

Code

of the

Town of Kingsbury

COUNTY OF WASHINGTON

STATE OF NEW YORK

SERIAL NO.40.....

GENERAL CODE PUBLISHERS CORP.

72 Hinchey Road

Rochester, New York 14624

1983

Code
of the
Town of Kingsbury (N.Y.).

COUNTY OF WASHINGTON

STATE OF NEW YORK

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GENERAL CODE PUBLISHERS CORP.

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CERTIFICATION

TOWN OF KINGSBURY

Office of the Town Clerk

I, **ELEANOR B. PUTNAM**, Town Clerk of the Town of Kingsbury, hereby certify that the chapters contained in this volume are based upon the original ordinances and local laws of the Town Board of the Town of Kingsbury and that said ordinances and local laws, as revised and codified, renumbered as to sections and rearranged into chapters, constitute the Code of the Town of Kingsbury, County of Washington, State of New York, as adopted by Local Law No. 2-1983 of the Town Board on December 28, 1983.

Given under my hand and the Seal of the Town of Kingsbury, County of Washington, State of New York, this 28th day of December 1983, at Kingsbury, New York.

s/**ELEANOR B. PUTNAM**

.....
Town Clerk

**OFFICIALS
OF THE
TOWN OF KINGSBURY**

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2006

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PREFACE

History

Several great Indian trails from the northern lakes to the Hudson River converged in Kingsbury. It is the oldest township in Washington County and the Adirondack region to have retained its original patent dimensions. Kingsbury was granted to James Bradshaw and twenty-two associates on May 11, 1762, following the French and Indian War. It contains an area of six and one-half square miles, about twenty-six thousand acres. One hundred years ago, it was unequaled in prosperity by any community north of Albany, and its land value was among the highest in the state, exceeding even those of New York City.

Baker's Falls, a natural falls on the Hudson at Hudson Falls, has a fall of eighty-five feet and is second in potential waterpower in New York only to Niagara. Following the Revolution, the waterpower, a new plank road from Waterford to Whitehall, constructed in 1806, the location of the county seat at Sandy Hill and the canal system put Kingsbury at the hub of northern commerce and transportation. Other industries followed and brought prosperity and men of great influence: two state governors, several prominent United States congressmen, famous jurists and figures of international consequence. One was William Little Lee, who was greatly responsible for development of modern government in Hawaii, and another was Townsend Harris, who was acknowledged as most responsible for opening Japan's trade markets to the west.

Today much of Kingsbury is rich farmland supporting a prosperous dairy industry. The Sandy Hill Corporation, carrying on a machine works tradition at Hudson Falls of more than a century, still produces paper mill machines and components for worldwide consumption. General Electric Company produces capacitors and electronic power equipment.

Besides Hudson Falls, there are several small communities in the rural areas of the township, among them are Smith's Basin, Dunham's Basin, the Hamlet of Kingsbury and the Hamlet of Pattens Mills.

Codification of Laws

While only a few simple ordinances were necessary in the early years of the town, subsequent growth of the town, together with the complexity of modern life, has created the need for more and detailed legislation for the proper function and government of the town. The recording of local law is an aspect of municipal history, and as the community develops and changes, review and revision of old laws and consideration of new laws, in the light of current trends, must keep pace. The orderly collection of these records is an important step in this ever-continuing process. Legislation must be more than mere chronological enactments reposing in the pages of old records. It must be available and logically arranged for convenient use and must be kept up-to-date. It was with thoughts such as these in mind that the Town Board ordered the following codification of the town's legislation.

Contents of Code

The various chapters of the Code contain all currently effective legislation (local laws, ordinances and certain resolutions) of a general and permanent nature enacted by the Town Board of the Town of Kingsbury, including revisions or amendments to existing legislation deemed necessary by the Town Board in the course of the codification.

Division of Code

The Code is divided into parts. Part I, Administrative Legislation, contains all legislation of an administrative nature, namely, that dealing with the administration of government, that establishing or regulating municipal departments and that affecting officers and employees of the municipal government and its departments. Part II, General Legislation, contains all other legislation of a regulatory nature. Legislation in this part generally imposes penalties for violation of the provisions contained therein, whereas that in Part I does not. The local law providing for the renumbering of town legislation into an orderly and organized system and designating the body of such renumbered legislation as the "Code of the Town of Kingsbury" appears in Chapter 1, General Provisions, Article I.

Grouping of Ordinances and Arrangement of Chapters

The legislation of the town is organized into chapters, the order being an alphabetical progression from one subject to another. Wherever there are two or more items of legislation dealing with the same subject, they are combined into a single chapter. In such chapters, use of Article designations has preserved the identity of the individual items of legislation.

Table of Contents

The Table of Contents details the arrangement of material by chapter as a means of identifying specific areas of legislation. Wherever two or more items of legislation have been combined by the editor into a single chapter, titles of the several Articles are listed beneath the chapter title in order to facilitate location of the individual item of legislation.

Reserve Chapters

Space has been provided in the Code for the convenient insertion, alphabetically, of later enactments. In the Table of Contents, such space appears as chapters entitled "(Reserved)." In the body of the Code, reserved space is provided by breaks in the page-numbering sequence between chapters.

Pagination

A unique page-numbering system has been used, in which each chapter forms an autonomous unit. One hundred pages have been allotted to each chapter, and the first page of each is the number of that chapter followed by the numeral "01." Thus, Chapter 20 begins on page 2001, Chapter 55 on page 5501, etc. By use of this system, it is possible to add or to change pages in any chapter without affecting the sequence of subsequent pages in other chapters and to insert new chapters without affecting the existing organization.

Numbering of Sections

A chapter-related section-numbering system is employed, in which each section of every item of legislation is assigned a number which indicates both the number of the chapter in which the item of legislation is located and the location of the section within that chapter. Thus, the first section of Chapter 20 is § 20-1, while the fifth section of Chapter 55 is § 55-5.

Scheme

The scheme is the list of section titles which precedes the text of each chapter. These titles are carefully written so that, taken together, they may be considered as a summary of the content of the chapter. Taken separately, each describes the content of a particular section. For ease and precision of reference, the scheme titles are repeated as section headings in the text.

Histories

At the end of the scheme in each chapter is located the legislative history for that chapter. This history indicates the specific legislative source from which the chapter was derived, including the local law number, if pertinent, and date of adoption. In the case of chapters containing Articles derived from more than one item of legislation, the source of each Article is indicated in the history. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

Amendments and Revisions; New Enactments

Sections of this Code amended or revised at the time of adoption of the codification are specifically enumerated in chapter histories with reference to "Ch. 1, General Provisions, Art. I," where an enumeration of all such changes will appear after final enactment. Sections so amended or revised are also indicated in the text by means of editor's notes referring to Chapter 1, Article I. The history of other amendments to each chapter appears where pertinent in the text.

Chapters derived from new legislation approved for enactment during codification are similarly noted in chapter histories with reference to "Ch. 1, General Provisions, Art. II." The legislation comprising such chapters will be listed in a table contained therein with respect to each chapter adopted during codification.

General References; Editor's Notes

In each chapter containing material related to other chapters in the Code, a table of general references is included to direct the reader's attention to such related chapters. Editor's notes are used in the text to provide supplementary information and cross references to related provisions in other chapters.

Appendix

Certain forms of local legislation are not of a nature suitable for inclusion in the main body of the Code but are of such significance that their application is community-wide or their provisions are germane to the conduct of municipal government. The Appendix of this Code is reserved for such legislation and for any other material that the community may wish to include.

Index

The Index is a guide to information. Since it is likely that this Code will be used by persons without formal legal training or those unfamiliar with town legislation, the Index has been formulated to enable such persons to locate a particular section quickly. Each section of each chapter has been indexed. The Index will be supplemented and revised from time to time as new legislation is added to the Code.

Supplementation

Supplementation of the Code will follow the adoption of new legislation. New ordinances and amendments will be included and repeals will be indicated as soon as possible after passage. Sup-

plemental pages should be inserted as soon as they are received, and old pages removed, in accordance with the instruction page which accompanies each supplement.

Acknowledgement

The preparation of this Code was greatly enhanced by the efforts of Town Attorney Richard E. McLenithan, Esq., who coordinated the many communications necessary to complete the project. We acknowledge, too, the research and assistance of Town Historian Paul Rayno.

The codification of the legislation of the Town of Kingsbury reflects an appreciation of the needs of a progressive and expanding community. As in many other municipalities, officials are faced with fundamental changes involving nearly every facet of community life. Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. It is the profound conviction of General Code Publishers Corp. that this Code will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

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GENERAL PROVISIONS

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[HISTORY: Adopted by the Town Board of the Town of Kingsbury: Art. I, 12-28-83 as L.L. No. 2-1983. Amendments noted where applicable.]

ARTICLE I

Adoption of Code

[Adopted 12-28-83 as L.L. No. 2-1983]

Be it enacted by the Town Board of the Town of Kingsbury as follows:

§ 1-1. Legislative intent; distribution table.

A. The local laws, ordinances and resolutions of the Town of Kingsbury referred to in § 1-1B of this local law shall be known collectively as the "Code of the Town of Kingsbury," hereafter termed the "Code," and the various parts and sections of such local laws, ordinances and resolutions shall be distributed and designated as provided and set forth in § 1-1B of this local law.

B. Distribution of local laws, ordinances and resolutions.

Derivation Table

[Sections providing for severability of provisions, repeal of conflicting legislation and effective dates, which are covered by provisions of Chapter 1, Article I, and certain title sections which are not necessary in a codification having chapter and/or Article titles for the various ordinances and local laws included therein have been omitted from the Code, and such sections are indicated as "omitted" in the table which follows.]

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
Ch. 3, Accounting System		5-22-78
§ 3-1	Unnumbered paragraph	
§ 3-2	Unnumbered paragraph	
§ 3-3	Unnumbered paragraph	
Omitted	Unnumbered paragraph	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
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§ 6-4	Section 2	
§ 6-5	Section 3	
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§ 55-3	Paragraph 4	Amended at time of adoption of Code

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§ 75-5	Section 2	
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Omitted	Section 4	
Ch. 80, Zoning		8-6-58
Omitted	Article I	

**New Number
(chapter, title,
Article, section)**

**Old Number
(source)**

**Adoption or
Amendment
Date**

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§ A84-9	Section 6	
§ A84-10	Section 7	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
Article III	Article IV	
§ A84-11	Unnumbered	
§ A84-12	Section 1	
§ A84-13	Section 2	
§ A84-14	Section 3	
§ A84-15	Section 4	
§ A84-16	Section 5	
§ A84-17	Section 6	
§ A84-18	Section 7	
Article IV	Article V	
§ A84-19	Section 1	
§ A84-20	Section 2	
§ A84-21	Section 3	
§ A84-22	Section 4	
Article V	Article VI	
§ A84-23	Sections 1, 2 and 3	
Omitted	Article VII	
Omitted	Section 1	
Procedures Summary	Appendix B	
Unnumbered	Sections 1, 2 and 3	
Ch. A85, Election Dis- tricts		7-1-18
§ A85-1		Amended 5-20-65

§ 1-2. Continuation of existing provisions.

- A. 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, as distributed and renumbered in § 1-1B above, 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 Town Board of the Town of Kingsbury, and it is the intention of said Town 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, ordinances and resolutions as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

- B. In compiling and preparing the local laws, ordinances and certain resolutions of the town for publication as the Code of the Town of Kingsbury, as distributed and designated in the table in § 1-1B hereof, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made.

§ 1-3. Repeal of local laws and ordinances not contained in Code.

All local laws and ordinances of a general and permanent nature heretofore adopted by the Town Board of the Town of Kingsbury and in force on the date of the adoption of this local law and not cited in the table in § 1-1B hereof are hereby repealed as of the effective date of this local law, except as hereinafter provided.

§ 1-4. Local laws and ordinances saved from repeal; matters not affected by repeal.

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, resolutions, rights and obligations, which are hereby expressly saved from repeal:

- A. Any local law, ordinance or resolution adopted subsequent to April 24, 1981.
- B. Any right or liability established, accrued or incurred under any legislative provision of the town prior to the effective date of this local law, or any action or proceeding brought for the enforcement of such right or liability.

- C. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the town, or any penalty, punishment or forfeiture which may result therefrom.
- D. 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 town.
- E. Any franchise, license, right, easement or privilege heretofore granted or conferred by the town.
- F. Any local law, ordinance or resolution of the town 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 town, or any portion thereof.
- G. Any ordinance or resolution of the town appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the town or other instruments or evidence of the town's indebtedness.
- H. Local laws, ordinances or resolutions authorizing the purchase, sale, lease or transfer of property, or any lawful contract or obligation.
- I. The levy or imposition of special assessments or charges.
- J. The dedication of property.
- K. Any local law, ordinance or resolution relating to salaries and employee benefits.
- L. Any rules, regulations, standards or specifications referred to or authorized to be adopted by any local law, ordinance or resolution included in the Code.
- M. Any ordinance, local law or resolution relating to a cable television franchise.

- N. Any ordinance, local law or resolution relating to a business facilities tax reduction pursuant to § 485 of the Real Property Tax Law, including but not limited to L.L. No. 5-1978, adopted 11-27-78.

§ 1-5. Effect on previously adopted legislation; amendments.

