daytime and, in addition thereto, by lights or flares from twilight continuously until daylight. Such barriers and lights shall conform in kind and numbers to the requirements of the Village Clerk. Failure to provide barriers and lights conforming to the requirements of the Village Clerk shall be prima facie evidence of a failure to provide suitable barriers and lights.

E. Backfilling, restoration and maintenance. Upon completion, all excavations shall be backfilled properly, and all streets, highways and sidewalks restored to Village specifications, and a written notice thereof given to the Village Clerk. All excavations and restorations shall be maintained for 12 months after such notice of completion has been given.

F. Responsibility for backfilling openings and restorations of streets and sidewalks. If any person to whom a permit to open a street, highway, sidewalk or public place in the Village of Plandome Heights shall fail, neglect or refuse promptly to backfill or cause any such opening to be backfilled and covered with pavement and restored to its original condition, such opening may be backfilled, covered with pavement and restored to its original condition by the Village of Plandome Heights, and such person shall pay for such backfill, pavement and restoration, and the Village Clerk may deduct the amount of money necessary to discharge said payment from any moneys deposited by the applicant with the Village Clerk. If moneys on deposit are not sufficient, the Village may pursue such other remedies as are provided by law. Without limiting the foregoing, if such person owns real property within the Village, the Board of Trustees may assess the expense thereof upon such real property and the charge therefor shall constitute a lien and charge upon such real property until paid or otherwise satisfied or discharged, and same shall be collected by the Village Treasurer in the manner provided by law for the collection of delinquent taxes.

G. Bond in lieu of security deposit. The Village Clerk may, in his or her discretion, in lieu of requiring a deposit of money from the applicant, condition the issuance of any such permit provided for herein upon the making of a bond, made by the applicant as principal, with the surety or insurance company, duly authorized and licensed to do business in the State of New York, as surety, in such amount as the Village Clerk may direct, that the applicant will save and hold harmless, and will indemnify, the Village of Plandome Heights from any liability for any and all injury, loss or damage to person or property either of the Village of Plandome Heights or others, resulting from any cause, by any act or omission of the applicant, his agents, servants, employees, nominees or any contractor employed by the applicant or the agents, servants, employees, or nominees of such contractor. In the event that any such permit is renewed for an additional period or periods, the said bond must be extended for such renewal period.

H. This § 110-10 shall apply to all applicants for permits hereunder, whether persons, unincorporated associations, partnerships, private corporations, public agencies, public utilities, municipal corporation and other types of instrumentality or organization.

§ 110-11. Posting of handbills and notices.

No person shall place on any curb, gutter, flagstone, tree, lamppost, telegraph or telephone pole, barrel, box or hydrant in any street or public place, any handbill, poster, notice, sign or advertisement, except for official Village notices.

§ 110-12. Maintaining unobstructed view at intersections. [Amended 5-3-2004 by L.L. No. 1-2004]

On any corner lot no wall, fence or other structure shall be erected or altered, and no hedge, tree, shrub or other growth shall be planted or maintained so as to obscure the view of pedestrians or create a dangerous traffic hazard. For the purpose of this chapter, a traffic hazard is deemed to be created by any fence, wall or other structure, or any tree, hedge, shrub or any other growth planted on or maintained on premises located at roadway intersections.

§ 110-13. Open burning. [Amended 4-2-1979 by L.L. No. 5-1979]

Except for open fires used for preparing food for human beings, and the smoking of cigarettes, cigars or pipes, provided that such fires do not create a nuisance, no person shall burn, or cause or permit to be burned in the open, any matter, including but not limited to trash, rubbish, leaves, garbage, grass, refuse, trees, automobiles, rubber, railroad ties, materials resulting from the demolition, wrecking or construction of buildings, materials for salvage purposes or other waste, so as to cause the emission of an air contaminant into the atmosphere of the Village.

§ 110-14. Penalties for offenses. [Amended 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

Chapter 115

Chapter 115

TAXATION

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

GENERAL REFERENCES

Assessment — See Ch. 8.

ARTICLE I

Senior Citizens Exemption

[Adopted 10-7-1974 by L.L. No. 1-1974]

§ 115-1. Grant of exemption.

Real property owned by 1 or more persons, each of whom is 65 years of age or over, or real property owned by husband and wife, 1 of whom is 65 years of age or over, shall be exempt from taxation to the extent of 50% of the assessed valuation thereof.

§ 115-2. Exceptions.

No exemption shall be granted:

A. If the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds the sum of \$21,500. Income tax year shall mean the 12-month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed said sum. Such income shall include social security and retirement benefits, interest dividends, net rental income, salary or earnings, and net income from self-employment, but shall not include gifts or inheritances. [Amended 7-11-1977 by L.L. No. 5-1977; 5-4-2004 by L.L. No. 1-2004]

B. Unless the title of the property shall have been vested in the owner or 1 of the owners the property for at least 12 consecutive months prior to the date of making application for exemption; provided, however, that in the event of the death of either a husband or wife in whose name title of the property shall have been vested at the time of death and then becomes vested solely in the survivor by virtue of devise by or descent from the deceased husband or wife, the time of ownership of the property by the deceased husband or wife shall be deemed also a time of ownership by the survivor and such ownership shall be deemed continuous for the purposes of computing such period of 12 consecutive months; provided, further, that in the event of a transfer by either a husband or wife to the other spouse of all or part of the title to the property the time of ownership of the property by the transferor spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purpose of computing such period of 12 consecutive months and, provided, further, that where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners and taken by eminent domain or other involuntary proceeding, except a tax sale and, further, provided that where a residence is sold and replaced with another within 1 year and is in the same assessment unit the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption and such periods of ownership shall be deemed to be consecutive for purposes of this section. [Amended 5-3-2004 by L.L. No. 1-2004]

C. Unless the property is used exclusively for residential purposes.

D. Unless the real property is the legal residence of and is occupied in whole or in part by the owner or by all of the owners of the property.

§ 115-3. Application; filing; contents.

Application for such exemption must be made by the owner, or all of the owners of the property, on forms to be furnished by the assessing authority and shall furnish the information and be executed in the manner required or prescribed in such forms, and shall be filed with the Village Clerk on or before the appropriate taxable status date.

§ 115-4. Notification; mailing of application.

At least 60 days prior to the appropriate taxable status date, the assessing authority shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed on or before taxable status date and be approved in order for the exemption to be granted. Failure to mail any such application form and notice or the failure of such person to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

§ 115-5. False statements; fine.

Any conviction of having made any willful false statement in the application for such exemption shall be punishable by a fine of not more than \$100 and shall disqualify the applicant or applicants from further exemption for a period of 5 years.

§ 115-6. When effective; applicability.

This article shall become effective upon the date of its filing in the Office of the Secretary of State of the State of New York, provided that such filing shall be made 5 days subsequent to the final adoption of said article. This article shall apply to assessment rolls prepared on the basis of taxable status occurring on and after June 1, 1975.

ARTICLE II

Utility Tax

[Adopted 4-7-1976 by L.L. No. 1-1976]

§ 115-7. Imposition of tax.

Pursuant to the authority granted by New York State Village Law § 5-530, from on and after February 1, 1968, there is hereby imposed:

A. A tax equal to 1% of the gross income of every utility doing business in the Village which is subject to the supervision of the New York State Department of Public Service and which has an annual gross income in excess of \$500 except motor carriers or brokers subject to such supervision under New York State Transportation Law § 240 et seq.

B. A tax equal to 1% of the gross operating income of every other utility doing business in the Village which has an annual gross operating income in excess of \$500.

§ 115-8. Definitions. [Amended 5-3-2004 by L.L. No. 1-2004]

The terms used in this article shall be defined as provided in New York State Tax Law § 186-a and New York State Village Law § 5-530.

§ 115-9. Applicability.

This article and the tax imposed thereby shall:

- A. Apply only within the territorial limits of the Village.
- B. Not apply and the tax shall not be imposed on any transaction originating or consummated outside of the territorial limits of the Village notwithstanding that some act be necessarily performed with respect to such transaction within such limits.
- C. Be in addition to any and all other taxes.
- D. Apply to all subject income received on and after February 1, 1968.

§ 115-10. Disposition of revenues.

All revenues resulting from the imposition of the tax imposed by this article shall be paid into the treasury of the Village and shall be credited to and deposited in the general fund of the Village.

§ 115-11. Collection and enforcement; rules and regulations.

The Village Treasurer shall be the chief enforcement officer of this article and shall make and be responsible for all collections hereunder. He shall also have the power and authority to make any rules or regulations or directives, not inconsistent with law, which, in his discretion, are reasonably necessary to facilitate the administration of this article and the collection of the taxes imposed hereby. Copies of all such rules and regulations and directives, as may from time to time be promulgated, shall be sent by registered mail to all utilities subject to this article which register as such with the Village Treasurer. All such rules, regulations and directives shall be deemed a portion of this article.

§ 115-12. Records.

Every utility subject to tax under this article shall keep such records of its business and in such form as the Village Treasurer may require, and such records shall be preserved for a period of 3 years unless the Village Treasurer directs otherwise.

§ 115-13. Returns; filing, contents.

A. Time of filing. Every utility subject to a tax hereunder shall file on or before December 25 and June 25 a return for the 6 calendar months preceding each return date, including any period for which tax imposed hereby or any amendment hereof is effective. However, any utility whose average gross income or gross operating income for the aforesaid 6-month period is less than \$3,000 may file a return annually on June 25 for the 12 calendar months preceding each return date, including any period for which the tax imposed hereby or any amendment hereof is effective. Any utility whether subject to tax under this article or not may be required by the Village Treasurer to file an annual return.

B. Contents. Returns shall be filed with the Village Treasurer on a form to be furnished by him for such purpose and shall show thereon the gross income or gross operating income for the period covered by the return and such other information, data or matter as the Village Treasurer may require to be included therein. Every return shall have annexed thereto a certification by the head of the utility making the same or of the owner or of a copartner thereof, or of a principal corporate officer to the effect that the statements contained therein are true.

§ 115-14. Payment.

At the time of filing a return as required by this article, each utility shall pay to the Village Treasurer the tax imposed hereby for the period covered by such return. Such tax shall be due and payable at the time of the filing of the return or if a return is not filed when due, on the last day on which the return is required to be filed.

§ 115-15. Penalties and interest.

Any utility failing to file a return or a corrected return, or to pay any tax or any portion thereof within the time required by this article, shall be subject to a penalty of 5% of the amount of tax due, plus 1% of such tax for each month of delay or fraction thereof, excepting the first month, after such return was required to be filed or such tax became due; but the Village Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 115-16. Tax as operating cost.

The tax imposed by this article shall be charged against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others but shall constitute a part of the operating costs of such utility.

§ 115-17. Failure to file or incorrect returns.