- A. In compiling and preparing the local laws, ordinances and certain resolutions of the town for publication as the Code of the Town of Kingsbury, as distributed and designated in the table in § 1-1B hereof, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided below.
- B. The following sections of the resolutions, ordinances or local laws enumerated are hereby amended to standardize the penalty provisions thereof to provide that an offense against the provisions of such ordinance or local law shall be a violation punishable by a fine of not to exceed two hundred fifty dollars (\$250.) or by imprisonment for a term not to exceed fifteen (15) days:
- (1) Section 17 of an ordinance adopted 10-12-82 regulating the location and use of mobile homes (§ 58-16).
 - (2) Section XIII of an ordinance adopted 9-28-81 regulating peddling and soliciting (§ 61-13).
- C. The following sections of the resolutions, ordinances or local laws enumerated are hereby amended to eliminate all dollar figures as they relate to fees for certain permits and official filings with or acts performed by the Town of Kingsbury, and to provide reference to Chapter 46, Fees, of the Code.
- (1) Section 8 of a resolution adopted 3-13-78 relating to access to public records [§ 24-8B(1)].
 - (2) Section 5 of an ordinance adopted 2-28-58 regulating the conduct of bingo games (§ 38-5A).
 - (3) Section 6 of Local Law No. 1-1979, adopted 7-9-79, providing environmental quality review.

- (4) An unnumbered section and a paragraph numbered "4" contained in a resolution concerning landfill operations adopted 10-12-82 (§§ 55-2A, 55-2B, 55-2C and 55-3B).
 - (5) Section VI of an ordinance adopted 9-28-81 regulating peddling and soliciting (§ 61-6).
 - (6) Sections 2, 3 and 4 of an ordinance adopted by the Planning Board 11-19-80 and approved by the Town Board 12-8-80 specifying subdivision regulations (§§ A84-5A, A84-6A, A84-7A).
- D. Section 2 of an ordinance adopted 10-25-72 pertaining to personal property tax exemption for certain senior citizens (§ 72-2) is hereby amended by deleting the words "sixty consecutive months prior to the date that application is filed" at the end thereof and adopting in its place and stead, the following after the words "at least": "...the time period specified by statute prior to the date the application is filed."
- E. Section 51 of an ordinance pertaining to zoning adopted 8-6-58 (§ 80-11) is hereby amended by changing the word and number "four (4)" as they describe the number of town zoning districts and inserting therein the word and number "six (6)." Said section is further amended by removing the district designations "Agricultural Ag" and "Planned Development Pld" from parentheses and listing them with the other districts enumerated.

§ 1-6. Filing of copies of Code.

A copy of the Code of the Town of Kingsbury, in loose-leaf form, has been filed in the office of the Town Clerk of the Town of Kingsbury and shall remain there for the use of and examination by the public until final action is taken on this local law; and if this local law shall be adopted, such copies shall be certified to by the Town Clerk of the Town of Kingsbury, and such certified copies shall remain on file in the office of said Town Clerk, to be made available to persons desiring to examine same during all times while said Code is in effect.

§ 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 Town of Kingsbury," or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the Town Board to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code of the Town of Kingsbury shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code of the Town of Kingsbury 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 Town Board deems desirable.

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

It shall be the duty of the Town Clerk, or someone authorized and directed by the Town Clerk, to keep up-to-date the certified copies of the book containing the Code of the Town of Kingsbury required to be filed in the office of the Town Clerk for the use of the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the Town Board subsequent to the enactment of this local law, in such form as to indicate the intention of said Town 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 or local laws or resolutions until such changes or local laws, ordinances 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 book containing the Code of the Town of Kingsbury may be purchased from the Town Clerk upon the payment of a fee to be set by resolution of the Town Board, which may also ar-

range by resolution for procedures for the periodic supplementation thereof.

§ 1-10. Publication; filing.

The Town Clerk of the Town of Kingsbury, pursuant to law, shall cause to be published, in the manner required, a notice of the introduction and enactment of this local law in the official newspaper of the town. A copy of the Code of the Town of Kingsbury shall be maintained in the office of the Town Clerk for inspection by the public at all times during regular office hours. The enactment and application 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.

§ 1-11. Tampering with Code; penalties.

Any person who, without authorization from the Town Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Town of Kingsbury, or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the town to be misrepresented thereby, or who violates any other provision of this local law shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine of not more than two hundred fifty dollars (\$250.) or by imprisonment for not more than fifteen (15) days, or by both such fine and imprisonment.

§ 1-12. Severability.

If any clause, sentence, paragraph, section, Article or part of this local law, or of any local law, ordinance or resolution cited in the table in § 1-1B hereof, or of any local law, ordinance or resolution incorporated into the Code hereafter, 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, Ar-

title or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-13. Incorporation of provisions into Code.

The provisions of this local law are hereby made Chapter 1, Article I, of the Code of the Town of Kingsbury, to be entitled "Chapter 1, General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-14, inclusive.

§ 1-14. When effective.

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

ARTICLE II

Legislation Enacted During Codification

[During the process of codification, certain complete new local laws were approved by the Town Board for inclusion in the Code of the Town of Kingsbury. Such new enactments are noted in the histories of individual chapters as "... adopted during codification; see Ch. 1, General Provisions, Art. II." During the course of normal supplementation, specific dates of adoption will be inserted where pertinent in the various chapters. The enumeration appearing below lists each chapter affected by any such legislation adopted during codification.]

Chapter	Local Law Number	Adoption Date
Ch. 46, Fees	1-1983	12-28-83

Chapter 3

ACCOUNTING SYSTEM

§ 3-1. Responsibility of Supervisor.

§ 3-2. Compliance with state regulations.

§ 3-3. Standards for inclusion in fixed asset records.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 5-22-78 by resolution. Amendments noted where applicable.]

§ 3-1. Responsibility of Supervisor.

The Supervisor of the Town of Kingsbury be and he hereby is designated as the person responsible for the coordination, development and maintenance of the fixed asset records. He shall be responsible for developing, in writing, rules and regulations as to maintaining fixed asset property records and for the development of proper forms for the maintaining of such records. All officers and employees of the Town of Kingsbury shall cooperate with the said Supervisor in the inventory and maintenance of fixed assets and their records.

§ 3-2. Compliance with state regulations.

The forms and procedures to be developed by the Supervisor of the Town of Kingsbury shall comply with the applicable laws and requirements of the New York State Department of Audit and Control pursuant to § 36 of the General Municipal Law.

§ 3-3. Standards for inclusion in fixed asset records.

The minimum standards for the inclusion in the fixed asset records are those items which have a significant value. The Town

Board of the Town of Kingsbury shall determine an item to have "significant value" if the estimated cost is over one hundred dollars (\$100.) and has an estimated life use of one (1) year and is an item not readily diminished by use or consumption.

ETHICS, CODE OF

Chapter 6

ETHICS, CODE OF

ARTICLE I
Legislative Intent

- § 6-1. Purpose.
- § 6-2. Additional standards.

ARTICLE II
Standards of Conduct

- § 6-3. Definitions.
- § 6-4. Conflicts of interest prohibited.
- § 6-5. Conduct of employees.
- § 6-6. Suspension or removal from office for violations.

ARTICLE III
Board of Ethics

- § 6-7. Membership.
- § 6-8. Advisory opinions.
- § 6-9. Promulgation of rules and regulations; records.

ARTICLE IV
Administration

- § 6-10. Distribution of copies.
- § 6-11. Filing of copy with state.

§ 6-12. Appropriation and expenditure of funds.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 8-26-70 as L.L. No. 2-1970. Amendments noted where applicable.]

GENERAL REFERENCES

Officers and employees — See Ch. 15.

**ARTICLE I
Legislative Intent****§ 6-1. Purpose.**

The Town Board of the Town of Kingsbury recognizes that there are state statutory provisions mandating towns to establish rules and standards of ethical conduct for public officers and employees which, if observed, can enhance public confidence in local government. In the light of a tendency today on the part of some people to downgrade our local governments and to discredit our public servants and our free institutions generally, it appears necessary that every effort be made to assure the highest caliber of public administration of this town as part of our state's important system of local government. It is the purpose of this chapter to implement this objective through the establishment of standards of conduct, to provide for punishment of violation of such standards and to create a Board of Ethics to render advisory opinions to the town's officers and employees as provided for herein.

§ 6-2. Additional standards.

The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflict-of-interest provisions or procedures prescribed by statute of the State of New York and are also in addition to common-law rules and judicial

decisions relating to the conduct of town officers to the extent that the same are more severe in their application than this chapter.

ARTICLE II Standards of Conduct

§ 6-3. Definitions.

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

TOWN — Any board, commission, district, council or other agency, department or unit of the government of the Town of Kingsbury.

TOWN EMPLOYEE — Any officer or employee of the Town of Kingsbury, whether paid or unpaid, whether serving in a full-time, part-time or advisory capacity.

§ 6-4. Conflicts of interest prohibited.

No town employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest.

§ 6-5. Conduct of employees.

- A. No town employee shall accept other employment which will impair his independence of judgment in the exercise of his official duties.
- B. No town employee shall accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.
- C. No town employee shall use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

- D. No town employee shall engage in any transaction as representative or agent of the town with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
- E. A town employee shall not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties or that he is affected by the kinship, rank, position or influence of any party or person.
- F. Each town employee shall abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.
- G. Each town employee shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.
- H. No town employee employed on a full-time basis, nor any firm or association of which such employee is a member, nor any corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such employee, shall sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the town in which such employee serves or is employed.

§ 6-6. Suspension or removal from office for violations.

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

ARTICLE III
Board of Ethics

§ 6-7. Membership.

There is hereby established a Board of Ethics consisting of at least three (3) members to be appointed by the Town Board, all of whom reside in the Town of Kingsbury and who shall serve without compensation and at the pleasure of the Town Board of the Town of Kingsbury. A majority of such members shall be persons other than town employees, but shall include at least one (1) member who is an elected or appointed town employee of the Town of Kingsbury.

§ 6-8. Advisory opinions.

The Board of Ethics established hereunder shall render advisory opinions to town employees on written request and, upon request of the Town Board, make recommendations to such Town Board as to any amendments of this chapter. The opinions of the Board of Ethics shall be advisory and confidential, and in no event shall the identity of the town employee be disclosed, except to authorized persons and agencies. Such opinions shall be on the advice of counsel employed by the Board of Ethics or, if none, of the Town Attorney.

§ 6-9. Promulgation of rules and regulations; records.

Such Board of Ethics, upon its formation, shall promulgate its own rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings.

ARTICLE IV
Administration

§ 6-10. Distribution of copies.

Upon the adoption of this chapter, the Town Supervisor shall cause a copy thereof to be distributed to every town employee of

this town. Failure to distribute any such copy or failure of any town employee to receive such copy shall have no effect on the duty of compliance with this code, nor the enforcement of provisions hereof. The Town Supervisor shall further cause a copy of this chapter to be kept posted conspicuously in each public building under the jurisdiction of the town. Failure to so post this chapter shall have no effect on the duty of compliance herewith, nor the enforcement provisions hereof.

§ 6-11. Filing of copy with state.

Within thirty (30) days of the adoption of this chapter, the Town Clerk shall file a copy thereof in the office of the State Comptroller.

§ 6-12. Appropriation and expenditure of funds.

The Town Board may appropriate moneys from the general town funds for the maintenance of and for personnel services to the Board of Ethics established hereunder, but such Board of Ethics may not commit the expenditure of town moneys, except within the appropriations provided herein.

Chapter 10

INDEMNIFICATION OF EMPLOYEES

- § 10-1. Purpose and intent.
- § 10-2. Definitions.
- § 10-3. Duty to provide defense.
- § 10-4. Duty to indemnify.
- § 10-5. Duty of employee.
- § 10-6. Limitations.
- § 10-7. Employees under civil service.
- § 10-8. Insurance policies not affected.
- § 10-9. Existing rights or immunities under other provisions.
- § 10-10. Applicability.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 6-9-1997 by L.L. No. 3-1997.¹ Amendments noted where applicable.]

§ 10-1. Purpose and intent.

- A. The purpose of this chapter is to provide legal and financial protection for those individuals serving the Town of Kingsbury from losses which may be brought against them in their individual capacity for actions taken while in performance of their official duties and responsibilities. In enacting this chapter, the Town Board finds that the State of New York has enacted

¹ Editor's Note: This local law supersedes former Ch. 10, Indemnification of Employees, adopted 1-25-1982 by resolution.

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.

- B. By enactment of this chapter, the Town Board does not intend to limit or otherwise abrogate any existing right or responsibility of the town 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 is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

§ 10-2. 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 town, including members of appointed boards or commissions, whether or not compensated, including but not limited to the Recreation Commission, the Town Historian and volunteers expressly authorized to participate in a publicly sponsored volunteer program, but not including independent contractors. The term "employee" shall include a former employee, his estate or judicially appointed personal representative. The town may, by contract, include an independent contractor as an employee under this chapter of the Town Code.

MEMBERS OF APPOINTED BOARDS — Includes the current and former members of the Zoning Board of Appeals, Planning Board, the Assessment Board of Review, the Board of Ethics and any other board or commission to be created by the Town of Kingsbury whose members are responsible for regulating activities in the town or are responsible for providing services.

PARTY — Any person who was, is or is threatened to be made a named defendant in a lawsuit, claim or proceeding.

TOWN — The Town of Kingsbury, Washington County, New York.

§ 10-3. Duty to provide defense.

- A. The town shall provide for the defense of any employee who is a party to 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 or in good faith purporting to act within the scope of his public employment or duties or which is brought to enforce a provision of Title 42 of the United States Code.
- B. Such defense shall not be provided where the employee has not complied with the provisions of § 10-5, below, or where employee is sued by the town while he or she is still in office.
- C. The town shall not have a duty to defend the employee where the town is the plaintiff in the lawsuit or the suit is a criminal action against the employee or activities related to the employee's performance in his or her employment.
- D. The town, however, shall reimburse the employee for all legal expenses, including attorneys' fees, if a court from which an appeal cannot be or is not taken finds for the employee.
- E. Subject to the conditions set forth in this chapter, the employee shall be represented by an attorney employed or retained by the town for the defense of the employee. Reasonable attorneys' fees and litigation expenses shall be paid by the town to such attorney employed or retained, from time to time, during the pendency of the civil action or proceeding. Such payment is subject to

certification by the Town Board that the employees is entitled to representation under the terms and conditions of this chapter. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the town. Any dispute with respect to representation of multiple employees or by an attorney employed or retained for such purposes or with respect to the amount of the fees or expenses shall be resolved through arbitration pursuant to the rules of the American Arbitration Association.

- F. Where the employee delivers process and a request for a defense to the Town Supervisor as required by § 10-5 of this chapter, the Town Board shall take the necessary steps, including the retention of an attorney on behalf of the employee to avoid entry of a default judgment, pending resolution of any question relating to the obligation to the town to provide a defense.

§ 10-4. Duty to indemnify.

A. Awards not covered by insurance; deductibles.

- (1) Whenever a civil action is brought against any employee of the town for any action or omission arising out of or in the course of performance of the duties of such office, position or employment, the town shall provide payment of that portion of any compensatory damage award or settlement otherwise covered by a policy of insurance which has not been paid because of a deductible provision in said policy.
- (2) If, for any reason, a civil action is brought against any employee of the town for any action or omission arising out of or in the course of the performance of the duties of such office, position or employment, and such action is not covered by a policy of insurance, the town will pay the compensatory damage award or settlement.

- B. The town shall provide the indemnification, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his or her public employment or duties, as alleged in the complaint or as determined by the court; provided, further, that in the case of a settlement, the duty to indemnify and hold harmless shall be conditioned on the approval of the amount of the settlement by the Town Board.
- C. Except as otherwise provided by law, the duty to indemnify and hold harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
- D. Nothing in this section shall authorize the town to indemnify or hold harmless an employee with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee pursuant to § 51 of the General Municipal Law; provided, however, that the town shall indemnify and hold 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 or her public employment or duties, has, without willfulness or intent on his or her part, violated a prior order, judgment, consent, decree or stipulation of settlement entered in any court of this state or of the United States.
- E. Upon entry of a final judgment against the employee or upon settlement of the claim, the employee shall serve 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 a supervisor. If such final judgment or settlement is not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the town.

§ 10-5. Duty of employee.

The duties to defend and indemnify provided in this chapter shall be contingent upon:

- A. Delivery to the Town Supervisor of the original copy of any summons, complaint, process, notice, demand or pleading within five days after the employee is served with such document. Such delivery shall be deemed a request by the employee that the town provide for his defense pursuant to this chapter, unless the employee shall state, in writing, that a defense is not requested.
- B. The full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the town based upon the same act or omission and in the prosecution of any appeal.

§ 10-6. Limitations.

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

§ 10-7. Employees under civil service.

The benefits of this chapter shall be extended to an employee of a negotiating unit for which an agreement has been negotiated pursuant to the Civil Service Law, Article 14, only if such agreement expressly so provides.

§ 10-8. Insurance policies not affected.

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.

§ 10-9. Existing rights or immunities under other provisions.

Unless 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 town or any right to defense provided for any governmental officer or employee by or in accordance with any other provision of state or federal statutory or common law.

§ 10-10. Applicability.

The provisions of this chapter shall apply to all actions and proceedings specified herein which have been commenced, instituted, filed or brought on or after the effective date of this chapter.

OFFICERS AND EMPLOYEES

Chapter 15

OFFICERS AND EMPLOYEES

ARTICLE I
Town Clerk

§ 15-1. **Term of office.**

ARTICLE II
Superintendent of Highways

§ 15-2. **Term of office.**

ARTICLE III
Assessor

§ 15-3. **Single Assessor established.**

ARTICLE IV
Compensation of Town Attorney

§ 15-4. **Purpose.**

§ 15-5. **Special services.**

§ 15-6. **General counsel services.**

ARTICLE V
Town Comptroller

§ 15-7. **Powers and duties.**

ARTICLE VI
Town Justice

§ 15-8. Position to be full time.

§ 15-9. When effective.

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

GENERAL REFERENCES

Code of Ethics — See Ch. 6.

Indemnification of employees — See Ch. 10.

ARTICLE I
Town Clerk

[Adopted 5-26-1964 by L.L. No. 1-1964¹]

§ 15-1. Term of office.

In conformity with and pursuant to the authority existing herein by the enactment of the Municipal Home Rule Law of the State of New York, effective January 1, 1964, and notwithstanding any rule, law or ordinance to the contrary, the term of office of the Town Clerk, hereafter to be elected, be and hereby is designated as four years instead of its current term of two years, as now provided for by the pertinent provisions of the Town Law of the State of New York.

¹ Editor's Note: The provisions of this local law were approved by a majority of qualified voters participating in a referendum held 11-3-1964.

ARTICLE II

Superintendent of Highways**[Adopted 5-26-1964 by L.L. No. 2-1964²]****§ 15-2. Term of office.**

In conformity with and pursuant to the authority existing herein by the enactment of the Municipal Home Rule Law of the State of New York, effective January 1, 1964, and notwithstanding any rule, law or ordinance to the contrary, the term of office of the Superintendent of Highways, hereafter to be elected, be and hereby is designated as four years instead of its current term of two years, as now provided for by the pertinent provisions of the Town Law of the State of New York.

ARTICLE III

Assessor**[Adopted 10-8-1969]****§ 15-3. Single Assessor established.**

The Town Board of the Town of Kingsbury hereby determines that, from and after December 31, 1969, there shall be but one Assessor for the Town of Kingsbury, to be appointed and hold office as provided in Subdivision 1 of § 21 of the Town Law.³

ARTICLE IV

Compensation of Town Attorney**[Adopted 7-25-1988 by L.L. No. 3-1988]****§ 15-4. Purpose.**

The purpose of this article is to set forth the method of payment of compensation to the Town Attorney for services

² Editor's Note: The provisions of this local law were approved by a majority of qualified voters participating in a referendum held 11-3-1964.

³ Editor's Note: Section 21 of the Town Law was repealed by L. 1974, c. 69, § 10, effective March 19, 1974. See now § 310 of the Real Property Tax Law.

rendered to the Town of Kingsbury, superseding the provisions of §§ 20, Subdivision 2(a), and 27 of the Town Law.

§ 15-5. Special services.

The Town Attorney, in addition to the annual salary provided for in § 15-6, is entitled to be compensated for services rendered in litigation, bond issues and of specialized legal services for the town or any special district therein, pursuant to resolution of the Town Board at its Annual Organization Meeting.

§ 15-6. General counsel services.

The Town Attorney is to be paid a salary at the rate for each annual period as determined by resolution of the Board at the Annual Organization Meeting. The annual salary is intended to compensate the Town Attorney for all general counsel services, defined as all legal services performed for the town, exclusive of the services described in § 15-5.

ARTICLE V

Town Comptroller

[Adopted 9-26-1994 by L.L. No. 1-1994]

§ 15-7. Powers and duties.

A. Section 34, Subdivision 2, of the Town Law authorizes a town to confer, upon the Town Board's election, the additional powers and duties for the position of Town Comptroller. Therefore, pursuant to the authorization granted by said section, the following powers and duties shall be exercised by the Town Comptroller:

- (1) The keeping of separate appropriation accounts and preventing funds or appropriation accounts from being overdrawn; or

- (2) The drawing upon funds or appropriations, provided that the countersignature of the Supervisor shall be required.

B. The Town Comptroller shall furnish to the Supervisor such information and data as the Supervisor may require for the purpose of enabling him to exercise his powers and perform his duties or make reports required by law.

ARTICLE VI

Town Justice

[Adopted 3-8-1999 by L.L. No. 4-1999⁴]

§ 15-8. Position to be full time.

The position of the Town Justice shall, from the time this article takes effect, within the context of Municipal Home Rule Law § 24, be full time, and that position shall, from the time this article takes effect, be accorded all of the emoluments which otherwise attach to a full-time position with the Town of Kingsbury.

§ 15-9. When effective.

This article shall take effect in conformance with Municipal Home Rule Law § 24 and, as such, shall not take effect until at least 45 days after its enactment; nor until approved by an affirmative vote of a majority of the qualified electors of the Town of Kingsbury, registered to vote therein, voting on a proposition for its approval if within 45 days after its adoption there be filed with the Clerk a petition protesting against such article, signed and authenticated as provided in the Municipal Home Rule Law, by qualified electors of the Town of Kingsbury, registered to vote at the last preceding general election, in a

⁴ Editor's Note: This local law passed referendum 4-26-1999.

§ 15-9

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§ 15-9

number equal to at least 10% of the total number of votes cast
for the Governor at the last gubernational election.

1506

6-20-99

Chapter 17

ORDINANCES, PUBLICATION OF

§ 17-1. Purpose.

§ 17-2. Definitions.

§ 17-3. Publication of summary.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 5-22-78 as L.L. No. 1-1978. Amendments noted where applicable.]

§ 17-1. Purpose.

The purpose of this chapter is to provide for the publishing of a summary of the text of a newly adopted ordinance or change thereto, in lieu of publishing the full text thereof.

§ 17-2. Definitions.

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

ORDINANCE — Any legislative act which the Town Board of the Town of Kingsbury shall have the power under the provisions of the New York State Town Law or any other law to meet, to enact or adopt. The term "ordinance" shall include any newly adopted ordinance, any amendment to any existing ordinance or the repeal of any ordinance.

PUBLICATION — "Publication" as defined in §§ 133, 264 and 265 of the Town Law.

§ 17-3. Publication of summary.

Every law, ordinance or rule having the force of law enacted by the Town Board or the Town of Kingsbury shall have a summary only of the text of such law or ordinance published in accordance with §§ 133, 264 and 265 of the Town Law, in lieu of publishing the entire text of such law, ordinance or amendment thereto, as heretofore provided.

Chapter 20

PLANNING BOARD

§ 20-1. Creation.

§ 20-2. Powers and duties.

§ 20-3. Term of office.

§ 20-4. Payment of expenses.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 7-1-68 by resolution. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision enforcement — See Ch. 69.

Zoning — See Ch. 80.

Subdivision regulations — See Ch. A84.

§ 20-1. Creation.

Pursuant to the provisions of § 271 of the Town Law, there is hereby created a Planning Board of and for the Town of Kingsbury, to be known as the "Kingsbury Planning Board," said Board to consist of seven (7) members, who shall serve without compensation.

§ 20-2. Powers and duties.

The Planning Board hereby created shall be and hereby is vested with the authority, powers and duties described and delineated in §§ 272, 272-a, 273 and 275 of the Town Law and such other powers and duties as may hereafter be delegated to it by action of the Town Board pursuant to the provisions of other sections of Article 16 of the Town Law.

§ 20-3. Term of office. [Amended 6-27-88]

The terms of office of the members of the Kingsbury Planning Board shall begin on the effective date of this chapter.¹ The Town Board may remove any member of the Kingsbury Planning Board for cause after a public hearing. Cause for said removal shall include but not be limited to the failure of any member of the Kingsbury Planning Board to attend, for a period of three (3) consecutive months, regularly scheduled meetings of the Kingsbury Planning Board.

§ 20-4. Payment of expenses.

For the payment of such expenses as are authorized by § 272 of the Town Law, there will be made available such funds as may hereafter be appropriated, from time to time, by the Town Board.

¹ Editor's Note: The effective date of this resolution was July 10, 1968. The remainder of the original section, which contained the appointment of the original members of the Planning Board, was deleted at time of adoption of Code. A list of current members of the Planning Board is available for inspection at the Town Clerk's office during regular business hours.

Chapter 22**PROCUREMENT POLICY**

§ 22-1. Effect on purchasing procedure.

§ 22-2. Amendment and modification.

§ 22-3. Table of applicable regulations.

§ 22-4. Contracts subject to competitive bidding.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 6-1-1998 by L.L. No. 4-1998.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Accounting system — See Ch. 3.

Records — See Ch. 24.

§ 22-1. Effect on purchasing procedure.

In the adoption of the procurement policy, it is not, the intent of the Town Board to alter or otherwise affect the operation of the Town of Kingsbury purchasing procedures requiring the following approvals:

- A. Where a nonbudgeted expenditure is in excess of \$1,000, and it has not been approved by the Highway Superintendent or the Supervisor, such purchase must be approved by the Town Board.
- B. Where the expenditure is at or below \$1,000, it may be approved by the Supervisor without Town Board approval.

¹ Editor's Note: This local law also repealed former Ch. 22, Procurement Policy, adopted 10-12-1993.

- C. Where the expenditure is at or below \$1,500, it may be approved by the Highway Superintendent without Town Board approval.
- D. Purchases must follow the policies and procedures of the Town of Kingsbury.

§ 22-2. Amendment and modification.

This procurement policy shall be reviewed at least annually. The Town Board shall have the right to amend or modify this procurement policy.

§ 22-3. Table of applicable regulations.

Type of Purchase	Verbal Quotes		Written Quotes
	0	3	3
Purchase contracts and contracts for public works below \$5,000			
Under \$100 to \$ 500	X		
\$500 to \$1,000		X	
\$1,000 to \$4,999			X
Insurance			X
Professional services			X

§ 22-4. Contracts subject to competitive bidding. [Added 12-9-2002 by L.L. No. 4-2002]

- A. General Municipal Law § 103 provides that purchase contracts under \$10,000 and public works contracts under \$20,000 are not subject to competitive bidding.

- B. The Town of Kingsbury wishes to be stricter with respect to competitive bidding, which the Town deems to be fair and equitable, and in the public's best interest.
- C. The Town of Kingsbury hereby sets forth that all Town contracts, which are \$10,000 or more, whether said contracts are purchase contracts or public works contracts, shall be competitively bid.
- D. The authority for this section is found in the Municipal Home Rule Law, and to the extent that it superseded General Municipal Law § 103, such authority is derived from the Municipal Home Rule Law.