In case any return filed pursuant to this article shall be insufficient or unsatisfactory to the Village Treasurer, he may require at any time a further or supplemental return, which shall contain any data that may be specified by him, and, if a corrected or sufficient return is not filed

within 20 days after the same is required by notice from him or if no return is made for any period, the Village Treasurer shall determine the amount due from such information as he is able to obtain and, if necessary, may estimate the tax on the basis of external indices or otherwise. He shall give notification of such determination to the utility liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the utility against which it is assessed shall, within 1 year after the giving of notice of such determination, apply to him for a hearing or unless the Village Treasurer, of his own motion, shall reduce the same. After such hearing he shall give notice of his decision to the utility liable for such tax.

§ 115-18. Review of final determination.

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under New York State Civil Practice Law and Rules Article 78 if the proceeding is commenced within 90 days after the giving of notice of such final determination; provided, however, that any such proceeding shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, ordinance or resolution, shall be first deposited and an undertaking filed, in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 115-19. Notice.

Any notice authorized or required under the provisions of this article may be given by mailing the same to the utility for which it is intended, in a postpaid envelope, addressed to such utility at the address given by it in the last return filed by it under this article, or if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the utility to which addressed. Any period of time, which is determined according to the provisions of this section by the giving of notice, shall commence to run from the date of mailing of such notice.

§ 115-20. Refunds.

If, within 1 year from the giving of notice of any determination or assessment of any tax or penalty, the person liable for the tax shall make application for a refund thereof and the Village Treasurer or the court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the Village Treasurer shall refund the amount so determined. For like cause and within the same period, a refund may be so made on the initiative of the Village Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the Village Treasurer as hereinbefore provided unless the Village Treasurer, after a hearing as hereinbefore provided, or of his own motion, shall have reduced the tax or penalty or it shall have been established in a proceeding in the manner provided in the New York State Civil Practice Law and Rules that such determination was erroneous or illegal. An application for a refund, made as hereinbefore provided, shall be deemed an application for the revision of any tax or penalty complained of and the Village Treasurer may receive additional

evidence with respect thereto. After making his determination the Village Treasurer shall give notice thereof to the person interested, and he shall be entitled to commence a proceeding to review such determination, in accordance with the provisions of the following section hereof.

§ 115-21. Review of proceedings for refunds.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the Village Treasurer, and he shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under New York State Civil Practice Law and Rules Article 78; provided, however, that such proceeding is instituted within 90 days after the giving of the notice of such denial, that a final determination of tax due was not previously made and that an undertaking is filed with the Village Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 115-22. Limitation of additional tax.

Except in the case of a willfully false or fraudulent return with the intent to evade the tax, no assessment or additional tax shall be made with respect to taxes imposed under this article, after the expiration of more than 3 years from the date of filing of a return; provided, however, that where no return has been filed as required hereby, the tax may be assessed at any time.

§ 115-23. Powers of Village Treasurer.

In addition to any other powers herein given the Village Treasurer and in order to further insure payment of the tax imposed hereby, he shall have the power to:

- A. Prescribe the form of all reports and returns required to be made hereunder.
- B. Take testimony and proofs, under oath, with reference to any matter hereby entrusted to him.
- C. Subpoena and require the attendance of witnesses and the production of books, papers, records and documents.

§ 115-24. Enforcement.

Whenever any person shall fail to pay any tax or penalty imposed by this article, the Village Attorney shall, upon the request of the Village Treasurer, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the Village Treasurer. Each such tax and penalty shall be a lien upon the property of the person liable to pay the same, in the same manner and to the same extent that the tax and penalty imposed by New York State Tax Law § 186 is made a lien.

Chapter 119

Chapter 119

TELECOMMUNICATIONS LICENSES AND FRANCHISES

[HISTORY: Adopted by the Board of Trustees 9-7-2002 by L.L. No. 1-2002. Amendments noted where applicable.]

ARTICLE I

General Provisions

§ 119-1. Purpose.

The purpose and intent of this chapter is to:

- A. Establish a local policy concerning telecommunications providers and services.
- B. Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services.
- C. Promote competition in telecommunications.
- D. Minimize unnecessary local regulation of telecommunications providers and services.
- E. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the Village.
- F. Permit and manage reasonable access to the public ways of the Village for telecommunications purposes on a competitively neutral basis.
- G. Conserve the limited physical capacity of the public ways held in public trust by the Village.
- H. Assure that the Village's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs.
- I. Secure fair and reasonable compensation to the Village and the residents of the Village for permitting private use of the public ways.

J. Assure that all telecommunications carriers providing facilities or services within the Village comply with the laws, rules and regulations of the Village.

K. Assure that the Village can continue to fairly and responsibly protect the public health, safety and welfare.

L. Enable the Village to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

§ 119-2. Definitions.

For the purpose of this chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

AFFILIATE —% A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

CABLE ACT —% The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 532 et seq., as now and hereafter amended, and the Telecommunications Act of 1996.

CABLE OPERATOR —% A telecommunications carrier providing or offering to provide cable service within the Village as that term is defined in the Cable Act.

CABLE SERVICE —% For the purpose of this chapter shall have the same meaning provided by the Cable Act.

CORPORATE AUTHORITIES —% The Mayor and Board of Trustees. Notwithstanding the foregoing, the Village may, where permitted by law, delegate to another person or entity, including an entity established by the Village in cooperation with 1 or more neighboring villages, the authority vested in the Village as to 1 or more subjects which are encompassed by this chapter.

EXCESS CAPACITY —% The volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

FCC or FEDERAL COMMUNICATIONS COMMISSION —% The federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

OTHER WAYS —% The highways, streets, alleys, utility easements or other rights-of-way within the Village, but under the jurisdiction and control of a governmental entity other than the Village.

OVERHEAD FACILITIES —% Utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

PERSON —% Includes corporations, companies, associations, joint-stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

PSC or PUBLIC SERVICE COMMISSION —% The New York State Public Service Commission, or any lawful successor state administrative agency authorized to regulate and oversee telecommunications carriers, services and providers in the State of New York.

PUBLIC STREET —% Any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and control of the Village which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

PUBLIC WAY —% Includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the Village, but only to the extent of the Village's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities.

STATE —% The State of New York.

SURPLUS SPACE —% That portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the New York Public Service Commission, to allow its use by a telecommunications carrier for a pole attachment.

TELECOMMUNICATIONS CARRIER —% Includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the Village, used or to be used for the purpose of offering telecommunications service.

TELECOMMUNICATIONS FACILITIES —% The plant, equipment and property, including but not limited to cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

TELECOMMUNICATIONS PROVIDER —% Includes every person who provides telecommunications service over telecommunications facilities without any ownership or management control of the facilities.

TELECOMMUNICATIONS SERVICE —% The providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

TELECOMMUNICATIONS SYSTEM —% See "telecommunications facilities."

UNDERGROUND FACILITIES —% Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

USABLE SPACE —% The total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders, rules and regulations of the New York Public Service Commission.

UTILITY EASEMENT —% Any easement owned by the Village and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

UTILITY FACILITIES —% The plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the Village and used or to be used for the purpose of providing utility or telecommunications services.

VILLAGE —% The Incorporated Village of Plandome Heights.

VILLAGE PROPERTY —% Includes all real property owned by the Village, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the Village, which are not subject to right-of-way licensing and franchising as provided in this chapter.

§ 119-3. Registration.

Except as otherwise provided herein, all telecommunications carriers and providers engaged in the business of transmitting, supplying or furnishing of telecommunications originating or terminating in the Village shall register with the Village pursuant to Article II of this chapter.

§ 119-4. Telecommunications license.

Except as otherwise provided therein, any telecommunications carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any public way of the Village for the purpose of providing telecommunications service to persons and areas outside the Village shall first obtain a license granting the use of such public ways from the Village pursuant to Article III of this chapter. This section shall not be applicable to the activities of any telecommunications carrier for which, by reason of applicable federal or state law, no franchise is required from the Village.

§ 119-5. Telecommunications franchise.

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or

across any public way of the Village, and to also provide telecommunications service to persons or areas in the Village, shall first obtain a franchise granting the use of such public ways from the Village pursuant to Article IV of this chapter. This section shall not be applicable to the activities of any telecommunications carrier for which, by reason of applicable federal or state law, no franchise is required from the Village.

§ 119-6. Cable television franchise.

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or locate telecommunications facilities in any public way of the Village for the purpose of providing cable service to persons in the Village shall first obtain a cable franchise from the Village as provided in Article V of this chapter.

§ 119-7. Application to existing franchises.

This chapter shall have no effect on any existing franchise agreement until:

- A. The expiration of said franchise agreement; or
- B. An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

§ 119-8. Penalties for offenses. [Amended 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

§ 119-9. Other remedies.

Nothing in this chapter shall be construed as limiting any judicial remedies that the Village may have, at law or in equity, for enforcement of this chapter.

ARTICLE II

Registration of Telecommunications Carriers and Providers

§ 119-10. Registration required.

All telecommunications carriers and providers that offer or provide any telecommunications service for a fee directly to the public, either within the Village, or outside the corporate limits from telecommunications facilities within the Village, shall register with the Village pursuant to this article on forms to be provided by the Village Clerk, which shall include the following:

- A. The identity and legal status of the registrant, including any affiliates.

B. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

C. A description of registrant's existing or proposed telecommunications facilities within the Village.

D. A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the Village.

E. Information sufficient to determine whether the registrant is subject to public way licensing or franchising under this chapter.

F. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility receipts tax or other occupation tax imposed by the Village.

G. Information sufficient to determine that the applicant has applied for and received any certificate of authority required by the New York State Public Service Commission to provide telecommunications services or facilities within the Village.

H. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide telecommunications services or facilities within the Village.

I. Such other information as the Village Clerk may reasonably require.

§ 119-11. Registration fee.

Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee in an amount established from time to time by resolution of the Board of Trustees.

§ 119-12. Purpose of registration.

The purpose of registration under this article is to:

A. Provide the Village with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the Village, or that own or operate telecommunication facilities within the Village;

- B. Assist the Village in enforcement of this chapter;
- C. Assist the Village in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the Village;
- D. Assist the Village in monitoring compliance with local, state and federal laws.

ARTICLE III

Telecommunications License

§ 119-13. Telecommunications license required.

A telecommunications license shall be required of any telecommunications carrier who desires to occupy specific public ways of the Village for the sole purpose of providing telecommunications services to persons or areas within or without the Village.

§ 119-14. License application.

Any person who desires a telecommunications license pursuant to this article shall file an application with the Village which shall include the following information:

- A. The identity of the license applicant, including all affiliates of the applicant.
- B. A description of the telecommunications services that are or will be offered or provided by licensee over its telecommunications facilities.
- C. A description of the transmission medium that will be used by the licensee to offer or provide such telecommunications services.
- D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:
 - (1) The location and route requested for applicant's proposed telecommunications facilities.
 - (2) The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route.
 - (3) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.
 - (4) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(1) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities.

(2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(1) The location proposed for the new ducts or conduits.