RECORDS

Chapter 24

RECORDS

ARTICLE I

Public Access to Records

- § 24-1. Purpose and scope.**
- § 24-2. Designation of records access officer; responsibilities.**
- § 24-3. Location where records may be examined.**
- § 24-4. Hours for public inspection.**
- § 24-5. Requests for access to records.**
- § 24-6. Listing of subject matter.**
- § 24-7. Denial of access; appeals.**
- § 24-8. Inspection and transcription of records.**
- § 24-9. Publication requirements.**

ARTICLE II

Records Management Program

- § 24-10. Establishment of program designation of officer.**
- § 24-11. Powers and duties of officer.**
- § 24-12. Records Advisory Board.**
- § 24-13. Custody; transferrals.**
- § 24-14. Replevin.**
- § 24-15. Disposal of records.**
- § 24-16. Definitions.**

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

GENERAL REFERENCES

Fees for copies of records — See Ch. 46.

ARTICLE I

Public Access to Records
[Adopted 3-13-1978]

§ 24-1. Purpose and scope.

- A. The people's right to know the process of government decisionmaking and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.
- B. This article provides information concerning the procedures by which records may be obtained from an agency as defined by Subdivision 3 of § 86 of the Public Officers Law.
- C. Town personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.
- D. Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

§ 24-2. Designation of records access officer; responsibilities.

- A. The Town Board shall be responsible for ensuring compliance with the regulations herein, and designates the Town Clerk as records access officer, who shall have

the duty of coordinating response to public requests for access to records. The designation of one or more records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

B. The records access officer is responsible for assuring that Town personnel:

- (1) Maintain an up-to-date subject matter list.
- (2) Assist the requestor in identifying requested records, if necessary; contact requestor seeking records when a request is voluminous or when locating the records involves substantial effort, so that Town personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of records requested.
[Amended 3-20-2006 by L.L. No. 1-2006]
- (3) Upon locating the records, take one of the following actions:
 - (a) Make records available for inspection.
 - (b) Deny access to the records in whole or in part and explain in writing the reasons therefor.
- (4) Upon request for copies of records:
 - (a) Make a copy available upon payment or offer to pay established fees, if any; or
 - (b) Permit the requester to copy those records.
- (5) Upon request, certify that a record is a true copy.
- (6) Upon failure to locate records, certify that:
 - (a) The Town is not the custodian for such records;
or
 - (b) The records of which the Town is a custodian cannot be found after diligent search.

§ 24-3. Location where records may be examined.

Records shall be available for public inspection and copying at the Town Clerk's Office.

§ 24-4. Hours for public inspection.

The records access officer shall accept requests for public access to records and produce records during all hours he is regularly open for business.

§ 24-5. Requests for access to records.

- A. The Town may require that a request be made in writing or may make records available upon oral request.
- B. The records access officer shall respond to any request reasonably describing the record or records sought within five business days of receipt of the request.
- C. A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.
- D. A response shall be given within five business days of receipt of a request by: **[Amended 3-20-2006 by L.L. No. 1-2006]**
 - (1) Informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;
 - (2) Granting or denying access to records in whole or in part;
 - (3) Acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which

shall be reasonable under the circumstances of the request and shall not be more than 20 business days from the date of such acknowledgment, providing a statement in writing indicating the reason for the inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or

- (4) If the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within 20 business days of such acknowledgment, but the circumstances prevent disclosure within that time, providing a statement in writing within 20 business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.
- E. A failure to comply with the time limitations described herein shall constitute a denial or a request that may be appealed. **[Added 3-20-2006 by L.L. No. 1-2006]**

§ 24-6. Listing of subject matter.

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

§ 24-7. Denial of access; appeals.

- A. The Town Board shall hear appeals or shall designate a person or body to hear appeals regarding denial of access to records under the Freedom of Information Law.
- B. Denial of access shall be in writing, stating the reason therefor and advising the person denied access of his or her right to appeal to the person or body established to hear appeals, and that person or body shall be identified by name, title, business address and business telephone number. The records access officer shall not be the appeals officer.
- C. If the records access officer fails to respond to a request within five business days of receipt of a request as required in § 24-5D of this article, such failure shall be deemed a denial of access by the Town.
- D. Any person denied access to records may appeal within 30 days of a denial.
- E. The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of written appeal identifying:
 - (1) The date and location of a request for records.
 - (2) The records that were denied.
 - (3) The name and return address of the appellant.
- F. The records access officer shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to: Committee on Open Government, Department of State, 41 State Street, Albany, New York 12231. **[Amended 3-20-2006 by L.L. No. 1-2006]**
- G. The person or body designated to hear appeals shall inform the appellant and the Committee on Open Government of its determination in writing within seven business days of receipt of an appeal. **[Amended 3-20-2006 by L.L. No. 1-2006]**

- (1) Failure to determine an appeal within seven business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.
 - (2) The determination shall be transmitted to the Committee on Open Government in the same manner as set forth in Subsection F of this section.
- H. A final denial of access to a requested record, as provided for in Subsection G of this section, shall be subject to court review, as provided for in Article 78 of the Civil Practice Law and Rules.

§ 24-8. Inspection and transcription of records.

Except when a different fee is otherwise prescribed by law:

- A. There shall be no fee charged for the following:
- (1) Inspection of records.
 - (2) Search for records.
 - (3) Any certification pursuant to this article.
- B. The records access officer will charge a fee for copies of records, provided that:
- (1) The fee for copying records shall not exceed the amount established in Chapter 46, Fees, per page for photocopies not exceeding nine inches by 14 inches. **[Amended 12-28-1983 by L.L. No. 2-1983]**
 - (2) If the Town cannot photocopy the record, a transcript of the requested records shall be made upon request. Such transcripts may either be typed or handwritten. In such cases, the person requesting records may be charged for the clerical time involved in making the transcript.
 - (3) The fee for copies of records not covered by Subsection B(1) and (2) of this section shall not

exceed the actual reproduction cost, which is the average unit cost for copying a record, excluding fixed costs of the agency such as operator salaries.

§ 24-9. Publication requirements.

The Town Clerk shall publicize by posting in a conspicuous location and/or by publication in a local newspaper of general circulation:

- A. The location where records shall be made available for inspection and copying.
- B. The name, title, business address and business telephone number of the designated records access officer.
- C. The right to appeal by any person denied access to a record and the name and business address of the person or body to whom an appeal is to be directed.

ARTICLE II

Records Management Program
[Adopted 12-10-1990 by L.L. No. 7-1990]

§ 24-10. Establishment of program; designation of officer.

- A. There shall be a records management program established under the aegis of and headed by a records management

(Cont'd on page 2407)

officer (RMO). The recordkeeping officer will be the Town Clerk of the Town of Kingsbury unless otherwise designated. The officer will be responsible for administering the noncurrent and archival public records and storage areas for the local government in accordance with local, state and federal laws and guidelines.

- B. There are numerous choices for placement of the records management/archives program within the local government structure. One (1) option is to name an existing officer as RMO, such as the County Clerk or the director of a central services agency. The wording may also include an option for this officer to appoint a designee.

§ 24-11. Powers and duties of officer.

The officer shall have all the necessary powers to carry out the efficient administration, determination of value, use, preservation, storage and disposition of the noncurrent and archival public records kept, filed or received by the offices and departments of the local government.

- A. The records management officer shall continually survey and examine public records to recommend their classification so as to determine the most suitable methods to be used for the maintaining, storing and servicing of the following archival material:
 - (1) Obsolete and unnecessary records according to New York State Records Retention and Disposition Schedules thereby subject to disposition.
 - (2) Information containing administrative, legal, fiscal, research, historical or educational value which warrants its permanent retention.
 - (3) Records not subject to disposition according to state law.
- B. The officer shall establish guidelines for proper records management in any department or agency of the local government in accordance with local, state and federal laws and guidelines.

- C. The officer shall report annually to the chief executive official and the governing body on the powers and duties herein mentioned, including but not limited to the cost/benefit ratio of programs effectuated by the department.
- D. The officer shall operate a records management center for the storage, processing and servicing of all noncurrent and archival records for all local government departments and agencies.
- E. The officer shall establish a local government archives and perform the following functions:
 - (1) Advise and assist local government departments in reviewing and selecting material to be transferred to the local government archives for preservation.
 - (2) Continually survey and examine public records to determine the most suitable methods to be used for the creating, maintaining, storing and servicing of archival materials.
 - (3) Establish and maintain an adequate repository for the proper storage, conservation, processing and servicing of archival records.
 - (4) Promulgate rules governing public access to and use of records in the archives, subject to the approval of the Records Advisory Board.
 - (5) Develop a confidentiality policy for archival records designated confidential, provided that such policy does not conflict with any federal or state statutes.
 - (6) Provide information services to other local government offices.
 - (7) Collect archival materials which are not official local government records but which have associational value to the local government or a close relationship to the existing archival collection. Such collection shall be subject to archive space, staff and cost limitations and to the potential endangerment of such materials if they are not collected by the archives.

- (8) Develop a procedure whereby historically important records are to be identified at the point of generation.

§ 24-12. Records Advisory Board.

There shall be a Records Advisory Board designated to work closely with and provide advice to the records management officer. The Board shall consist of the Town Board of the Town of Kingsbury. The Board shall meet periodically and have the following duties:

- A. To provide advice to the records management officer on the development of the records management program.
- B. To review the performance of the program on an ongoing basis and propose changes and improvements.
- C. To review retention periods proposed by the records management officer for records not covered by the state archives' schedules.
- D. To provide advice on the appraisal of records for archival value and to be the final sign-off entity as to what is or is not archival.

§ 24-13. Custody; transferrals.

- A. A local government department is the legal custodian of its records and shall retain custody of records deposited in the records center. Records transferred to or acquired by the archives shall be under the custody and control of the archives rather than the department which created or held them immediately prior to being transferred to the archives.
- B. Records shall be transferred to the archives upon the recommendation of the RMO, with the approval of the head of the department which has custody of the records and the approval of the Records Advisory Board.
- C. Records may be permanently removed from the archives at the request of the RMO or the head of the department which had custody of the records immediately prior to the transfer of

those records to the archives, subject to the approval of the Records Advisory Board.

§ 24-14. Replevin.

The Legal Department may take steps to recover local government records which have been alienated from proper custody and may, when necessary, institute actions of replevin.

§ 24-15. Disposal of records.

No records shall be destroyed or otherwise disposed of by a department of the local government unless approval has been obtained from the records management officer. No records shall be destroyed or otherwise disposed of by the records management officer without the express written consent of the department head having authority.

§ 24-16. Definitions.

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

ARCHIVES — Those official records which have been determined by the officer and Advisory Committee to have sufficient historical or other value to warrant their continued preservation by the local government.

RECORDS — Any documents, books, papers, photographs, sound recordings, microforms or any other materials, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official local government business.

RECORDS CENTER — An establishment maintained by the local government primarily for the storage, servicing, security and processing of records which must be preserved for varying periods of time and need not be retained in office equipment or space.

RECORDS DISPOSITION:

- A. The removal by the local government, in accordance with approved records control schedules, of records no longer necessary for the conduct of business by such agency through removal methods which may include:
- (1) The disposal of temporary records by destruction or donation.
 - (2) The transfer of records to the record center/archives for temporary storage of inactive records and permanent storage of records determined to have historical or other sufficient value warranting continued preservation.
- B. The transfer of records from one local government agency to any other local government agency.

RECORDS MANAGEMENT — The planning, controlling, directing, organizing, training, promotion and other managerial use and records disposition, including records preservation, records disposal and records centers or other storage facilities.

SERVICING — Making information in records available to any local government agency for official use or to the public.

Chapter 26

RECREATION COMMISSION, JOINT

§ 26-1. Applicability.

§ 26-2. Membership.

§ 26-3. Facilities.

§ 26-4. Personnel.

§ 26-5. Budget.

§ 26-6. Fiscal officer.

§ 26-7. Procedures.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 5-22-78. Amendments noted where applicable.]

§ 26-1. Applicability.

This chapter shall be applicable to all territory within the limits of the Town of Kingsbury and the Village of Hudson Falls, Washington County, New York.

§ 26-2. Membership.

The Joint Recreation Commission shall be composed of all members of the Town of Kingsbury Recreation Commission¹ and the Village of Hudson Falls Recreation Commission.

¹ Editor's Note: The Kingsbury Recreation Commission was established 2-22-78 by resolution of the Town Board. The resolution setting forth the powers and duties of the Commission is on file in the office of the Town Clerk, where it may be inspected during regular business hours.

§ 26-3. Facilities.

The Joint Recreation Commission shall have the authority to contract with the Town of Kingsbury, Village of Hudson Falls and the Hudson Falls Central School District for use of their recreation facilities.

§ 26-4. Personnel.

The Joint Recreation Commission has the authority to hire personnel for the supervision of the facilities and the programs administered by the Commission.

§ 26-5. Budget.

The Joint Recreation Commission shall determine its total budget request. The members of the Town of Kingsbury Recreation Commission and the Village of Hudson Falls Recreation Commission shall present to their appropriating body the total budget and shall set the amount chargeable to that municipality. The Town of Kingsbury and the Village of Hudson Falls shall each be chargeable for one-half ($\frac{1}{2}$) of the operating budget of the Joint Recreation Commission.

§ 26-6. Fiscal officer.

The Village Treasurer of the Village of Hudson Falls is hereby designated as the fiscal officer of the Joint Recreation Commission and the custodian of the moneys made available for expenditure for such purposes.

§ 26-7. Procedures.

The Joint Recreation Commission shall designate its own Chairman and establish the procedural rules by which it will carry out its responsibilities.

SALARIES AND COMPENSATION

Chapter 30

SALARIES AND COMPENSATION

[The annual compensation of the Supervisor and Town Board is as set by local law. The salaries and compensation of other town officers and employees are determined annually by the Town Board by resolution or motion. Information concerning current salary and compensation figures is on file in the office of the Town Clerk, where it is available for examination during regular office hours.]