(2) The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

H. A preliminary construction schedule and completion date.

I. A preliminary traffic control plan.

J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.

M. All fees, deposits or charges required pursuant to Article VI of this chapter.

N. Such other and further information as may be required by the Village Manager.

§ 119-15. Determination by the Village.

Within a reasonable time after receiving a complete application under § 119-14 hereof, the corporate authorities shall issue a written determination granting or denying the application in

whole or in part, applying the following standards, and, if the application is denied, the written determination shall include the reasons for denial.

- A. The financial and technical ability of the applicant.
- B. The legal capacity of the applicant.
- C. The capacity of the public ways to accommodate the applicant's proposed facilities.
- D. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the license is granted.
- E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the license is granted.
- F. The public interest in minimizing the cost and disruption of construction within the public ways.
- G. The service that applicant will provide to the community and region.
- H. The effect, if any, on public health, safety and welfare if the license is granted.
- I. The availability of alternate routes and/or locations for the proposed facilities.
- J. Applicable federal and state telecommunications laws, regulations and policies.
- K. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

§ 119-16. Agreement.

No license granted hereunder shall be effective until the applicant and the Village have executed a written agreement setting forth the particular terms and provisions under which the license to occupy and use public ways of the Village will be granted.

§ 119-17. Nonexclusive grant.

No license granted under this article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the Village for delivery of telecommunications services or any other purposes.

§ 119-18. Rights granted.

No license granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a license only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

§ 119-19. Construction permits.

All licensees are required to obtain construction permits for telecommunications facilities as required in Article VII of this chapter; provided, however, that nothing in this article shall prohibit the Village and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

§ 119-20. Compensation to Village.

Each license granted under this article is subject to the Village's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the licensee, provided that nothing in this article shall prohibit the Village and a licensee from agreeing to the compensation to be paid.

§ 119-21. Amendment of grant.

A new license application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways of the Village which are not included in a license previously granted under this chapter.

§ 119-22. Renewal applications.

A grantee that desires to renew its license under this article shall, not more than 180 days nor less than 90 days before expiration of the current license, file an application with the Village for renewal of its license which shall include the following information:

- A. The information required pursuant to § 119-14 of this article.
- B. Any information required pursuant to the license agreement between the Village and the grantee.

§ 119-23. Renewal determinations.

Within a reasonable time after receiving a complete application under § 119-22 hereof, the corporate authorities shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards, and, if the renewal application is denied, the written determination shall include the reasons for nonrenewal.

- A. The financial and technical ability of the applicant.
- B. The legal capacity of the applicant.

C. The continuing capacity of the public ways to accommodate the applicant's existing facilities.

D. The applicant's compliance with the requirements of this chapter and the license agreement.

E. Applicable federal, state and local telecommunications laws, rules and policies.

F. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

§ 119-24. Obligation to cure as a condition of renewal.

No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Village.

ARTICLE IV

Telecommunications Franchise

§ 119-25. Telecommunications franchise required.

A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public ways of the Village and to provide telecommunications services to any person or area in the Village.

§ 119-26. Franchise application.

Any person who desires a telecommunications franchise pursuant to this article shall file an application with the Village which shall include the following information:

A. The identity of the franchise applicant, including all affiliates of the applicant.

B. A description of the telecommunications services that are or will be offered or provided by the franchise applicant over its existing or proposed facilities.

C. A description of the transmission medium that will be used by the franchisee to offer or provide such telecommunications services.

D. Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:

(1) The location and route requested for applicant's proposed telecommunications facilities.

(2) The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route.

(3) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.

(4) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.

E. If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(1) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities.

(2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:

(1) The location proposed for the new ducts or conduits.

(2) The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

H. A preliminary construction schedule and completion dates.

I. A preliminary traffic control plan.

J. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

K. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

L. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.

M. Whether the applicant intends to provide cable service, video dial-tone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising.

N. An accurate map showing the location of any existing telecommunications facilities in the Village that applicant intends to use or lease.

O. A description of the services or facilities that the applicant will offer or make available to the Village and other public, educational and governmental institutions.

P. A description of applicant's access and line extension policies.

Q. The area or areas of the Village the applicant desires to serve and a schedule for build-out to the entire franchise area.

R. All fees, deposits or charges required pursuant to Article VI of this chapter.

S. Such other and further information as may be requested by the Village.

§ 119-27. Determination by the Village.

Within a reasonable period of time after receiving a complete application under § 119-26 hereof, the corporate authorities shall issue a written determination granting or denying the application in whole or in part, applying the following standards, and if the application is denied, the written determination shall include the reasons for denial.

A. The financial and technical ability of the applicant.

B. The legal capacity of the applicant.

C. The capacity of the public ways to accommodate the applicant's proposed facilities.

D. The capacity of the public ways to accommodate additional utility and telecommunications facilities if the franchise is granted.

E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.

F. The public interest in minimizing the cost and disruption of construction within the public ways.

- G. The service that applicant will provide to the community and region.
- H. The effect, if any, on public health, safety and welfare if the franchise requested is granted.
- I. The availability of alternate routes and/or locations for the proposed facilities.
- J. Applicable federal and state telecommunications laws, regulations and policies.
- K. Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

§ 119-28. Agreement.

No franchise shall be granted hereunder unless the applicant and the Village have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use public ways of the Village will be granted.

§ 119-29. Nonexclusive grant.

No franchise granted under this article shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the Village for delivery of telecommunications services or any other purposes.

§ 119-30. Rights granted.

No franchise granted under this chapter shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

§ 119-31. Construction permits.

All franchisees are required to obtain construction permits for telecommunications facilities as required in Article VII of this chapter; provided, however, that nothing in this article shall prohibit the Village and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

§ 119-32. Compensation to Village.

Each franchise granted under this article is subject to the Village's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the franchisee; provided that nothing in this article shall prohibit the Village and a franchisee from agreeing to the compensation to be paid, and further provided that the Village

shall not fix an amount of compensation which is contrary to the provision of any such franchise agreement.

§ 119-33. Nondiscrimination.

A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this article shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

§ 119-34. Service to the Village.

A franchisee shall make its telecommunications services available to the Village at its most favorable rate for similarly situated users, unless otherwise provided in a license or franchise agreement.

§ 119-35. Amendment of grant.

A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways of the Village which are not included in a franchise previously granted under this chapter.

§ 119-36. Renewal applications.

Unless otherwise provided by law, a grantee which desires to renew its franchise under this article shall, not more than 240 days nor less than 150 days before expiration of the current franchise, file an application with the Village for renewal of its franchise which shall include the following information:

- A. The information required pursuant to § 119-26 of this article.
- B. Any information required pursuant to the franchise agreement between the Village and the grantee.

§ 119-37. Renewal determinations.

Within a reasonable time after receiving a complete application under § 119-36 hereof, the corporate authorities shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards, and if the renewal application is denied, the written determination shall include the reasons for nonrenewal.

- A. The financial and technical ability of the applicant.
- B. The legal capacity of the applicant.

C. The continuing capacity of the public ways to accommodate the applicant's existing facilities.

D. The applicant's compliance with the requirements of this chapter and the franchise agreement.

E. Applicable federal, state and local telecommunications laws, rules and policies.

F. Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

§ 119-38. Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise agreement, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Village.

ARTICLE V

Cable Franchise

§ 119-39. Requirements.

In addition to the provisions outlined in Article IV regarding franchise application, grant and authority, cable franchisees are subject to the provisions and requirements outlined in this article.

A. Cable franchisees are subject to this chapter, the Cable Act, and such other federal and state statutes, rules and regulations as may be applicable.

B. If a conflict arises between the language in this article and any other part of this chapter, this article shall prevail.

§ 119-40. Description of system.

The minimum capacity for a cable system shall be 450 MHz with at least 77 downstream channels. The franchisee shall, as part of the acceptance of a franchise, provide the Village with a written description of the cable system within the Village, including technical characteristics, channel capacity, channel carriage, and a strand map. The franchisee shall provide the Village with an updated description, upon request or whenever substantial changes in the system are made.

§ 119-41. Channel allocation.

The franchisee shall, to the maximum extent possible, assign as dial locations for local broadcast stations carried on the system numbers available by either a cable-ready television or a converter,

which correspond to their respective FCC-assigned TV station call numbers unless the station has negotiated a more favorable position in the channel line up.

§ 119-42. Access channels.

The franchisee shall provide access channels on the subscriber network for the exclusive use of designated institutions.

A. The number and use of said channels will be prescribed in the franchise agreements, and such channels shall be available on the lowest tier of basic service.

B. The franchisee shall make every reasonable effort to assign PEG (public, educational, government) channels to the same channels assigned by other providers within the Village, and in contiguous municipalities.

§ 119-43. Renewal.

To the extent applicable, renewal shall be governed by the Cable Act.

§ 119-44. Service to the Village.

Applications for franchises shall include proposals for the provision of public, educational and governmental access to the telecommunications system.

ARTICLE VI

Fees and Compensation

§ 119-45. Purpose.

It is the purpose of this article to provide for the payment and recovery of certain direct and indirect costs and expenses of the Village related to the enforcement and administration of this chapter.

§ 119-46. Application and review fee. [Amended 5-3-2004 by L.L. No. 1-2004]

A. Any applicant for a license or franchise pursuant to Article III or Article IV of this chapter shall be responsible for the payment of all fees set forth in the Schedule of Fees and Payments maintained by the Village Clerk. No application fee shall be required of any applicant for a license or franchise pursuant to Article V of this chapter.

B. The application and review fee shall be deposited with the Village as part of the application filed pursuant to Article III or Article IV of this chapter.

C. An applicant whose license or franchise application is withdrawn, abandoned or denied shall, within 60 days of its application and review fee written request, be refunded the balance of its deposit under this section, less a reasonable sum to be determined by the Village as its expenses incurred for the application and review process prior to the date of withdrawal, abandonment or denial. Such expenses may include all ascertainable costs and expenses incurred by the Village in connection with the application.

§ 119-47. Other Village costs.

All license or franchise grantees pursuant to Articles III, IV or V of this chapter shall, within 30 days after written demand therefor, reimburse the Village for all direct and indirect costs and expenses, including professional fees, incurred by the Village in connection with any modification, amendment, renewal or transfer of the license or franchise or any license or franchise agreement. Where the Village's authority with respect to such application has been exercised in whole or in part by an entity to whom the Village has delegated such authority, the Village's direct and indirect costs and expenses as provided in this section shall include the Village's share of such expenses incurred by such entity.

§ 119-48. Reserved compensation for public ways.

The Village reserves its right to annually fix a fair and reasonable compensation to be paid for the property rights granted to a telecommunications license or franchise grantee. Nothing in this article shall prohibit the Village and a grantee from agreeing to the compensation to be paid for the granted property rights. Where a franchise or license agreement contains provision for such compensation, no further compensation for public way shall be required pursuant to this section.

§ 119-49. Compensation for Village property.