PART II

**GENERAL
LEGISLATION**

Chapter 35

AGRICULTURE

ARTICLE I
Right To Farm

- § 35-1. Authority.
- § 35-2. Definitions.
- § 35-3. Policy; findings.
- § 35-4. Activity not to constitute a nuisance.
- § 35-5. Disclosure.
- § 35-6. Refusal to sign disclosure statement.
- § 35-7. Penalties for offenses.
- § 35-8. Effect on other provisions.
- § 35-9. Resolution of disputes.
- § 35-10. Posting.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury: Art. I, 8-24-1992 as L.L. No. 1-1992. Amendments noted where applicable.]

ARTICLE I
Right To Farm
[Adopted 8-24-1992 as L.L. No. 1-1992]

§ 35-1. Authority.

Under § 10 of the Municipal Home Rule Law, the Town of Kingsbury adopts this Right To Farm Law.

§ 35-2. Definitions.

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

AGRICULTURAL FARM OPERATION — Any person, organization, entity, association, partnership or corporation engaged in the business of agriculture, whether for profit or otherwise.

AGRICULTURAL LAND — All that real property within the boundaries of the Town of Kingsbury currently used for agricultural operations or upon which agricultural operations may in the future be established.

AGRICULTURAL PRACTICES — Any activity, including the cultivation of land, the raising of crops or the raising of livestock, poultry, horticulture, timber, apiculture and fur-bearing animals. Further, "agricultural practices" shall mean any activity now permitted by law engaged in by a farmer as defined herein, in connection with and in furtherance of the business of farming and shall include, without limitation, the collection, transportation, distribution and storage of animal and poultry wastes; storage, transportation and use of equipment for tillage, planting and harvesting; transportation, storage and use of legally permitted fertilizers and limes, insecticides, herbicides and pesticides, all in accordance with local, state and federal law and regulation and in accordance with the manufacturer's instructions and warnings; construction of farm structures and facilities as permitted by local and state building codes and regulations; and construction and maintenance of fences.

TOWN — The Town of Kingsbury, Washington County, New York, and its Town Board.

§ 35-3. Policy; findings.

- A. It is the declared policy of this town to enhance and encourage agricultural operations within the town. It is the further intent of this town to provide to the residents of this town proper

notification of the town's recognition and support through this Article of those persons' and/or entities' right to farm.

- B. Where nonagricultural land uses extend into agricultural areas or exist side by side, agricultural operations frequently become the subjects of nuisance complaints due to lack of information about such operations. As a result, agricultural operators are forced to cease or curtail their operations. Such actions discourage investments in farm improvements to the detriment of adjacent agricultural uses and the economic viability of the town's agricultural industry as a whole. It is the purpose and intent of this Article to reduce the loss to the town of its agricultural industry as a whole. It is the purpose and intent of this Article to reduce the loss to the town of its agricultural resources by clarifying the circumstances under which agricultural operations may be considered a nuisance. This Article is not to be construed as in any way modifying or abridging any New York State law or any other applicable provisions of state law relative to nuisances; rather, it is only to be utilized in the interpretation and enforcement of the provisions of this Article.
- C. An additional purpose of this Article is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residence. Such concerns may include, but are not limited to, the noises, odors, dust, chemicals, smoke and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

§ 35-4. Activity not to constitute a nuisance.

No agricultural activity, operation or facility or appurtenances thereof conducted or maintained in a manner consistent with management practices such as those recommended by state and federal agencies within the educational aspects of farmers and

agricultural practices, herein and after referred to as "accepted customs and standards," shall be or become a nuisance.

§ 35-5. Disclosure.

- A. The disclosure statement required by this Article shall be used under the following circumstances and in the following manners: Upon any transfer of real property by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements or residential stock cooperative improvement with dwelling units, the transferor shall require that a statement containing the language set forth in Subsection B shall be signed by the purchaser or lessee and recorded with the county recorder in conjunction with the deed or lease conveying the interest in real property; provided, however, that the real property to be transferred is adjacent to real property upon which agricultural operations are conducted.
- B. The disclosure required by Subsection A is set forth herein, and shall be made on a copy of the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE TOWN OF KINGSBURY, STATE OF NEW YORK. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED AGRICULTURAL PROPERTY AND MAY APPLY TO THIS ARTICLE I OF CHAPTER 35 OF THE CODE OF THE TOWN OF KINGSBURY AS OF _____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

SELLER'S INFORMATION

The seller discloses the following information with the knowledge that even though this is not a warranty, prospective buyers should consider this information in deciding whether and on what terms to purchase the subject property. The seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property. THE FOLLOWING IS INFORMATION MADE BY THE SELLER(S) AS REQUIRED BY THE TOWN OF KINGSBURY AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

1. The Town of Kingsbury permits operation of accepted customs and standards for agricultural operations within the town. If the property you are purchasing is located near agricultural lands or operations or included within an agricultural district, you may be subject to inconveniences or discomfort arising from such operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery during any hour of the day or night, storage and disposal of manure and the application, by spraying or otherwise, of chemical fertilizers, soil amendments, herbicides and pesticides. One (1) or more of the inconveniences described may occur as a result of any agricultural operation still within conformance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a town with a strong rural character and an active agricultural sector. The Town of Kingsbury has established a Grievance Committee to assist in the resolution of any disputes which might arise between residents of this town regarding agricultural operations.

2. Additional town requirements.

The seller certifies that the information herein is true and correct to the best of the seller's knowledge as of the date signed by the seller.

Seller _____ Date _____
Seller _____ Date _____

II

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____

Seller _____ Date _____

Buyer _____ Date _____

Buyer _____ Date _____

Agent (broker obtaining the seller)

_____ By _____ Date _____

(Associate Licensee or Broker Signature)

Agent (broker obtaining the offer)

By _____ Date _____

(Associate Licensee or Broker Signature)

State of _____ On this the ____ day
County of _____ :ss: of _____, before me,
the undersigned Notary Public, personally appeared

Personally known to me. _____ Provided to me on the basis of
satisfactory evidence to be the person(s) whose name(s)
_____ subscribed to the within instrument and acknowl-
edged that _____ executed the same for the purposes
therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Present A.P. No. _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

§ 35-6. Refusal to sign disclosure statement.

If a buyer refuses to sign the disclosure statement set forth in § 35-5B, the transferor may comply with the requirements of this Article by delivering the statement to the buyer as provided in § 35-5B and affixing and signing the following declaration to the statement:

I, _____, have delivered a copy of the foregoing disclosure statement as required by law to _____ who has refused to sign.

I declare the foregoing to be true.

Date _____ Sign _____
Print Name:

§ 35-7. Penalties for offenses.

Noncompliance with any provision of this Article shall not affect title to real property, nor prevent the recording of any document. Any person who violates any provision of this Article is guilty of an infraction punishable by a fine not exceeding one hundred dollars (\$100.).

§ 35-8. Effect on other provisions.

This Article and the prescriptions set forth herein are in addition to all other applicable laws, rules and regulations.

§ 35-9. Resolution of disputes.

- A. Should any controversy arise regarding any inconveniences or discomfort occasioned by agricultural operations, including but not limited to noises, odors, fumes, dust, the operation of machinery of any kind during any hour of the day or night, the storage and disposal of manure and the application, by spraying or otherwise, of chemical fertilizers, soil amendments, herbicides and pesticides, the parties will submit the controversy to a Grievance Committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.

- B. Any controversy between the parties may be submitted to a Grievance Committee whose decision shall be advisory only, within thirty (30) days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.
- C. The Committee shall be composed of five (5) members selected from the community by the Town Board of whom two (2) shall be active farmers, one (1) an agribusinessman, one (1) a Town Board member and one (1) a member-at-large.
- D. The effectiveness of the Grievance Committee as a forum for resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
- E. The controversy shall be presented to the committee by written consent of one (1) of the parties within the time specified. Thereafter, the Committee may investigate the facts of the controversy, but must, within thirty (30) days, hold a meeting to consider the merits of the matter and, within twenty (20) days of the meeting, render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each considers to be pertinent facts.
- F. The decision of the Committee shall not be binding. If one (1) of the parties is not satisfied with the Committee's decision, upon agreement of both parties, the matter may be submitted to the Town Board according to the procedures set forth in Subsection G below.
- G. Town Board procedures.
 - (1) The controversy between the parties shall be submitted to the Town Board upon written agreement of both parties.
 - (2) The Town Board shall review the controversy with a report from the proceedings of the Grievance Committee. Within thirty (30) days of the written request, the Town Board shall render a written decision to the parties.

§ 35-10

AGRICULTURE

§ 35-10

§ 35-10. Posting.

"Right to farm" signs will be maintained throughout the town.

Chapter 36

ASSEMBLIES, MASS PUBLIC

§ 36-1. Purpose.

§ 36-2. Definitions.

§ 36-3. Permit requirements.

§ 36-4. Time limitation.

§ 36-5. Revocation of permit.

§ 36-6. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 12-26-73 as L.L. No. 1-1973. Amendments noted where applicable.]

§ 36-1. Purpose.

The purpose of this chapter is to protect the public health, welfare, safety, peace and tranquility by regulating mass gatherings within the Town of Kingsbury.

§ 36-2. Definitions.

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

MASS GATHERING — Any assemblage or gathering of people at a carnival, circus, rock music festival or other public amusement of a temporary nature to which a charge is made for admission or in connection with which a charge is made for the use or enjoyment of any facility.

§ 36-3. Permit requirements.

No person shall hold or promote, by advertising or otherwise, a mass gathering unless a permit shall have been issued therefor by the Town Board of the Town of Kingsbury as herein provided.

- A. A permit under this section may be issued upon a written application by the person who will promote or hold the mass gathering, which application may be in letter form and shall identify the area and location of such mass gathering, the name and address of the person or persons holding or promoting the same, the date or dates thereof and such other information relating thereto as the Town Board may require. Such application if approved under the state regulations shall be accompanied by an appropriate permit issued by the appropriate permit-issuing official pursuant to the provisions of Section 7.5 of Chapter 1 of the State Sanitary Code and shall be further accompanied by copies of all plans, reports and specifications required in the issuance of said permit pursuant to the State Sanitary Code. Such application shall be further accompanied by such additional plans, reports, specifications and other matter as may be required by the Town Board respecting the provisions of water supply and sewerage facilities, drainage, refuse storage and disposal facilities, sleeping areas and facilities, food service, medical facilities and fire protection. Such application shall further be accompanied by a copy of the performance bond filed pursuant to Section 7.34 of Chapter 1 of the State Sanitary Code.
- B. The Town Board, before taking final action upon the application for permit, shall be required to hold a public hearing upon at least five (5) days' notice of said application.
- C. Notwithstanding any of the provisions of this section, the Town Board may in its discretion deny any application for such permit upon its determination that the police facilities of the Town of Kingsbury are or would be insufficient or inadequate to fully protect the public safety and property or upon its determination that the public peace, tranquility and good order is likely to be unduly disturbed.

§ 36-4. Time limitation.

No mass gathering authorized pursuant to the provisions of this chapter shall extend for a period in excess of seven (7) consecutive days.

§ 36-5. Revocation of permit.

Any permit granted hereunder may be revoked by the Town Board of the Town of Kingsbury if it finds that the mass gathering for which the permit was issued is maintained, operated or occupied in violation of law or the Sanitary Code of the State of New York or of the health district in which such mass gathering takes place.

§ 36-6. Penalties for offenses.

A failure to comply with the provisions of this chapter shall be deemed a violation, and the violator shall be liable to a fine of not more than two hundred fifty dollars (\$250.) for each violation. For the purposes of this section, each day of a continuing violation shall be deemed a separate violation.

Chapter 38

BINGO

- § 38-1. Definitions.**
- § 38-2. Authorization.**
- § 38-3. License applications.**
- § 38-4. General restrictions.**
- § 38-5. Issuance and duration of license.**
- § 38-6. Hearing; amendment of license.**
- § 38-7. License form.**
- § 38-8. Enforcement.**
- § 38-9. Days of conduct of games.**
- § 38-10. Participation by minors.**
- § 38-11. Number of games permitted per month; alcoholic beverages prohibited.**
- § 38-12. Persons eligible to conduct games; equipment; expenditures.**
- § 38-13. Admission charges; prizes.**
- § 38-14. Advertising of games.**
- § 38-15. Statement of receipts and expenses.**
- § 38-16. Examination of records; disclosure of information.**
- § 38-17. Appeals.**
- § 38-18. Immunity to prosecution; exceptions.**
- § 38-19. Suspension of license.**
- § 38-20. Amendment procedure.**
- § 38-21. Delegation of authority.**

§ 38-22. Referendum to be held; when effective.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 2-28-1958. Amendments noted where applicable.]

§ 38-1. Definitions.

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

AUTHORIZED ORGANIZATION — Includes only bona fide religious, charitable or nonprofit organizations of veterans, volunteer firemen and similar nonprofit organizations.

BINGO or GAME — Includes a specific game of chance, commonly known as "bingo" or "lotto," in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.

BONUS BALL — A bingo game that is played in conjunction with one or more regular or special bingo games, and is designated as a bonus ball game by the licensed authorized organization during one or more consecutive bingo occasions, in which a prize is awarded to the player obtaining a specified winning bingo pattern when the last number called by the licensed authorized organization is the designated bonus ball number. The bonus ball prize shall be based upon a percentage of the sales from opportunities to participate in bonus ball games not to exceed 75% of the sum of money received from the sale of bonus ball opportunities or \$6,000, whichever shall be less, and which is not subject to the prize limits imposed by §§ 479(5) and (6) and § 481(1)(a) of the New York State General Municipal Law. The percentage shall be specified both in the application for the bingo license and the license. Notwithstanding General Municipal Law § 489, not more than \$1 shall be charged per player for an opportunity to participate in all bonus ball games conducted during a single bingo

occasion, and the total amount collected from the sale of bonus ball opportunities and the amount of the prize to be awarded shall be announced prior to the start of each bingo occasion.