If the right is granted, by lease, license, franchise or other manner, to use and occupy Village property for the installation of telecommunications facilities, the compensation to be paid shall be fixed by the Village, unless otherwise agreed upon in the license or franchise agreement.

§ 119-50. Construction permit fee.

Prior to issuance of a construction permit, the permittee shall pay a permit fee as may be required by law for any construction permit required for permittee's facilities within the Village, unless otherwise agreed upon in the license or franchise agreement.

§ 119-51. Annual fees.

Unless otherwise agreed in a license or franchise grant agreement, each license or franchise grantee shall pay an annual license fee to the Village equal to 5% of the gross revenues received by the licensee or franchisee pursuant to the said license or franchise fee. Such annual fee may be used by the Village for payment or reimbursement of costs incurred in connection with reviewing, inspecting and supervising the use and occupancy of the public ways in behalf of the

public and existing or future users, and the administration and supervision of the exercise of the license or franchise.

ARTICLE VII

Conditions of Grant

§ 119-52. Location of facilities.

All facilities shall be constructed, installed, located, used and operated in accordance with the terms and conditions contained in a license or franchise agreement.

§ 119-53. Construction permits.

All license or franchise grantees are required to obtain construction permits for telecommunications facilities as required in Article III of this chapter. However, nothing in this article shall prohibit the Village and a grantee from agreeing to alternative plan review, permit and construction procedures in a license or franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

§ 119-54. Interference with the public ways.

No license or franchise grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the Village, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the grantee, temporarily or permanently, as determined by the Village Engineer.

§ 119-55. Damage to property.

No license or franchise grantee nor any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any Village property, public ways of the Village, other ways or other property located in, on or adjacent thereto.

§ 119-56. Notice of work.

Unless otherwise provided in a license or franchise agreement, no license or franchise grantee, nor any person acting on the grantee's behalf, shall commence any nonemergency work in or about the public ways of the Village or other ways without 10 working days' advance notice to the Village.

§ 119-57. Repair and emergency work.

In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee shall notify the Village as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

§ 119-58. Maintenance of facilities.

Each license or franchise grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

§ 119-59. Relocation or removal of facilities.

Within 30 days following written notice from the Village, a license or franchise grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the corporate authorities shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- A. The construction, repair, maintenance or installation of any Village or other public improvement in or upon the public ways.
- B. The operations of the Village or other governmental entity in or upon the public ways.

§ 119-60. Removal of unauthorized facilities.

Within 30 days following written notice from the Village, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways of the Village shall, at its own expense, remove such facilities or appurtenances from the public ways of the Village. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- A. Upon expiration or termination of the grantee's telecommunications license or franchise.
- B. Upon abandonment of a facility within the public ways of the Village.
- C. If the system or facility was constructed or installed without the prior grant of a telecommunications license or franchise.
- D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- E. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications license or franchise.

§ 119-61. Emergency removal or relocation of facilities.

The Village retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the Village, as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

§ 119-62. Facilities maps.

Each license or franchise grantee shall provide the Village with an accurate map or maps certifying the location of all telecommunications facilities within the public ways. Each grantee shall provide updated maps annually.

§ 119-63. Duty to provide information.

Within 10 days of a written request from the Village, each license or franchise grantee shall furnish the Village with information sufficient to demonstrate:

- A. That grantee has complied with all requirements of this chapter.
- B. That all municipal sales, message and/or telecommunications taxes due the Village in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.
- C. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the Village at reasonable times and intervals.

§ 119-64. Grantee insurance.

Unless otherwise provided in a license or franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the Village, and its elected and appointed officers, officials, agents and employees as additional insureds:

- A. Comprehensive general liability insurance with limits not less than:
 - (1) \$5,000,000 for bodily injury or death to each person;
 - (2) \$5,000,000 for property damage resulting from any 1 accident; and
 - (3) \$5,000,000 for all other types of liability.
- B. Automobile liability for owned, nonowned and hired vehicles with a limit of \$3,000,000 for each person and \$3,000,000 for each accident.
- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.

E. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications license or franchise, and such other period of time during which the grantee is operating without a franchise or license hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until 30 days after receipt by the Village, by registered or certified mail, of a written notice addressed to the Village of such intent to cancel or not to renew."

F. Within 20 days after receipt by the Village of said notice, and in no event later than 10 days prior to said cancellation, the grantee shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this section.

§ 119-65. General indemnification.

Each license or franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the Village and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a grant agreement made or entered into pursuant to this chapter.

§ 119-66. Security fund.

Where the license or franchise agreement provides for a security fund to be used for payments of penalties, if any, imposed for violation or breach of the conditions of any such agreement or license:

A. Such fund shall serve as security for the full and complete performance of the terms and conditions of the license or franchise agreement, and the requirements of this chapter, including any costs, expenses, damages or loss the Village pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rule, regulations or permits of the Village.

B. Before any sums are withdrawn from the security fund, the Village shall give written notice to the grantee:

(1) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the Village has incurred by reason of grantee's act or default;

(2) Providing a reasonable opportunity for grantee to first remedy the existing or ongoing default or failure, if applicable;

(3) Providing a reasonable opportunity for grantee to pay any monies due the Village before the Village withdraws the amount thereof from the security fund, if applicable;

(4) Providing that the grantee will be given an opportunity to review the act, default or failure described in the notice.

C. Grantees shall replenish the security fund within 14 days after written notice from the Village that there is a deficiency in the amount of the fund.

§ 119-67. Assignments or transfers of grant.

Ownership or control of a telecommunications system, license or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the Village, which consent shall not be unreasonably withheld or delayed, as expressed by resolution, and then only on such reasonable conditions as may be prescribed therein.

A. No grant shall be assigned or transferred in any manner within 12 months after the initial grant of the license or franchise, unless otherwise provided in a license or franchise agreement.

B. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.

C. Grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the Village not less than 150 days prior to the proposed date of transfer:

(1) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;

(2) All information required of a license or franchise applicant pursuant to Articles III, IV or V of this chapter with respect to the proposed transferee or assignee;

(3) Any other information reasonably required by the Village.

D. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this chapter.

E. Unless otherwise provided in a license or franchise agreement, the grantee shall reimburse the Village for all direct and indirect fees, costs, and expenses reasonably incurred by the Village in considering a request to transfer or assign a telecommunications license or franchise.

F. Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior approval of the Village under this section or pursuant to a license or franchise agreement shall be void and is cause for revocation of the grant.

§ 119-68. Transactions affecting control of grant.

Any transactions which singularly or collectively result in a change of 10% or more of the ownership or working control of the grantee, of the ownership or working control of a telecommunications license or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth of grantee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring Village approval pursuant to § 119-67 hereof. Transactions between affiliated entities are not exempt from Village approval.

§ 119-69. Revocation or termination of grant.

A license or franchise granted by the Village to use or occupy public ways of the Village may be revoked for the following reasons:

- A. Construction or operation in the Village or in the public ways of the Village without a license or franchise grant of authorization.
- B. Construction or operation at an unauthorized location.
- C. Unauthorized substantial transfer of control of the grantee.
- D. Unauthorized assignment of a license or franchise.
- E. Unauthorized sale, assignment or transfer of grantee's franchise or license assets, or a substantial interest therein.
- F. Misrepresentation or lack of candor by or on behalf of a grantee in any application to the Village.
- G. Abandonment of telecommunications facilities in the public ways.
- H. Failure to relocate or remove facilities as required in this chapter.
- I. Failure to pay taxes, compensation, fees or costs when and as due the Village.

- J. Insolvency or bankruptcy of the grantee.
- K. Violation of material provisions of this chapter.
- L. Violation of the material terms of a license or franchise agreement.

§ 119-70. Notice and duty to cure.

Unless otherwise provided in the license or franchise agreement, in the event that the Village believes that grounds exist for revocation of a license or franchise, it shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time not exceeding 30 days to furnish evidence:

- A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- B. That rebuts the alleged violation or noncompliance.
- C. That it would be in the public interest to impose some penalty or sanction less than revocation.

§ 119-71. Hearing.

The Board of Trustees shall consider the apparent violation or noncompliance in a public meeting, with respect to which the corporate authorities shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

§ 119-72. Standards for revocation or lesser sanctions.

If persuaded that the grantee has violated or failed to comply with material provisions of this chapter, or of a franchise or license agreement, the corporate authorities shall determine whether to revoke the license or franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by 1 or more of the following factors:

- A. Whether the misconduct was egregious.
- B. Whether substantial harm resulted.
- C. Whether the violation was intentional.
- D. Whether there is a history of prior violations of the same or other requirements.
- E. Whether there is a history of overall compliance.

F. Whether the violation was voluntarily disclosed, admitted or cured.

Chapter 122

Chapter 122

TREES

[HISTORY: Derived from Sec. 4 of the General Ordinances; amended in its entirety 5-3-2004 by L.L. No. 1-2004. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Streets, sidewalks and private property — See Ch. 110.

Village property — See Ch. 135.

§ 122-1. Permission required for cutting trees.

No person shall cut, break or injure any living tree or shrubbery on any public property or remove any of the same without having first obtained written permission from the Village Clerk.

§ 122-2. Trees on private property. [Amended 7-2-2007 by L.L. No. 2-2007]

It shall be unlawful for any landowner to allow the existence of a dangerous or hazardous tree on his land where said tree is or may become a hazard to the public or to any public property. For purposes of this section, a "dangerous tree" or "hazardous tree" shall be defined as a tree, or any part thereof, that is overhanging from private property and creating a hazard to adjoining public rights-of-way, or to persons using the adjoining rights-of-way, or if its roots are causing damage to the curb, gutters, sidewalks, or a sewer system. The Board of Trustees shall provide for the enforcement of this section by resolution and it shall regularly require the Village Clerk to list the landowners on whose property there are situated dangerous or hazardous trees, and every such landowner shall be required to remove or to trim the dangerous or hazardous tree on his property. Upon resolution of the Board of Trustees requiring removal of the tree, such landowner shall be required to remove the tree. The Village Clerk shall give to the landowner 15 days' written notice that there is a dangerous or hazardous tree situated on his property, and failure of said landowner to have the dangerous condition of the tree corrected or the dangerous or hazardous tree removed within said 15-day period shall constitute a violation of this chapter. The removal of trees on Village property shall include the grinding of the stump and root flares 6 inches to 8 inches below grade, the removal of the grindings and the installation of topsoil to grade. Before the Village Clerk shall list a dangerous or hazardous tree, the tree shall have been determined to be a dangerous or hazardous tree by a licensed/certified arborist retained by the Village. Should the property owner contest the determination that a tree is a dangerous or hazardous tree, the licensed/certified arborist retained by the Village shall make the final determination whether corrective action is needed. If the subject tree remains designated as a

dangerous or hazardous tree, upon the failure of said landowner to correct the dangerous condition of said tree or to remove said tree, the Board of Trustees may cause said dangerous condition to be corrected, or said dangerous or hazardous tree to be removed, and assess the expense thereof upon the real property involved, and such charge shall constitute a lien and charge upon the real property upon which it is levied until paid or otherwise satisfied or discharged, and shall be collected by the Village Treasurer in the manner provided by law for the collection of delinquent taxes. Any person found guilty of a violation of this section shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

§ 122-3. Prohibited acts to Village trees.