[Added 2-11-2008 by L.L. No. 1-2008]

CONTROL COMMISSION — The State Lottery Control Commission.¹

EARLY BIRD — A bingo game which is played as a special game, conducted not more than twice during a bingo occasion, in which prizes are awarded based upon a percentage not to exceed 75% of the sum of money received from the sale of the early bird cards and which is neither subject to the prize limits imposed by §§ 479(5) and (6) and 481(1)(a) of the New York State General Municipal Law nor the special game opportunity charge limit imposed by § 489 of the General Municipal Law. The percentage shall be specified both in the application for the bingo license and the license. Not more than \$1 shall be charged per card, with the total amount collected from the sale of the early bird cards and the prize for each game to be announced before the commencement of each game. **[Added 2-11-2008 by L.L. No. 1-2008]**

LICENSE — A license issued pursuant to the provisions of this chapter.

SUPERCARD — A bingo card on which prizes are awarded, which card is selected by the player, containing five designated numbers, colors or symbols corresponding to the letters B, I, N, G, and O, displayed on the bingo board of the bingo premises operator, which can be played concurrently with the other bingo cards played during the game of bingo. **[Added 2-11-2008 by L.L. No. 1-2008]**

1. Editor's Note: The term "Control Commission" was redefined by Chapter 46 of the Laws of 1977 to mean the State Racing and Wagering Board. See § 476 of the General Municipal Law, as amended.

§ 38-2. Authorization.

It shall be lawful for any authorized organization, upon obtaining a license therefor as hereinafter provided, to conduct the game of bingo within the territorial limits of the Town of Kingsbury, subject to the provisions of this chapter and the provisions of Article 14-H (§§ 475 through 499) of the General Municipal Law and the provisions of the State Lottery Control Law.²

§ 38-3. License applications.

- A. Each applicant shall file with the Town Clerk of the Town of Kingsbury a written application in the form prescribed in the rules and regulations of the Control Commission duly executed and verified.
- B. In each application, there shall be designated an active member or members of the applicant organization under whom the game or games of chance described in the application are to be held, operated and conducted, and there shall be appended to the application a statement executed and verified by the applicant and by the member or members so designated that he, she or they will be responsible for the holding, operation and conduct of such games of chance in accordance with the terms of the license and the provisions of this chapter, Chapter 854 of the Laws of 1957³ and the rules and regulations of the Control Commission, if such license is granted.
- C. In the event that any premises upon which any such game of chance is to be held, operated or conducted or which is to be used for any other purpose in connection with the holding, operation or conduct thereof is to be leased or

2. Editor's Note: The State Lottery Control Law was amended to become the State Bingo Control Law by Chapter 437 of the Laws of 1962. Subsequently Chapter 7 of the Laws of 1964 amended the State Bingo Control Law to become the Bingo Control Law. See Article 19-B of the Executive Law, § 430 et seq.

3. Editor's Note: See Article 14-4 of the General Municipal Law, § 475 et seq.

rented from any person, persons or corporations, the application shall be accompanied by a written statement signed and verified under oath by such person or persons or on behalf of such corporation, stating his or its address, the amount of rent to be paid for such premises and stating that such lessor, lessors or, if a corporation, all of its officers and each of its stockholders who hold more than 10% or more of its stock issued and outstanding are of good moral character and have not been convicted of a crime.

§ 38-4. General restrictions.

Any game or games licensed hereunder shall be subject to the following restrictions in addition to such other restrictions as may be provided herein or contained in the rules and regulations of the Control Commission:

- A. No person, firm, association, corporation or organization, other than an authorized organization licensed under the provisions of this chapter, shall be permitted to conduct such games.
- B. The entire net proceeds of any game or games shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.
- C. No prize shall exceed the sum or value of \$1,000 in any single game of bingo. **[Amended 2-11-2008 by L.L. No. 1-2008]**
- D. No series of prizes on any one bingo occasion shall aggregate more than \$3,000. **[Amended 2-11-2008 by L.L. No. 1-2008]**
- E. No person except a bona fide member of such organization shall participate in the management or operation of such game.
- F. No person shall receive any remunerations for participating in the management or operation of any such game.

- G. The unauthorized conduct of a bingo game and any willful violation of any provision of this chapter shall constitute and be punishable as a misdemeanor.

§ 38-5. Issuance and duration of license.

- A. The Town Board of the Town of Kingsbury shall cause to be investigated the qualifications of each applicant and the merits of each application with due expedition after the filing of the application. Such investigation shall be made with the view to determining whether the applicant is duly qualified to be licensed under this chapter to hold, operate and conduct games of chance under the provisions of this chapter and the rules and regulations governing the holding, operation and conduct thereof in the Town of Kingsbury; that the member or members of the applicant designated in the application to hold, operate or conduct the games of chance, to hold, operate and conduct which the license was applied for, are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime; that such games of chance are to be held, operated and conducted in accordance with the provisions of this chapter and in accordance with the rules and regulations governing the holding, operation and conduct thereof; and that the proceeds thereof are to be disposed of as provided by this chapter. If the said Town Board of the Town of Kingsbury is satisfied that no commission, salary, compensation, reward or recompense whatever will be paid or given to any person holding, operating or conducting or assisting in the holding, operation and conduct of any such games of chance, except as in this chapter otherwise provided; and that no prize will be offered and given in excess of the sum or value of \$1,000 in any single game of chance; and that the aggregate of all prizes offered and given in all of such games of chance, held, operated and conducted on a single occasion under said license shall not exceed the sum or value of \$3,000, it shall issue a license to the applicant for the holding, operation and conduct of the specific kinds of

games of chance applied for, accordingly, upon payment of a license fee or fees established in Chapter 46, Fees, for each occasion upon which any games of chance are to be conducted under such license. **[Amended 12-28-1983 by L.L. No. 2-1983; 2-11-2008 by L.L. No. 1-2008]**

- B. On or before the 30th day of each month, the Supervisor of the Town of Kingsbury shall transmit to the State Comptroller a sum equal to 50% of all license fees collected by the Town of Kingsbury pursuant to this section during the preceding calendar month.
- C. No license shall be issued under this chapter which shall be effective for a period of more than one year.

§ 38-6. Hearing; amendment of license.

- A. No application for a license hereunder shall be denied by the Town Board except for good cause shown after a hearing, held on due notice to the applicant, at which the applicant shall be entitled to be heard upon the qualifications of the applicant and the merits of the application.
- B. Any license issued under this chapter may be amended upon application to the said Town Board, if the subject matter of the proposed amendment could lawfully and properly have been included in the original license, and upon the payment of such additional license fee, if any, as would have been payable if it had been so included.

§ 38-7. License form.

Each license shall be in such form as shall be prescribed in the rules and regulations promulgated by the Control Commission.

§ 38-8. Enforcement.

The Town Board of the Town of Kingsbury shall have and exercise control and supervision over all games of chance held, operated or conducted under such license, and such Town Board and the Control Commission shall have the power and authority to suspend any such license and, after notice and hearing, to revoke the same for violation of any provision of such license, this chapter, §§ 475 to 499 of the General Municipal Law or the rules and regulations of the Control Commission. The Town Board and the Control Commission or any officer designated by them shall have the right of entry at all times into any premises where any such game of chance is being held, operated or conducted, or where it is intended that any such game of chance shall be held, operated or conducted, or where any equipment being used or intended to be used in the conduct thereof is found, for the purpose of inspecting the same.

§ 38-9. Days of conduct of games. [Amended 5-30-1984 by L.L. No. 4, 1984]

Such games may be held on any day provided for in such license, and on Sunday said game can be conducted between the hours of 7:00 p.m. and 12:00 midnight.

§ 38-10. Participation by minors.

No person under the age of 18 years is permitted to participate in any game of chance held, operated or conducted pursuant to any license issued under this chapter unless accompanied by an adult.

§ 38-11. Number of games permitted per month; alcoholic beverages prohibited.

No game or games of chance shall be held, operated or conducted under any license issued under this chapter more often than on six days in any one calendar month, or in any

room or outdoor area where alcoholic beverages are sold or served during the progress of the game or games.

§ 38-12. Persons eligible to conduct games; equipment; expenditures.

No person shall hold, operate or conduct any game or games of chance under any license issued under this chapter, except an active member of the authorized organization to which the license is issued, and no person shall assist in the holding, operating or conducting of any game or games of chance under such license, except such an active member or a member of an organization or association which is an auxiliary to the licensee or a member of an organization or association of which such licensee is an auxiliary or a member of an organization or association which is affiliated with the licensee by being, with it, auxiliary to another organization or association and except bookkeepers or accountants as hereinafter provided. No such game of chance shall be conducted with any equipment except such as shall be owned absolutely or used without payment of any compensation therefor by the licensee, and no item of expense shall be incurred or paid in connection with the holding, operating or conducting of any game of chance held, operated or conducted pursuant to any license issued under this chapter, except such as are bona fide items of reasonable amount for goods, wares and merchandise furnished or services rendered which are reasonably necessary to be purchased or furnished for the holding, operating or conducting thereof under any circumstances whatever. No rental shall be paid for the use of any premises for holding, operating or conducting any such game of chance thereon or for any other purpose in connection with the holding, operating or conducting thereof, unless the amount of such rental is stated in a statement annexed to the application for the license as provided in § 480 of the General Municipal Law or which is in excess of the sum stated as the rental to be charged therefor in such statement. No commission, salary, compensation, reward or recompense whatever shall be paid or given, directly or indirectly, to any person holding, operating or conducting, or assisting in the

holding, operation or conduct of any game of chance so held, operated or conducted, except that reasonable compensation may be paid to bookkeepers or accountants for bookkeeping or accounting services rendered according to a schedule of compensation prescribed by the rules of the Control Commission.

§ 38-13. Admission charges; prizes. [Amended 2-11-2008 by L.L. No. 1-2008]

Except in the conduct of limited period bingo, as defined in General Municipal Law § 476(1) and as admission charges are set forth in General Municipal Law § 489, not more than \$5 shall be charged by any licensee for admission to any room or place in which any game or games of chance are to be held, operated and conducted under any license issued under this chapter, which admission fee, upon payment thereof, shall entitle the person paying the same to a card entitling him to participate, without additional charge, in all regular games of chance to be played under such license on such occasion, and no charge in excess of \$5 shall be made for a single opportunity to participate in all special games to be played under such license on such occasion. No prize greater in amount or value than \$1,000 shall be offered or given in any single game conducted under any such license, and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$3,000, and all winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game was played. No alcoholic beverage shall be offered or given as a prize in any such game of bingo.

§ 38-14. Advertising of games.

No game of chance to be conducted under any license issued under this chapter shall be advertised as to its location, the time when it is to be or has been played or the prizes awarded or to be awarded, by means of newspapers, radio, television or sound trucks or by means of billboards, posters or handbills or

by any other means addressed to the general public, except that one sign, not exceeding 60 square feet in area, may be displayed on or adjacent to the premises where the game will be played. An additional sign may be displayed on or adjacent to the premises where the prize or prizes are displayed. Additional signs may be displayed upon any fire-fighting equipment belonging to any licensee which is a volunteer fire company, or upon any first-aid or rescue squad equipment belonging to any licensee which is a first-aid or rescue squad, in and throughout the community or communities served by such volunteer fire company or such first-aid or rescue squad, as the case may be.

§ 38-15. Statement of receipts and expenses.

Within 15 days after the conclusion of the holding, operating and conducting of any such game of chance, the authorized organization which held, operated or conducted the same, and its members who were in charge thereof, shall furnish to the Clerk of the Town of Kingsbury a duly verified statement showing the amount of the gross receipts derived from each game of chance, which shall include receipts from the sale of shares, tickets or rights in any manner connected with participation in said game or the right to participate therein, each item of expense incurred or paid and each item of expenditure made or to be made, the name and address of each person to whom each such item has been paid or is to be paid, with a detailed description of the merchandise purchased or the services rendered therefor, the net profit derived from each such game of chance and the use to which such net profit has been or is to be applied and a list of prizes offered and given, with the respective values thereof, and it shall be the duty of such licensee to maintain and keep such books and records as may be necessary to substantiate the particulars of each such report.

§ 38-16. Examination of records; disclosure of information.

The Town Board of the Town of Kingsbury and the Control Commission shall have power to examine or cause to be examined the books and records of any authorized organization to which any such license is issued so far as they may relate to any transactions connected with the holding, operating and conducting of any game of chance thereunder and to examine any manager, officer, director, agent, member or employee thereof under oath in relation to the conduct of any such game of chance under any such license but any information so received shall not be disclosed, except so far as may be necessary for the purpose of carrying out the provisions of this chapter.

§ 38-17. Appeals.

Any applicant for, or holder of, any license issued or to be issued under this chapter aggrieved by any action of the Town Board of the Town of Kingsbury, concerning an application which has been made or a license which has been issued, may appeal to the Control Commission from the determination of the city, its officers or agents, by filing with the said Town Board a written notice of appeal within 30 days after the determination of action appealed from, and upon the hearing of such appeal, the evidence, if any, taken before the said Town Board, and any additional evidence may be produced and shall be considered in arriving at a determination of the matters in issue, and the action of the Control Commission upon said appeal shall be binding upon the town and all parties to said appeal.

§ 38-18. Immunity to prosecution; exceptions.