No person shall remove, prune or do any act upon any tree located on Village property, except pursuant to an express written grant of authority by the Village; or harm, damage, cut, trim, break or otherwise injure any such tree or its roots; or park any vehicle or machinery, or fuel any such equipment, or pile, heap or store any building materials, soil, debris or other matter, or make any mortar or cement or dispose of any paint or other chemical substances within the drip line of any such tree; or do any other act which a reasonable person would expect to cause any such tree to die, either immediately or within the course of time.

§ 122-4. Protection of Village trees.

A. Whenever any person shall undertake construction, excavation, grading or filling on private property in the Village, the owner of such property shall cause to be filed with the Building Inspector a site plan which, in addition to any other matters required by law or regulation, shall plainly show the location of all trees on any Village right-of-way adjacent to such property, all routes of access and egress to the construction site intended or available to be used by vehicles or equipment, and a description of the method intended to be used to protect such Village trees as required by Subsection B.

B. Before commencing any construction, excavation, grading or filling, the owner shall cause the following precautions to be taken for the protection of trees located on any adjacent Village right-of-way:

(1) With respect to any Village tree having a diameter of 10 inches or less, at a height of 4 feet 6 inches from the ground, a stable and substantial fence at least 4 feet high and surrounding the entire drip line of such tree shall be erected and thereafter continuously maintained until the conclusion of construction.

(2) With respect to any Village tree having a diameter exceeding 10 inches, at a height of 4 feet 6 inches from the ground, if it is determined by the Building Inspector that compliance with Subsection B(1) hereof would unreasonably restrict access to the construction site, then a stable and substantial fence at least 4 feet high shall be erected and maintained at the maximum distance from the tree that the Building Inspector determines is

feasible, and any portion of the drip line of such tree not enclosed by such fence shall be protected as the Building Inspector may require.

C. The Building Inspector may impose, in addition to the above regulations, such other and further requirements as he may deem necessary to protect and preserve any Village tree from damage caused by, or as a consequence of construction, excavation, grading, filling or soil compaction or other root damage.

D. Anytime there has been any type of damage or destruction of a Village tree adjacent to a property where work on the home or property is taking place, it shall be assumed that said damage or destruction was caused as a result of the work and the owner of the property shall be responsible and liable for any penalties described herein.

§ 122-5. Trees on Village property or within Village right-of-way. [Amended 7-2-2007 by L.L. No. 2-2007]

A. Trees on Village property. The Board of Trustees by resolution shall provide for the annual inspection by a licensed/certified arborist of the trees within the Village, which trees are located on Village property. If, in the opinion of the licensed/certified arborist retained by the Village, there are trees on Village property which are dangerous or hazardous and require corrective action or removal, the Village Clerk shall within 15 days of having received the written opinion of said licensed/certified arborist, have said condition corrected or said dangerous or hazardous trees removed. The removal of trees on Village property shall include the grinding of the stump and root flares 6 inches to 8 inches below grade, the removal of the grindings and the installation of topsoil to grade. The cost to the Village of correcting a dangerous condition of a tree or removing a dangerous or hazardous tree shall be borne by the Village, unless said dangerous or hazardous tree is situated on Village land adjacent to the public street of the Village, i.e., within the Village right-of-way.

B. Trees located within the Village right-of-way. All trees located within the Village right-of-way shall be maintained by the adjoining property owner. For dangerous trees or hazardous trees, defined as any tree, or part or limb thereof, that is creating a hazard to private property, to a Village street, to the public rights-of-way, to persons using the rights-of-way, or if its roots are causing excessive damage to the curb, gutters, sidewalks, or a sewer system, located within the Village right-of-way, the Board of Trustees shall regularly require the Village Clerk to list the landowners that have situated dangerous or hazardous trees adjacent to their property, within the Village right-of-way. Every such landowner shall be required to remove or to trim the dangerous or hazardous tree located within the public right-of-way. Upon resolution of the Board of Trustees requiring removal of the tree, such landowner shall be required to remove the tree. The Village Clerk shall give to the landowner 15 days' written notice that there is a dangerous or hazardous tree located on the right-of-way adjacent to his

property. Failure of said landowner to have the dangerous condition of the tree corrected or the dangerous or hazardous tree removed within said 15-day period shall constitute a violation of this chapter. Before the Village Clerk shall list a dangerous or hazardous tree, the tree shall have been determined to be a dangerous or hazardous tree by a licensed/certified arborist retained by the Village. Should the property owner contest the determination that a tree is a dangerous or hazardous tree, the licensed/certified arborist retained by the Village shall make the final determination whether corrective action is needed. If the subject tree remains designated as a dangerous or hazardous tree, upon the failure of said landowner to correct the dangerous condition of said tree or to remove said tree, the Board of Trustees may cause said dangerous condition to be corrected, or said dangerous or hazardous tree to be removed, and assess the expense thereof upon the adjoining real property, and such charge shall constitute a lien and charge upon the real property of said abutting owner upon which it is levied until paid or otherwise satisfied or discharged, and shall be collected by the Village Treasurer in the manner provided by law for the collection of delinquent taxes. Any person found guilty of a violation of this section shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

§ 122-6. Penalties for offenses.

Any person violating the provisions of § 95-1 shall be required to replace the living tree or shrubbery with a like tree or shrub, and shall be punished by a fine or penalty up to and including \$2,500.

Chapter 126

Chapter 126

VEHICLES

[HISTORY: Adopted by the Board of Trustees 5-4-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

GENERAL REFERENCES

Parking and vehicles — See Ch. 85.

Zoning — See Ch. 140, § 140-2, definition of "private garage."

§ 126-1. Definitions.

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

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 any power other than muscular power. For the purposes of this chapter, the term "motor vehicle" shall include but not be limited to automobiles, trucks, buses, motorcycles and trailers.

OWNER OF MOTOR VEHICLE —% A person, firm or corporation having the property in or title to a motor vehicle, including a person entitled to the use and possession of a vehicle subject to a security interest in another person, and also including any lessee or bailee of a motor vehicle having the use thereof under 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 Village.

PREMISES or PROPERTY —% Includes all parcels of real property privately owned, situated in the Village, whether occupied or vacant.

UNREGISTERED MOTOR VEHICLE —% Any motor vehicle which is not currently registered.

§ 126-2. Parking or storage of certain vehicles prohibited.

A. Only the standard-type unaltered passenger car or station wagon, without commercial lettering or sign, shall be parked or stored in the Village. No bus, trailer, sleeping bus, sleeping car, boat, aircraft or helicopter or any vehicle which is designed or used for living or sleeping shall be parked, stored, or maintained on any lot in the Village. In case of special hardship, upon written application by a resident, the Board of Trustees may issue a temporary permit for such parking or storage.

B. No truck or commercial-type vehicle shall be parked on any lot in the Village except when being used in performing a service for the resident of the lot upon which such vehicle is parked, and when so marked or lettered on the outside of such vehicle as to state the name and address of the owner of such vehicle.

§ 126-3. Outdoor storage of unregistered vehicles prohibited.

It shall be unlawful for any person, firm or corporation, either as owner, occupant, lessee, agent, tenant or otherwise of property within the Village, to store or deposit, or cause or permit to be stored or deposited, an unregistered motor vehicle, or part or piece thereof, on any public or private property within the Village, unless such motor vehicle is stored or deposited in a completely enclosed building.

§ 126-4. Notice of violation.

A. If the provisions of the foregoing sections are believed to be violated, the Building Inspector shall serve a written notice, either personally or by registered, certified or ordinary mail, upon the owner, occupant or person having charge of such private property, to comply with the requirements of this chapter. The Building Inspector may determine ownership of any parcel of land in the Village of Plandome Heights from the current assessment roll of the Village and may serve written notice upon the owner thereof by mailing such notice to the owner at the address listed on the current assessment roll.

§ 126-5. Violations.

Failure to remove the unregistered motor vehicle within the periods prescribed above is a violation of this chapter.

§ 126-6. Penalties for offenses.

Any person found guilty of a violation of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

§ 126-7. Removal of violating vehicles.

The Village may, at its option, remove an unregistered motor vehicle, and if done so, shall be at the owner's expense.

Chapter 135

Chapter 135

VILLAGE PROPERTY

[HISTORY: Derived from Secs. 8.6 and 8.7 of the General Ordinances. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 43.

Streets, sidewalks and private property — See Ch. 110.

§ 135-1. Erection of structures; planting trees.

No wall fence or other structure may be erected or maintained on and no hedge, tree or shrub shall be planted on Village property without first obtaining written permission from the Village Clerk.

§ 135-2. Penalties for offenses. [Amended 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation of this chapter shall be punishable as set forth in Chapter 1, General Provisions, Article III, General Penalty.

Chapter 140

Chapter 140

ZONING

[HISTORY: Adopted by the Board of Trustees as part of the General Ordinances. Amendments noted where applicable.]

GENERAL REFERENCES

Architectural Review Board — See Ch. 4.

Building construction — See Ch. 43.

Flood damage prevention — See Ch. 65.

ARTICLE I

General Provisions

§ 140-1. District; map. [Amended 5-3-2004 by L.L. No. 1-2004]

The Village shall constitute a single district to be known as a Villa Resident District as depicted on the Official Map of the Incorporated Village of Plandome Heights, prepared by Charles E. Ward, Inc., dated January 1980, and adopted by the Board of Trustees on March 3, 1980, which accompanies this chapter and which is hereby declared to be a part hereof.

§ 140-2. Definitions.

A. Words used in the present tense include the future, and the future the present; the singular number includes the plural, and the plural the singular; the word "lot" includes the word "plot" as the sense may require it; the word "shall" is always mandatory.

B. Certain words in this chapter are defined for the purpose thereof as follows:

ACCESSORY BUILDING OR USE —% A building subordinate to the main building customarily incidental to and located on the same lot occupied by the main building or use.

ALTERATION —% As applied to a building or structure, is the change or rearrangement of the structural parts, or any enlargement, whether by extending on any side or by increasing in height, or the moving from one location to another. It does not include ordinary repairs.

BASEMENT —% That space of a building that is partly below grade which has more than half of its height measured from floor to ceiling above the average established level or finished grade of the ground adjoining the building.

BUILDING —% A combination of materials other than a structure to form a construction that is safe and stable and adapted to permanent or continuous occupancy as a residence; the term "building" shall be construed as if followed by the words "or part thereof."