No person or corporation lawfully conducting, or participating in the conduct of, or possessing, selling or in any manner disposing of any shares, tickets or rights to participate in, or permitting the conduct upon any premises owned by him or it

of any game of chance conducted or to be conducted under any license lawfully issued pursuant to this chapter, shall be liable to prosecution or conviction for violation of any provision of Article 130 of the Penal Law⁴ or any other law or ordinance to the extent that such conduct is specifically authorized by this chapter, but this immunity shall not extend to any person or corporation knowingly conducting or participating in the conduct of any game of chance under any license obtained by any false pretense or statement made in any application, for such license or otherwise, or possessing, selling or disposing of shares, tickets or rights to participate in or permitting the conduct upon any premises owned by him or it of any game of chance conducted under any license known to him or it to have been obtained by any such false pretense or statement.

§ 38-19. Suspension of license.

Any person who shall make any false statement in any application for any such license or in any statement annexed thereto or shall pay any rental for the use of any premises for holding, operating or conducting any game of chance under this chapter or for any other purpose in connection with the holding, operating or conducting thereof, unless the amount of such rental is stated in a statement annexed to the application for the license as provided in § 38-3 of this chapter or shall pay or receive any sum for such rental in excess of the sum stated as the rental to be charged therefor in such statement executed by him or on its behalf or shall fail to keep such books and records as shall fully and truly record all transactions connected with the holding, operating and conducting of games of chance under any such license or shall falsify or make any false entry in any book or record so far as they relate to any transaction connected with the holding, operating or conducting of any game of chance under any such license or shall violate any of the provisions of this chapter or of any term of such license shall be guilty of a misdemeanor and shall forfeit any license issued to it under

4. Editor's Note: Article 130 of the former Penal Law of 1909 was superseded by Article 225 of the Penal Law of 1965, § 225 et seq.

this chapter and be ineligible to apply for a license under this chapter for one-year thereafter.

§ 38-20. Amendment procedure.

This chapter may be amended, from time to time, or repealed by the said Town Board, and such amendment or repeal, as the case may be, may be made effective and operative not earlier than 30 days following the date of enactment of the local law or ordinance affecting such amendment or repeal, as the case may be. The approval of a majority of the electors shall not be a condition prerequisite to the taking effect of such local law or ordinance.

§ 38-21. Delegation of authority.

The Town Board of the Town of Kingsbury may delegate to an officer or officers thereof designated by it for that purpose any of the authority granted to it hereby in relation to the issuance, amendment and cancellation of licenses, the conduct of investigations and hearings, the supervision of the operation of the games and the collection and transmission of fees.

§ 38-22. Referendum to be held; when effective.

The provisions of this chapter shall remain inoperative unless and until a proposition therefor submitted at a general or special election in the Town of Kingsbury shall be approved by a vote of the majority of the qualified electors voting thereon. In the event that such proposition is so approved, this chapter shall become effective immediately after filing a copy thereof with the Control Commission.

Chapter 39

BUILDINGS, UNSAFE AND COLLAPSED

- § 39-1. Declaration.
- § 39-2. Inspection and report.
- § 39-3. Determination.
- § 39-4. Contents of notice.
- § 39-5. Service of notice by registered mail.
- § 39-6. Filing of notice with County Clerk.
- § 39-7. Failure to remove or repair; assessment of costs.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 3-26-84 as L.L. No. 2-1984. Amendments noted where applicable.]

§ 39-1. Declaration.

It is hereby declared that any building, structure or part thereof which has been damaged by fire or explosion or which has become unsafe, dangerous, unsightly or otherwise detrimental to the public safety, health, morals or general welfare is hereby declared to be an imminent danger to the life and safety of the public and to be a public nuisance.

§ 39-2. Inspection and report.

The Building Inspector, or the official appointed by the Town Board of the Town of Kingsbury for the purposes of enforcing this chapter, shall inspect any structure located within the town which may be a hazard to the health and safety of the public. Said official shall make a report in writing of his formal inspection to the Town Board of the Town of Kingsbury making his findings and recommendations in regard to the removal or repair of the building.

§ 39-3. Determination.

The Town Board shall thereafter consider the report and recommendations and, by resolution, determine that said structure or building or part of the building is unsafe and dangerous and thereby a public nuisance and order its removal or repair if the building or structure can be safely repaired.

§ 39-4. Contents of notice.

The Board shall thereupon cause a notice to be served on the owner, the owner's agent, legal representative, lessee or assign, either personally or by registered mail, addressed to the last known address of the owner, the owner's agent, legal representative, lessee or assign, containing the following information:

- A. A description of the premises.
- B. A statement of the particulars.
- C. An order requiring the same to be made safe and secure or to be removed.
- D. A time limit within which the person so served shall commence the securing or removing of the building or structure.
- E. Scheduling for a hearing before the Board within fourteen (14) days after the service of the notice specifying the time, place and date of said hearing.
- F. A statement that assessment of all costs and expenses incurred by the town in connection with proceedings to remove or secure, upon failure of the owner or person so served to do so will be an assessment against the land upon which the building or structure is so located.

§ 39-5. Service of notice by registered mail.

If service of said notice is made by registered mail, a copy of such notice shall be posted on the premises.

§ 39-6. Filing of notice with County Clerk.

A copy of the notice shall be filed with the Washington County Clerk, which notice shall be filed by said Clerk in the same manner as a notice of pendency and shall be effective for a period of one (1) year.

§ 39-7. Failure to remove or repair; assessment of costs.

If the owner, agent, legal representative, lessee or assign fails or refuses to repair or remove the same within the time period provided in the notice or if after a hearing before the Board the owner, agent, legal representative, lessee or assign fails or refuses to repair or remove the same within the time provided for such repair or removal by the Town Board, the Town Board may proceed to remove said building, wall or structure and to fill the excavation and level the property and assess the cost thereof against the property. The costs and expenses incurred by the town in connection with the proceedings to remove or secure, including the cost of actually removing said building or structure, shall be assessed against the land and become a lien on the property and shall be collectible in the same manner as the taxes levied thereon.

CONTROL OF ANIMALS

Chapter 40

CONTROL OF ANIMALS

Title.

**ARTICLE I
Purpose**

Purpose.

**ARTICLE II
Definitions**

§ 40-1. Definitions.

**ARTICLE III
Animal Control**

§ 40-2. Farm animals.

§ 40-3. Domestic animals.

§ 40-4. Control of dogs.

§ 40-5. Enforcement officer.

§ 40-6. Kennel regulations; where required.

§ 40-7. Filing of complaint.

§ 40-8. Jurisdiction of the Court.

Exception.

§ 40-9. Procedures relating to dangerous dogs.

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KINGSBURY CODE

ARTICLE IV
Seizure and Impoundment

- § 40-11. Dogs to be seized.
- § 40-12. Care of seized dogs.
- § 40-13. Impoundment fee.
- § 40-14. Disposition of impoundment fees.
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- § 40-16. Unredeemed dogs.
- § 40-17. Redemption periods.
- § 40-18. Penalties for offenses.
- § 40-19. Nonliability for damages.
- § 40-20. Word usage.
- § 40-21. Severability.
- § 40-22. Effective date.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 11-24-1997 by L.L. No. 4-1997.¹ Amendments noted where applicable.]

Title.

This chapter shall be known as the "Animal Control Law" of the Town of Kingsbury inclusive of the Village of Hudson Falls.

¹ Editor's Note: This local law also repealed former Ch. 40, Dogs, Art. I, General Provisions, adopted 8-22-1988 by L.L. No. 4-1988, as amended, and Art. II, Seizure and Impoundment, adopted 3-23-1987 by L.L. No. 1-1987, as amended.

CONTROL OF ANIMALS

ARTICLE I

Purpose

Purpose.

The purpose of this chapter is to protect the health, safety and well-being of persons and property within the Town of Kingsbury by imposing restrictions and prohibitions on the keeping and running at large of dogs, dangerous animals and other identified animals within the town.

(Cont'd on page 4003)

ARTICLE II
Definitions

§ 40-1. Definitions.

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

ANIMAL CONTROL OFFICER — The Animal Control Officer of the Town of Kingsbury who is specifically authorized to enforce the provisions of this chapter.

AT LARGE — A dog, dangerous animal or any other animal identified herein off the premises of the owner and in a public place or on private lands without the knowledge, consent and approval of the owner of such lands.

CAT — Any member of the feline family, regardless of sex.

DANGEROUS ANIMAL — Any animal that conducts itself so as to cause bodily harm and injury or to put any person in reasonable apprehension of such bodily harm and injury, or any animal which attacks, chases or worries any domestic animal, as defined in § 108 of the Agriculture and Markets Law.

DOG — Any member of the species *canis familiaris*, regardless of sex.

LEASHED or RESTRAINED BY A LEASH — A dog that is equipped with a collar of sufficient strength attached to a leash not more than six feet long, which leash shall be held by a person having sufficient ability to control and restrain the dog by means of the collar and leash.

OWNER — Includes any person who owns, keeps, harbors or has the care, custody or control of any dog, dangerous animal or any other animal identified herein. Dogs, dangerous animals or any other animal identified herein owned by minors shall be deemed to be in the care, custody and control of the minor's parents or other

head of the household where the minor resides, and who shall be responsible for any acts of said dog in violation of this chapter. The term "owner" shall also be construed to include any association or corporation owning, harboring, in possession of or keeping a dog or dogs or any other animal identified herein with the Town of Kingsbury inclusive of the Village of Hudson Falls.

SERVICE DOG — Any dog that is trained to aid a person with a disability and is actually used for this purpose, otherwise known as a "guide dog."

POLICE WORK DOG — A dog under the care and control of any law enforcement agency and used primarily for law enforcement investigations and related work. The provisions of this chapter shall not apply to any police work dog.

ARTICLE III Animal Control

§ 40-2. Farm animals.

- A. It shall be unlawful for any person to keep any horses, cattle, swine, pigs, sheep, goats, poultry or any other farm animal anywhere in the Village of Hudson Falls, except the same may be legally transported by common carrier through the village to reach a destination outside the village.
- B. It shall be unlawful for any person to permit any horses, cattle, swine, pigs, sheep, goats, poultry or any other farm animal to run at large in the Town of Kingsbury.

§ 40-3. Domestic animals.

- A. The owner of any other domestic animals or pets including but not limited to all species of lizard, snake, spider, bird, rat, mouse, guinea pig or rabbit shall maintain said other domestic animal or pet in a cage or

appropriate container at all times when said other domestic animal or pet is outside the premises of the owner.

- B. All dog feces must be immediately removed from the streets, highways and sidewalks by the owner of the dog. It shall be unlawful for the owner of a dog to allow the dog to defecate on the property of another without the consent of the property owner.

§ 40-4. Control of dogs.

It shall be unlawful for any owner of or any person owning or harboring any dog in the Town of Kingsbury to permit or allow any such dog to:

- A. Engage in habitual barking, howling, crying or whining, or to conduct itself in such a manner as to habitually annoy any person other than the owner or person(s) harboring such dog, or which disturbs the peace, generally, by loud noises at any time of the day or night.
- B. Cause damage or destruction to the property of or commit a nuisance upon the premises of a person other than the owner or person(s) harboring such dog without the consent or approval of the owner of such premises.
- C. Chase, jump on or at, or otherwise harass any person in such a manner as would reasonably cause intimidation or to put such person in reasonable apprehension of bodily harm or injury.
- D. Attack, chase or worry any domestic animal, as defined by § 108 of the Agriculture and Markets Law.
- E. Habitually chase or bark at motor vehicles, motorcycles or bicycles while on a public street, highway or place, or upon private property without the consent or approval of the owner of such property.
- F. Be off the premises of the owner or harborer unless restrained by a leash to be held by a person of sufficient

strength and ability to adequately restrain the dog. Such dog may be unleashed while off the owner's or harborer's premises only on such occasions as when such dog is on the private premises of another with the knowledge, consent and approval of such person.

- G. No dog, whether leashed or unleashed, shall be in any restaurant, grocery or commercial establishment which sells food for human consumption except for a service dog or police work dog.
- H. No person who owns or harbors a dog shall permit the premises, structures or enclosures in which such dog is kept to be unclean or unsanitary whether on account of dog feces or otherwise.

§ 40-5. Enforcement officer.

- A. The Animal Control Officer or other law enforcement officer observing a violation of this chapter in his presence shall issue and serve an appearance ticket for such violation. The Animal Control Officer shall enforce the provisions of this article pursuant to Article 7 of the Agriculture and Markets Law.
- B. The Animal Control Officer or other law enforcement officer may also investigate and report to the Town of Kingsbury Court ("the Court") any dangerous dog, as described in Article 7 of the Agriculture and Markets Law as defined herein, and see that the order of the Court in such case is carried out.

§ 40-6. Kennel regulations; where required.

Any residence or single parcel of land that is a nonmultiple residence, a multiple residence being three or more residences on a single parcel of land, shall have a kennel for the outdoor housing of dogs where there are four or more adult dogs over the age of six months.

- A. "Kennel" shall be defined to mean the outdoor housing of dogs, for profit or otherwise.
- B. Any pre-existing kennels or kennels coming into existence after the adoption of this section will conform to the following restrictions within 90 days of the effective date of this section.
- C. Fences. Each kennel, either preexisting or coming into existence after the adoption of this section, shall have a fence surrounding said kennel with the following requirements:
 - (1) Each fence will be a minimum of six feet in height and a maximum of six feet six inches in height, and it is to be of consistent height.
 - (2) Each fence and kennel shall be set back at least eight feet from adjoining property lines, roads, sidewalks or highways.
 - (3) Each fence and kennel must conform to the Zoning Ordinances of the Town of Kingsbury,³ Village of Hudson Falls and other governmental agencies. Compliance with this section is in addition to compliance with other laws.
 - (4) Each fence shall be of such construction so as to be capable of confining said dog or dogs at all times.
- D. When any dog is outside the residential building, off a leash and not under the direct control of a responsible adult or the owner in a residence or parcel of land where a kennel is necessary under this section, said dog or dogs shall be confined to said kennel.

§ 40-7. Filing of complaint.