BUILDING AREA —% The area of the maximum horizontal cross section of the building, including floor area of porches, accessory buildings on a lot excluding permitted encroachments, but including decks over 18 inches in height, patios, masonry walkways and driveways. [Amended 5-3-2004 by L.L. No. 1-2004]

BUILDING HEIGHT —% The vertical distance measured from the average level of the finished adjoining ground to the highest point of the roof.

BUILDING INSPECTOR —% The inspector appointed by the Board of Trustees or in case of his inability to act for any reason, a person designated by the Village authorities to act on the Building Inspectors behalf.

CELLAR —% That space of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established finished grade of the ground adjoining building.

CORNER LOT —% A lot situated at the intersection or junction of 2 or more streets.

DEPARTMENT OF HEALTH —% The Department of Health of the County of Nassau and any other Health Board or Department established pursuant to the laws of the State of New York and entrusted with the regulations, control and/or supervision of matters pertaining to and affecting the public health in the Village.

DEPTH OF LOT —% The mean distance from the street line of the lot to its opposite rear line, measured along the side lines of the lot.

ERECTED —% Constructed, reconstructed, altered, placed or moved.

FAMILY —% Any number of individuals related by blood, marriage or legal adoption, living and cooking together on the premises as a single housekeeping unit.

FIRST FLOOR —% The lower story entirely above the average level of the ground surrounding a building.

FLOOR AREA RATIO —% The total gross floor area, as defined herein, on a lot divided by the sum of the lot area. [Amended 5-3-2004 by L.L. No. 1-2004]

FRONTAGE —% The street upon which a lot abuts. If a lot abuts upon more than 1 street, it means the street upon which the lot has the least frontage.

FRONT OF BUILDING —% The front of a building on an interior lot is the exterior wall facing the street. The front of a building on a corner lot is the exterior wall where the main entrance is established.

FRONT YARD —% A yard across the full width of a lot extending from the front line of a building to the front line of the lot measured between the side property lines and in the case of a corner lot measured from the street line to the side property line.

HABITABLE FLOOR AREA IN A DWELLING —% Spaces occupied by 1 or more persons for living, eating and/or sleeping, but does not include attached or built-in garages, open porches or terraces or spaces in cellar. On the first floor it shall be construed to mean all finished floor area having a clear headroom of 7 1/2 feet or over, including stair wells; on the second floor all finished or unfinished floor area having a clear headroom of 7 1/2 feet or over for a minimum horizontal measurement of 6 feet with sidewalls not less than 5 1/2 feet in height.

INTERIOR LOT —% A lot other than a corner lot.

LOT —% A parcel of land which the owner shall designate in his application as his building site or a parcel of land occupied by a building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this chapter and such open spaces as are arranged and designed to be used in connection with such building.

LOT AREA —% The area of a lot measured within the boundaries thereof.

MAIN BUILDING —% A building which houses the principal purpose for the utilization of the lot.

OPEN PORCH —% A roofed open structure projecting from the outside wall of a building without window sash or any other form of permanent enclosure.

PERSON —% Includes individual, firm, corporation, partnership, association or other agency of voluntary action.

PREMISES —% Includes the land and all buildings or structures thereon.

PRIVATE GARAGE —% A detached or attached building or part of the main building used for storage of not more than 3 noncommercial automobiles owned and used by the owner or tenant of the lot on which the main building is erected and in which no business or service is conducted.

PROFESSIONAL OFFICE —% An office maintained by a doctor, dentist, lawyer, teacher, artist, architect, engineer, accountant or musician in the dwelling in which such person resides, provided that such office does not occupy more than 50% of the habitable floor space in the first floor or more than 25% of the habitable floor space of a 1-story dwelling and not more than 1

assistant or employee is employed by such person and further provided that there is no alteration or change to the exterior of such dwelling which modifies its residential character or use or the use thereof, has no feature which is offensive, annoying or harmful to the public health, safety or general welfare, including but not limited to by reason of noise, glare, vibration, odor, radiation, dust, fumes or undue traffic.

REAR YARD —% A yard across the full width of the lot extending from the rear line of the building to the rear line of the lot measured between the side property lines.

SIDE YARD —% A yard between the side of the building and the corresponding side line of the lot and extending from the front line of the rear lot line in the case of a single building on the front portion of a lot.

SINGLE-FAMILY DWELLING —% A building designed for and occupied exclusively as a home or residence for not more than 1 family. Each single-family dwelling shall have a private garage, either detached, attached, or within the main building. [Amended 10-5-1987]

STORY —% That portion of a building which is between one floor level and the next higher floor level or the roof. A basement shall be deemed to be a story when its ceiling is 6 or more feet above finished grade. A half-story is that part of any building above a story and having at least 2 opposite exterior walls meeting a sloping roof at a level no higher above the floor than 1/2 the floor to ceiling height of the story below, but having not less than 5 feet clear headroom at any point. [Amended 5-3-2004 by L.L. No. 1-2004]

STREET —% Any public thoroughfare or space more than 20 feet in width which may or may not have been dedicated or deeded to the public for public use.

STREET LINE —% A line dividing a lot from the street.

STRUCTURE —% A combination of materials other than a building to form a construction that is safe and stable, including, among others, signs, fences, retaining walls, outdoor fireplaces, swimming pools, pergolas detached garages, lampposts, freestanding basketball hoops and exterior central air-conditioning components; the term "structure" shall be construed as if followed by the words "or part thereof." [Amended 5-3-2004 by L.L. No. 1-2004]

TERRACE —% An open porch without a permanent roof.

TWO-STORY BUILDING —% Any building where the area of the second floor is equal to at least 75% of the area of the first floor.

USE —% The listed uses permitted. The listing of any uses as being permitted uses shall be deemed to mean that such uses and no other shall be permitted unless otherwise specifically permitted in the chapter. "Use" shall also mean designed, intended or arranged to be used.

WIDTH OF LOT —% The mean width measured at right angles to its depth.

YARD —% An open and unoccupied space on the same lot with a building, open and unobstructed from the ground to the sky.

ARTICLE II

Use Regulations

§ 140-3. Permitted uses.

No building or structure shall be erected, used or maintained nor shall any building, structure or premises be altered or remodeled nor any lot used for other than 1 or more of the following uses:

- A. A single-family detached dwelling with private garage. [Amended 10-5-1987]
- B. A nonprofit institution of learning approved by the State Board of Regents and supported by public funds.
- C. A Village park for recreational use.
- D. A Village Hall or other buildings necessary in connection with the administration of the affairs of the Village.
- E. A church or other buildings used exclusively for religious purposes. A parish house.
- F. Professional office, provided that the office is located in the dwelling in which the professional person resides and provided there is no display of advertising, except for doctors and dentists who may have a small professional name plate which may be illuminated by an electric lamp not exceeding 15 watts of power contained within the sign.
- G. Private garage detached or attached or within the main building.
- H. No signs except as mentioned in Subsection F shall be permitted, except the following: [Amended 12-4-1989 by L.L. No. 2-1989]
 - (1) Small sign, which may be illuminated, not exceeding 1/2 square foot to identify name or number of a resident.
 - (2) One sign only for sale or rental of real estate on property on which same is located, said sign not to exceed 3 square feet and to contain only the words "for sale" or "for rent" and a telephone number, and, if not attached to the building, the same shall conform with the minimum front and side yard setbacks herein stated in this chapter.

(3) Notices or advertisements required by law, or any legal proceedings, or signs put up for public notices.

(4) Signs for the directions, regulation or information for the safety of the public, in each case when authorized in writing by the Village Clerk.
[Amended 10-7-1996 by L.L. No. 1-1996]

I. Other accessory buildings or structures conforming to the provisions of Article III.

§ 140-4. Height.

A. In the case of a single-family dwelling no building shall exceed 2 1/2 stories, with a maximum height of 30 feet.

B. Buildings other than a single-family dwelling shall not exceed 35 feet in height, except a church spire or belfry.

§ 140-5. Plot area.

No dwelling or other building shall be constructed on a lot containing an area of less than 1/4 acre (10,890 square feet) and having a frontage of not less than 90 feet. The area shall be computed on the basis of a reasonable flat lot. Berms more than 3 feet in height shall be excluded from the computations. Slopes of berm shall measure not less than 2 on the horizontal and 1 on the vertical.

§ 140-6. Building area. [Amended 2-1-1999 by L.L. No. 1-1999]

The building area, including all accessory buildings, sheds, and all structures, shall not exceed 25% of the lot area.

§ 140-7. Floor area. [Amended 2-1-1999 by L.L. No. 2-1999]

A. No dwelling shall be erected unless it has a habitable first floor area in a 1-story building of at least 1,300 square feet.

B. The floor area ratio of the lot shall not exceed 0.40.

§ 140-8. Front yard.

On an interior lot there shall be a front yard, the depth of which shall be not less than 35 feet from the front property line. Where a front yard setback has been established, the front yard depth shall conform to the established front yards of adjacent residential buildings but shall not be less than 25 feet from the street line.

§ 140-9. Corner lot.

On a corner lot a dwelling shall have a front yard on each street conforming with the provisions of § 140-8.

§ 140-10. Front of building.

The principal entrance of any building shall face the street which the property adjoins through the wall or side of such building nearest to such adjoining street.

§ 140-11. Side yards.

A. On an interior lot there shall be 2 side yards, 1 on each side of the main building, the aggregate width of which shall be not less than 40 feet, and either side yard shall be not less than 15 feet wide. Buildings over 30 feet in height shall have a side yard on each side of the building of not less than 20 feet.

B. On a corner lot there shall be only 1 side yard of not less than 15 feet. Said yard shall be on the side adjoining the interior lot opposite the front yard having the greater street frontage. The remaining yard shall be considered the rear yard and shall conform to the provision of § 140-12.

§ 140-12. Rear yard.

There shall be a rear yard the depth of which shall be not less than 30 feet. No building to be used for dwelling purposes shall be erected in back of or to the rear of a building on the same lot. No building situated in back of or to the rear of a building on the same lot at the effective date of this chapter shall be altered and used for dwelling purposes.

§ 140-13. Planning Board. [Added 5-3-2004 by L.L. No. 1-2004]

A. Establishment and powers. A Planning Board is hereby established with all of the powers and duties set forth in New York State Village Law.

B. Appointment and membership. Members of the Planning Board shall be appointed by the Mayor with the approval of the Board of Trustees as provided in Chapter 1, General Provisions, Article IV, Boards, of this Code.

§ 140-14. Subdivision and merger. [Amended 5-3-2004 by L.L. No. 1-2004]

No parcel of land shall be subdivided to create 1 or more new lots, nor shall the lot lines of existing lots be altered unless approved by the Planning Board in conformity with this chapter and in accordance with New York State Village Law, and such other rules and regulations established by resolution of the Board of Trustees.

§ 140-15. Change in plans or construction.

Nothing herein contained shall require any change in the plans or construction of a building under construction, provided that at the effective date of this chapter the construction shall have proceeded to the completion of the foundation, and provided, further, that the work thereon shall be diligently prosecuted to completion within 1 year from the effective date of this chapter.

§ 140-16. Extensions to existing buildings. [Amended 2-1-1999 by L.L. No. 3-1999]

In the case of a building erected prior to the effective date of this chapter, and having existing side yards less than permitted in this chapter, extensions to the rear of the main building shall be permitted as follows:

A. If the minimum existing side yard is less than 10 feet, extension to the rear of the main building must maintain a minimum side yard of not less than 10 feet.

B. The aggregate width of side yards at the extension shall be not less than 40 feet.

C. The extension of the building to the rear may be extended to the minimum rear yard requirement, provided the building, including the extension, does not exceed the limitations of lot coverage and floor area ratio requirements.

§ 140-17. Cellars.

A cellar shall not be used or occupied for other than utility and recreation purposes.

§ 140-18. Basement.

A basement may be used as habitable space.

§ 140-19. Nonvegetated area. [Added 5-3-2004 by L.L. No. 1-2004]

A. The nonvegetated surface of the front yard of a dwelling may not exceed 25%.

B. Nonvegetative surface shall mean driveways, walks, decking, and any other areas covered with pavement, concrete, masonry, flagstone, gravel, bluestone, wood or other surface coverings so as to render the ground unsuitable for the growth of vegetation or plants.

§ 140-20. Driveway widths. [Added 5-3-2004 by L.L. No. 1-2004]

A. Single-car garage. A driveway from the street to a single-car garage may have a maximum width of 20 feet, except that it may not exceed a width of 10 feet at a distance 3 feet from the street.

B. Two-car garage. A driveway from the street to a 2-car garage may have a maximum width of 20 feet, except that it may fan out to a width of 22 feet at a distance 3 feet from the street.

§ 140-21. Lampposts. [Added 5-3-2004 by L.L. No. 1-2004]

No accessory structures are permitted in the front yard; except lampposts may be constructed in accordance with the following restrictions:

- A. Location limited to front yard, no farther than 10 feet from the front wall of the building.
- B. Maximum height, including pedestal, not to exceed 6 feet.
- C. Building permit and Architectural Review Board approval required.

ARTICLE III

Accessory Buildings and Structures; Permitted Encroachments; Swimming Pools

§ 140-22. Accessory structures and encroachments permitted.

Accessory buildings or structures and encroachments, conforming to the provision of this article, are permitted.

§ 140-23. Accessory buildings.

- A. Accessory buildings, except as otherwise provided in this article, shall not be over 15 feet in height at their highest point. The yard area occupied by an accessory building shall be included in computing the maximum percentage of the lot area which may be utilized for building.
- B. Accessory buildings shall be a distance at least 10 feet more from the street line than the rear wall of the main building and not less than 5 feet from any lot side line or 2 feet from any lot rear line.
- C. No accessory building, with the exception of fences or retaining walls, shall be erected within 20 feet of a building used for residence purposes on an adjoining lot.
- D. Unless otherwise provided in this article, accessory buildings and/or structures on corner lots 100 feet or less in depth shall be located as far as possible from the front property lines while conforming to the provisions of Subsections A and B.
- E. On a corner lot a private detached garage accessory to a dwelling on the same lot may be erected in the rear yard, provided the depth of a lot is sufficient to

permit compliance with the provisions of Subsection A to D, inclusive, and provided the setback of such garage complies with the front yard requirements.

§ 140-24. Accessory structures. [Amended 5-6-1991 by L.L. No. 4-1991; 12-7-1998 by L.L. No. 3-1998; 7-12-1999 by L.L. No. 4-1999; 5-3-2004 by L.L. No. 1-2004]

A. No fence shall be created, constructed or altered without first obtaining a building permit as provided in Article III of Chapter 43, Building Construction. Fences shall not exceed 4 feet in height. Fences shall be of an open-type construction, allowing a passage of both light and air through the fence, and shall be constructed of wrought iron, polyvinyl chloride (PVC) or wood. The style of fence shall be approved by the Architectural Review Board prior to installation. In addition to any landscaping that will be required by the Architectural Review Board, as a minimum requirement, evergreen shrubs at least 3 feet in height as measured from grade level at installation shall be planted at each fence post. Open-type construction shall mean construction in which the materials used are present in not more than 60% of the surface area of the fence, and the obstructed areas and the unobstructed areas are uniformly distributed throughout the area of the fence. Fences constructed of any other material or in any other manner shall require the approval of the Board of Appeals. Fences may be constructed to enclose the rear yard or any portion thereof, but in no event shall any fence extend forward of the rear wall of the dwelling. No fences shall be permitted in front yards or side yards unless approved by the Board of Appeals. [Amended 1-10-2005 by L.L. No. 2-2005]

B. A retaining wall shall have a maximum height of 4 feet with a setback ratio of 1:1. Retaining walls shall not extend more than 6 inches above the surface of the ground which they support.

C. Stationary outdoor fireplaces shall be erected in rear yards only and shall be at least 10 feet distance from the side and rear yard property lines and shall not exceed 5 feet in height.

D. Pergolas shall not exceed 10 feet in height.

E. No accessory structure or building shall be constructed or erected upon the premises for the purpose of containing air-conditioning equipment, ventilating fans and appurtenances thereto; such air conditioning, ventilating fans and appurtenant equipment shall be contained within the confines of the main building.

(1) Upon application the limiting provisions of this section may be waived when a central air-conditioning unit of 5 tons or less is installed in the side or rear yard and when such unit is installed in compliance with the side and rear yard sections of this article and when such installation has a

certified sound level rating at the adjoining property line not exceeding 25-35 decibels.

(2) When a central air-conditioning system is installed, a certificate of installation certifying that it has been installed by the builder in accordance with the manufacturer's instructions shall be issued to the owner and a copy of same shall be filed with the Village Clerk.

F. A single garden shed or tool shed is permitted, with a permit from the Building Inspector, subject to the provisions of this section and other applicable provisions of this Code. The shed may be located in the rear yard, provided that (1) it has a gabled roof with a minimum pitch of 1 in 3, that (2) it does not exceed 9 feet in height from grade to the top of gable ridge, (3) floor area of shed may not occupy more than 3.20% of the rear yard area, but in no event shall it be more than 80 square feet, (4) it is set back no less than 3 feet or more than 5 feet from the side or rear lot line, (5) it shall be a distance of at least 10 feet more from the street line than the rear wall of the main building, (6) side and rear lot lines at sheds shall have evergreens planted to a minimum height of 4 feet at time of planting as a buffer zone. Nonconforming sheds that are modified, rebuilt or replaced must conform with this chapter.

G. Other accessory structures not mentioned herein shall be located in accordance with the requirements for accessory buildings as provided in § 140-23A through E, inclusive. [Amended 8-7-2006 by L.L. No. 5-2006]

§ 140-25. Permitted encroachments.

A. Encroachments into required yards are permitted in the Village as provided in this article only.

B. Cornice and eaves projection not more than 24 inches; gutters projecting not more than 8 inches; chimneys not projecting more than 18 inches; bay windows not more than 6 feet in width and projection not more than 24 inches into any front yard; bay windows not projecting more than 24 inches into any side or rear yard; belt courses and sills projecting no more than 6 inches.

C. One-story open porches and terraces projecting not more than 5 feet into a minimum front yard.

D. One-story enclosed vestibule not greater than 8 feet in width and 5 feet in depth extending into a minimum front yard, provided that said vestibule shall conform in architecture and material to the main building and after the erection thereof there shall remain a front yard with a depth not less than the least depth of a front yard existing in the same block.

E. No encroachment which is permitted to extend into any yard if unroofed or unenclosed shall thereafter be enclosed permanently in whole or in part.

F. No permitted encroachment shall in any case extend or project closer than 13 feet to any lot line.

G. Steps extending into a minimum yard shall not be considered an encroachment into such yard, provided that such steps do not exceed in height the first floor level of the building and provided further that such steps are necessary to provide access to a walk, porch, terrace or vestibule.

H. In any case where the Board of Appeals has diminished required yard by variance, none of the foregoing encroachments shall be permitted in such diminished yard.

§ 140-26. Swimming pools. [Amended 6-1-1964]

A. Swimming pools may be installed only as an accessory structure to a residence for the private use of the owner or occupant of such residence and their families and guests.

B. No swimming pool shall be installed or maintained as authorized in the preceding section except on the following conditions: [Amended 2-4-1991 by L.L. No. 1-1991]

(1) Such pool shall be installed in the rear yard of the premises and shall not exceed a height of 18 inches above ground level.

(2) Swimming pools shall be located not less than 30 feet distant from the side and rear lot lines, and not less than 20 feet from any building or structure other than the dwelling located on the plot.

(3) All pools shall be fenced in accordance with the New York State Uniform Fire Prevention and Building Code. Such fencing shall not be less than 4 feet nor more than 5 feet in height, and may be erected so as to completely enclose the pool itself or the entire rear property as specified in this chapter, Article III, § 140-24A. The location and style of fence shall be approved prior to installation by the Architectural Review Board. Mature shrubbery and/or plants shall be planted around the exterior of the fencing to screen the fencing. [Amended 2-10-2003 by L.L. No. 1-2003]

(4) Such pool area shall not occupy more than 40% of the open area of the rear yard after compliance with all setback restrictions.

(5) If the water for such pool is supplied from a private well, there shall be no cross-connection with the public water supply system.

(6) If the water for such pool is supplied from the public water supply system, the inlet shall be above the overflow level of the pool.

(7) Such pool shall be chemically treated in a manner sufficient to maintain the bacterial standards established by the provisions of the New York State Sanitary Code or other agencies having jurisdiction relating to public swimming pools.

(8) No permission shall be granted for the installation of any swimming pool unless the plans therefore meet the approval of the Building Inspector's construction requirements nor until the owner of the premises has filed with the Building Inspector a certificate approved by a professional engineer licensed by the State of New York stating that the drainage of such pool is adequate and will not interfere with the public water supply system, with existing sanitary facilities or with the public highways.

(9) No loud speaker device which can be heard beyond the property lines of the premises in which any swimming pool has been installed may be operated in connection with such pool, nor may any lighting be installed in connection therewith which shall throw any rays beyond such property lines.

(10) In determining any application for permission to erect a fence other than as required in Subsection B(3) hereof, the Board of Appeals shall consider whether the proposed fence will interfere with or impair the use of the light or air enjoyed by the abutting properties, the character of the abutting properties, the necessity of such a fence to protect the property to be enclosed thereby or the abutting properties, the existence, height, and nature of other fences in the vicinity.

(11) Outdoor water pools shall for the purposes of this chapter be construed to mean any swimming pool, tank, depression or excavation in any material, dike or berm constructed, erected, excavated or maintained which will cause the retaining of water to a greater depth than 18 inches and having a larger plane surface area of water greater than 100 square feet, except such as shall hereinafter be excluded. The word "pool" shall be construed to mean outdoor water pool.

(12) Should the owner abandon the pool he shall arrange to remove the depression and return the surface of the ground to its original grade and approximately in the same condition as before the pool was constructed, and he shall further notify the Building Inspector of the abandonment so that an inspection of the site may be made and the records of the permit be marked accordingly.

C. Portable swimming pools of a size capable of retaining water to a greater depth than 18 inches and having a larger plane surface area of water greater than 100 square feet shall not be required to comply with the provisions of Subsection B, providing the following conditions are complied with in all respects:

- (1) The pool shall be so located on the premises as to be visible from the dwelling.
- (2) The pool shall be located in the rear yard of the premises and as far removed from all property lines as is practicable.
- (3) The pool shall be equipped with a cover approved by the Building Inspector and shall be of sufficient strength to protect against accidental entry into the pool. The pool shall be covered at all times when containing water and not in use.
- (4) When the pool contains water and is not in use, it shall be equipped with an electrical device, approved by the Building Inspector to sound an alarm on entry.
- (5) The water in the pool shall be drained whenever the residence it serves is left unattended for a period in excess of 24 hours.
- (6) Provision shall be made on the premises for drainage of water from the pool.
- (7) The pool shall be treated in such manner as to maintain the bacterial standards satisfactory to the Nassau County Department of Health, or other agencies having a jurisdiction.

ARTICLE IV

Board of Appeals

§ 140-27. Appointment and membership. [Amended 5-3-2004 by L.L. No. 1-2004]

A Board of Appeals shall be appointed by the Mayor with the approval of the Board of Trustees. Members of said Board of Appeals shall be appointed as provided in Chapter 1, General Provisions, Article IV, Boards, of this Code.

§ 140-28. Powers. [Amended 5-3-2004 by L.L. No. 1-2004]

The Board of Appeals shall have the powers and duties set forth in the New York State Village Law.

§ 140-29. Lapse of variance. [Amended 6-5-2000 by L.L. No. 7-2000]

A. A variance granted by the Board of Appeals shall lapse after the expiration of 180 days from the date that the decision is filed in the Village Clerk's office if no building permit is obtained in accordance with the plans for which such variance was granted, and the provisions of this chapter shall thereafter govern. [Amended 5-3-2004 by L.L. No. 1-2004]

B. A variance granted by the Board of Appeals shall lapse after the expiration of 180 days from the date that the building permit is filed in the Village Clerk's Office if no substantial construction has taken place in accordance with the plans for which such variance was granted, and the provisions of this chapter shall thereafter govern. [Amended 5-3-2004 by L.L. No. 1-2004]

C. A request by the applicant for an extension of time to obtain a permit pursuant to Subsection A of this section, or to complete substantial construction pursuant to Subsection B of this section, shall be made within the initial 180-day period in which to obtain the permit or complete substantial construction.

§ 140-30. Rules.

The Board of Appeals may make rules as to the manner of filing appeals or application for permits or variance in specific cases from the provision of this chapter.

§ 140-31. Notice of hearing. [Amended 5-3-2004 by L.L. No. 1-2004]

A. The Board of Appeals shall fix a time and place for a public hearing of an application and shall publish a notice in a local newspaper or newspapers at least 10 days before the hearing. The notice shall state the location of the building or lot and the general nature of the application. Notice of public hearing shall be posted in conspicuous places within the Village.

B. At least 10 days prior to the hearing the applicant shall send the notice by certified mail, return receipt requested, to all owners of properties within a 200-foot radius of the applicant's property as appears on the latest Village assessment roll.

§ 140-32. Fees. [Added 3-28-1977 by L.L. No. 3-1977; 9-12-1988 by L.L. No. 2-1988; 6-1-1998 by L.L. No. 1-1998; 5-1-2000 by L.L. No. 5-2000; 4-2-2001 by L.L. No. 3-2001; 5-3-2004 by L.L. No. 1-2004]

The applicant shall be responsible for the payment of all fees set forth in the Schedule of Fees and Payments maintained by the Village Clerk.

ARTICLE V

Enforcement and Interpretation

§ 140-33. Enforcement.

This chapter shall be enforced by the Board of Trustees who may make any rules and regulations necessary in connection therewith.

§ 140-34. Interpretation.

In interpreting and applying the provisions of this chapter, such provisions shall be held to be the minimum requirements for the promotion of the health, safety, morals and/or the general welfare of the Village. It is not the intent by this chapter to interfere with or abrogate or annul any rules or regulations adopted and/or issued thereunder, or the rules and regulations of the Department of Health of the County of Nassau; provided, however, that where this chapter imposes a greater restriction upon the use of a building or premises or upon the height of a building, or required larger open spaces than are imposed or required by such code, rules and regulations, the provision of this chapter shall control.

§ 140-35. Remedies.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any hedge, tree, shrub or other growth is maintained, or any building, structure or land is used in violation of this chapter, or of any regulations made pursuant thereto, in addition to other remedies provided by law, any appropriate action or proceeding whether by legal process or otherwise, may be instituted or taken to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

§ 140-36. Penalties for offenses. [Amended 12-9-1965; 4-7-1969; 5-3-2004 by L.L. No. 1-2004]

Any person found guilty of a violation of this chapter shall be punishable as set forth in New York State Village Law. Each day that a violation continues shall be deemed a separate offense.

§ 140-37. Abatement of violation.

Appropriate action and proceedings may be taken at law or in equity to prevent unlawful construction or to restrain, correct or abate a violation or to prevent illegal occupancy and/or use of a building, structure or premises or to prevent illegal acts, conduct or business in or about any premises, and these remedies shall be in addition to the penalties prescribed in the preceding section.

ARTICLE VI

Miscellaneous Provisions

§ 140-38. Nonconforming buildings, lots and uses. [Added 5-3-2004 by L.L. No. 1-2004]

A. Nonconforming buildings.

(1) Nothing in this chapter shall be deemed to prohibit the continuance or the maintenance, repair, alteration (including enlargement or other structural alteration) or reconstruction of a nonconforming building, provided that no such action shall increase the extent of any nonconformity of such building with any requirement of this chapter or create any new nonconformity therewith.

(2) No repair, alteration or reconstruction of a nonconforming building shall be made if the cost of such action would exceed 50% of the then-current replacement value of such building, exclusive of foundations.

(3) No nonconforming building shall be moved, in whole or in part, to any other portion of the lot occupied by such building unless, as a result of such move, such building would cease to be a nonconforming building.

B. Nonconforming uses.

(1) Nothing in this chapter shall be deemed to prohibit continuance of the use of a building or lot which has become a nonconforming use, subject to the following provisions of this section.

(2) A use which has become a nonconforming use shall not:

(a) Be moved, in whole or in part, from the location within the lot on which it is conducted to another location within such lot.

(b) Be moved to a lot other than the lot on which such use was conducted at the time such use became a nonconforming use unless such use is a permitted use on such other lot.

(3) The use of a building or lot which is a nonconforming use shall not be changed except to a use permitted for such building or lot.

(4) A nonconforming use shall not be enlarged, increased, extended or expanded so as to occupy a larger portion of the lot on which such use is conducted than the portion occupied by such use at the time such use became a nonconforming use.

(5) A nonconforming use shall not be extended so as to displace a permitted use. An increase in the area of accessory parking for a nonconforming use on the same lot on which such use is conducted or on a

different lot in a district in which such use is not a permitted use shall be deemed the displacement of a permitted use by a nonconforming use.

(6) A nonconforming use which has been discontinued for a continuous period of 12 months or more or which is replaced for any period by a permitted use shall be deemed to have been abandoned and shall not be resumed.

(7) A building which is utilized for a nonconforming use shall not be enlarged or otherwise changed unless, after such enlargement or other change, such building is utilized for a permitted use.

(8) Damages to nonconforming use.

(a) In the event that a building which is utilized for a nonconforming use is damaged by fire or other casualty, upon the filing of an application for a building permit for the repair, rebuilding or reconstruction (hereinafter called "restoration") of such building, the Board of Trustees shall determine the extent of such damage in terms of the current cost of such restoration as a percentage of the current cost for replacement of the entire structure (hereinafter referred to as the "damage percentage"), and such determination shall be conclusive.

(b) If the damage percentage is greater than 40%, no restoration of such building shall be made unless, after such restoration, such building and the use thereof will conform to all of the provisions of this chapter. In such case, the owner of such building shall furnish to the Board of Trustees a declaration, in recordable form, to the effect that such nonconforming use has been abandoned.

(c) If the damage percentage is 40% or less, restoration of such building may be done, provided that such building, after such restoration, shall not exceed the height, building area, floor area, volume and other dimensions of such building as existing prior to such damage and shall not increase any encroachment of such building into yards as existing prior to such damage. Failure of the owner to apply, within 6 months after such casualty, for a building permit for such restoration or to commence such restoration (pursuant to a permit) within 9 months after such casualty and to prosecute such restoration diligently and without interruption shall be deemed an abandonment of such nonconforming use.

(d) The Board of Trustees may, in its discretion, appoint a licensed architect or licensed professional engineer to advise the Board in regard to its determination of the damage percentage, and in such event, the reasonable fees of such architect or engineer shall be paid by the owner of such building in addition to any other fees or charges provided for in this Code.

C. Nonconforming lots.

(1) No lot shall be subdivided so as to create any new lot which does not conform or so that the building or buildings on such new lots do not conform to the requirements of this chapter with regard to area, depth, street frontage, front yard, rear yard, side yard or other dimensional aspect.

(2) Nothing in this chapter shall be deemed to prohibit the establishment of a permitted use or the erection of a building on a lot which has less than the minimum lot area, street frontage or width required by this chapter, provided that:

(a) The ownership of such lot was different from the ownership of all adjoining lots at the effective date of the earliest provision of this chapter which established such deficiency. (In making a determination as to the existence or nonexistence of such diverse ownership, the Board of Trustees may utilize the services of an abstract company or title company, and in such event, the reasonable fees and expenses of such company for such services shall be paid by the owner of such lot, in addition to any other charges provided for by this Code.)

(b) In the case of the proposed erection of a building on such lot, it was lawful to erect a building on such lot immediately prior to such effective date, and such lot and the building to be erected thereon will comply with the requirements of this chapter in all other respects.

§ 140-39. Abandonment.

When a change of zone is made to permit the use of property for a particular project, in the event of the abandonment of such project, the Board of Trustees may after public hearing restore the property to its former zoning district or such other district as it may determine. The failure to obtain building permits within 1 year of the date of change of the zone, or the failure to complete the project within 2 years after issuance of building permits may be deemed to be an abandonment.

§ 140-40. Petition fee. [Amended 9-12-1988 by L.L. No. 2-1988; 4-2-2001 by L.L. No. 3-2001; 5-3-2004 by L.L. No. 1-2004]

The applicant for a proposed change in the Zoning Map of this chapter shall be responsible for the payment of all fees set forth in the Schedule of Fees and Payments maintained by the Village Clerk.