- A. Any person who observes a violation of any provision of this chapter may file a signed complaint, under oath,

³ Editor's Note: See Ch. 80, Zoning.

with the Court, specifying: the objectionable conduct; the date(s) thereof; the damage caused; a description of the animal; and the name and residence, if known, of the owner of such animal or other person harboring such animal.

- B. Any person who is attacked, chased or otherwise harassed by any dog in such a manner as to reasonably cause intimidation or to put such person in reasonable apprehension of bodily harm or injury, or any person who witnesses a dog attacking, chasing or worrying any domestic animal, as defined in § 108 of the Agriculture and Markets Law, may file a signed complaint, under oath, with the Court, stating: the specific objectionable conduct of the dog; the date thereof; the place of occurrence; a description of the dog; the name and residence, if known, of the person harassed; and the owner or other person harboring said dog; or, in the alternative, the person harassed by a dog may file with the Court an information charging a violation of this chapter.

§ 40-8. Jurisdiction of the Court.

- A. The Town Court shall have jurisdiction to hear all complaints filed as herein provided and all actions and proceedings hereunder and of all prosecutions for any violation of this chapter.
- B. Upon receipt by the Court or any complaint against the conduct of a particular dog, the Court may summon the alleged owner of the dog or other person harboring such dog, to appear in person before the Court. If the summons is disregarded, the Court may permit the filing of an information and issue a warrant for the arrest of such person.

Exception.

This article shall not apply to a Seeing Eye dog or police work dog during such time as such dogs are performing the functions for which they are trained.

§ 40-9. Procedures relating to dangerous dogs.

Procedures relating to dangerous dogs shall be in accordance with the relevant provisions of the Agriculture and Markets Law.

- A. In the event of a complaint of an attack upon a person or of an attack, chase or worrying of a domestic animal, the Court shall immediately determine if there is probable cause to believe the dog is a dangerous dog, and upon so finding, shall order the Animal Control Officer or law enforcement officer to immediately seize the dog pending a judicial hearing conducted in accordance with the provisions of the Agriculture and Markets Law.
- B. If satisfied that said dog is a dangerous dog, the Court may order the Animal Control Officer or other law enforcement officer to take any action consistent with the provisions of the Agriculture and Markets Law including the destruction of the dog, or take any other action prescribed herein. In the event that any person is bitten or scratched by said dog, the Court shall order the dog tested for rabies or quarantined for a period of 10 days. The rabies testing and/or quarantine shall be at the owner's expense.
- C. In the event that the Court does not order the dog destroyed and determines that said dog is a dangerous dog within the meaning of the Agriculture and Markets Law, the owner of the dog shall be required to:
 - (1) Maintain liability insurance, which insurance must specifically cover damage or injury to persons or property which may be caused by a dangerous dog;
 - (2) Muzzle the dog when in all public places; and

(3) Post the property where the dog is located with a notice of "Dangerous Dog."

D. Upon default of any of the conditions of a Court order, said dangerous dog shall be dealt with in accordance with the law and without the need for further process of the court.

§ 40-10. Penalties for offenses.

An offense against any provision of this chapter shall be punishable:

A. By a fine of not more than \$25 for the first offense. Where a person has been found to have violated this chapter within the preceding five years, the fine may not be more than \$50, and where the person has been found to have committed two or more violations of this chapter within the preceding five years, the offense shall be punishable by a fine of not more than \$100 or imprisonment for not more than 15 days, or both.

B. In addition to the penalties imposed for violations of this chapter, the person found to have violated this chapter must pay administrative fines as set forth hereinafter for the cost of seizure and kennel fees.

C. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

D. Upon presentation of proof of payment of any and all fines and/or penalties, the Animal Control Officer or other law enforcement officer shall release any dog impounded to its owner or harbinger, provided that the release of the dog is consistent with any court determination made with respect to the dog.

E. Any person violating any provision of this chapter shall be and hereby is declared a disorderly person and such violation shall constitute disorderly conduct under the New York State Penal Law.

ARTICLE IV
Seizure and Impoundment

§ 40-11. Dogs to be seized.

- A. The Animal Control Officer or any other law enforcement officer in the employ of or under contract with the Town of Kingsbury shall seize:
- (1) Any dog which is not identified and which is not on the owner's premises.
 - (2) Any dog which is not licensed, whether on or off the owner's premises.
- B. The Animal Control Officer or any other law enforcement officer in the employ of or under contract to the Town of Kingsbury may seize any dog in violation of any local law or ordinance relating to the control of dogs adopted by the Town of Kingsbury pursuant to the provisions of Article 7 of the Agriculture and Markets Law.

§ 40-12. Care of seized dogs.

Each dog seized in accordance with the provisions of this article shall be properly sheltered, fed and watered for the redemption period as hereinafter provided.

§ 40-13. Impoundment fee.

Each dog which is not identified, whether or not licensed, shall be held for a period of five days from the day seized, during which period the dog may be redeemed by its owner, provided that such owner produces proof that the dog has been licensed and has been identified pursuant to the provisions of this article, and further provided that the owner pays the impoundment fee and pickup fee as required in the current fee schedule set forth in Chapter 46 of the Kingsbury Code. All impoundment fees including all seizure and kennel fees and all

finest and/or penalties levied or assessed by the Court to this chapter shall be the property of the Town of Kingsbury.

§ 40-14. Disposition of impoundment fees.

All impoundment fees shall be the property of the municipality to which they are paid and shall be used only for controlling dogs and enforcing this article and any rule, regulation or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under § 117 of the Agriculture and Markets Law used therefor, and subsidizing public humane education programs in responsible dog ownership.

§ 40-15. Notice of seizure; redemption.

Promptly upon seizure of any identified dog, the owner of record of such dog shall be notified personally or by certified mail, return receipt requested, of the facts of seizure and the procedure for redemption. If notification is personally given, such dog shall be held for a period of seven days after the day of notice, during which period the dog may be redeemed by the owner. If such notification is made by mail, such dog will be held for a period of nine days from the date of mailing, during which period the dog may be redeemed by the owner. In either case, the owner may redeem such dog upon payment of the impoundment fees prescribed by § 40-9⁴ and by producing proof that the dog has been licensed.

§ 40-16. Unredeemed dogs.

An owner shall forfeit title to any dog unredeemed at the expiration of the appropriate redemption period, and the dog shall then be made available for adoption or euthanized. Any person, other than the owner of the dog seized or a member of

⁴ Editor's Note: See § 40-13, Impoundment fee.

his or her immediate family, may apply to the impoundment facility for the adoption of the dog, provided that no such dog shall be delivered for adoption unless it has been licensed pursuant to the provisions of Article 7 of the Agriculture and Markets Law prior to its release from the custody of a pound or shelter. Upon adoption, collection of any impoundment fees from the adoptee prescribed by Chapter 46, Fees, of the Kingsbury Code, shall be waived.

§ 40-17. Redemption periods.

The redemption periods set forth above in this section notwithstanding, the Town of Kingsbury may establish the duration of such periods by local law or ordinance, provided that no such period shall be less than three days, except that where notice to the owner is given by mail, no such period shall be less than seven days.

§ 40-18. Penalties for offenses.

The seizure of any dog shall not relieve any person from any violation provided for by § 119 of the Agriculture and Markets Law.

§ 40-19. Nonliability for damages.

The Town of Kingsbury, its employees or agents shall not be liable in damages or otherwise on account of the seizure, adoption or destruction of any dog pursuant to the terms of this chapter.

§ 40-20. Word usage.

Where necessary, words in the singular shall be interpreted in the plural and vice-versa.

§ 40-21. Severability.

If, upon judicial review and determination, any part of this chapter is deemed or found to be unenforceable, illegal, unconstitutional or void, such determination shall not affect or impair the validity of the remaining provisions of this chapter or the application thereof.

§ 40-22. Effective date.

This chapter shall take effect immediately upon its adoption and filing with the Secretary of State.

ENVIRONMENTAL QUALITY REVIEW

Chapter 43

ENVIRONMENTAL QUALITY REVIEW

- § 43-1. Definitions.
- § 43-2. Compliance required.
- § 43-3. Type I and Type II actions.
- § 43-4. Applications; filing of environmental assessment form.
- § 43-5. Rendering of determination; time limitations.
- § 43-6. Preparation, filing and circulation of determination of significance.
- § 43-7. Preparation of environmental impact statements.
- § 43-8. Filing of notice of completion; publication.
- § 43-9. Public hearing.
- § 43-10. Change in determination of environmental significance.
- § 43-11. Final environmental impact statements; procedures.
- § 43-12. Copies to be kept on file.
- § 43-13. Actions involving more than one agency.
- § 43-14. Designation of lead agency.

Appendix A

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 7-9-79 as L.L. No. 1-1979. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 20.

§ 43-1. Definitions.

- A. Unless the context shall otherwise require, the terms, phrases, words and their derivatives used in this chapter shall have the same meaning as those defined in § 8-0105 of the Environmental Conservation Law and Section 617.2 of Part 617 of Title 6 of NYCRR, said Part 617 referred to herein as adopted September 1, 1978.
- B. As used in this chapter, the following terms shall have the meanings indicated:

NYCRR — Codes, rules and regulations of the State of New York.

TOWN — The Town of Kingsbury.
- C. A list of "ministerial acts" performed by town employees are included herein under Appendix A.¹

§ 43-2. Compliance required.

No decision to carry out or approve an action, other than an action listed in § 43-3B hereof or Section 617.13 of Title 6 of NYCRR as a Type II action, shall be made by the Town Board or by any department, board, commission, officer or employee of the town until there has been full compliance with all requirements of this chapter and Part 617 of Title 6 of NYCRR; provided, however, that nothing herein shall be construed as prohibiting:

- A. The conducting of contemporaneous environmental, engineering, economic feasibility or other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action which do not commit the town to approve, commence or engage in such action.
- B. The granting of any part of an application which relates only to technical specifications and requirements, provided that no such partial approval shall entitle or permit the applicant to commence the action until all requirements of this chapter and Part 617 of Title 6 of NYCRR have been fulfilled.

¹ Editor's Note: Appendix A is included at the end of this chapter.

§ 43-3. Type I and Type II actions.

- A. Consistent with Part 617 of Title 6 of NYCRR and the criteria therein, the following actions, in addition to those listed in Section 617.12 of Title 6 of NYCRR as Type I actions, are likely to have a significant effect on the environment: none.
- B. Consistent with Part 617 of Title 6 of NYCRR and the criteria therein, the following actions, in addition to those listed in section 617.13(d) of the Title 6 of NYCRR as Type II actions are deemed not to have a significant effect on the environment:
 - (1) Construction of a minor subdivision, as defined in the Town Subdivision Ordinance.²
 - (2) General highway maintenance, including patching roads with blacktop or emulsion, ditching, brush cutting, burning of brush, plowing snow, salting of roads for ice control, using salt and calcium for road stabilization and dust control.
 - (3) Installing traffic control devices on existing streets.
- C. The Type I and Type II actions listed in Subsections A and B of this section may be explained by resolution of the Town Board, subsequent to a public hearing.

§ 43-4. Applications; filing of environmental assessment form.

For the purpose of assisting in the determination of whether an action may or will not have a significant effect on the environment, applicants for permits or other approvals shall file a written statement with the Town Planning Board setting forth the name of the applicant; the location of the real property affected, if any; a description of the nature of the proposed action; and the effect it may have on the environment. In addition, applicants may include a detailed statement of the reasons why, in their view, a proposed action may or will not have a significant effect on the environment. Where the action involves an ap-

² Editor's Note: See Ch. A84, Subdivision Regulations.

plication, the statement shall be filed simultaneously with the application for the action. The statement provided herein shall be upon an environmental assessment form prescribed by resolution of the Town Board and shall contain such additional relevant information as shall be required in the prescribed form. Such statement shall be accompanied by drawings, sketches and maps, if any, together with any other relevant explanatory material required by the town lead agency.

§ 43-5. Rendering of determination; time limitations.

- A. The town lead agency shall render a written determination on such application within fifteen (15) days following receipt of a complete application and statement; provided, however, that such period may be extended by mutual agreement of the applicant and the lead agency. The determination shall state whether such proposed action may or will not have a significant effect on the environment. The lead agency shall consider the criteria enumerated in § 617.11 of Part 617 in making such a determination. The lead agency may hold informal meetings with the applicant and may meet with and consult any other person for the purpose of aiding it in making a determination on the application.
- B. The time limitations provided in this chapter shall be coordinated with, to the extent practicable, other time limitations provided by statute or local law, ordinance or regulation of the town which pertains to the action in question.³

§ 43-6. Preparation, filing and circulation of determination of significance.

If the town lead agency determines that the proposed action is not an exempt action, not an action listed in § 43-3B hereof or Section 617.13 of Title 6 of NYCRR as a Type II action and that it will not have a significant effect on the environment, the lead

³ Editor's Note: Original Section 6, which immediately followed this section, which established a fee for an application for a determination of significance, was deleted at time of adoption of Code. For current provisions, see Ch. 46, Fees.

agency shall prepare, file and circulate such determination as provided in Section 617.10(b) of Title 6 of NYCRR, and thereafter the proposed action may be processed without further regard to this chapter. If the town lead agency determines that the proposed action may have a significant effect on the environment, the lead agency shall prepare, file and circulate such determination as provided in Section 617.10(b) of Title 6 of NYCRR, and thereafter the proposed action shall be reviewed and processed in accordance with the provisions of this chapter and Part 617 of Title 6 of NYCRR.

§ 43-7. Preparation of environmental impact statements.

Following a determination that a proposed action may have a significant effect on the environment, the lead agency shall, in accordance with the provisions of Part 617 of Title 6 of NYCRR:

A. Actions involving an applicant.

- (1) In the case of an action involving an applicant, immediately notify the applicant of the determination and shall request the applicant to prepare an environmental impact report in the form of a draft environmental impact statement. If the applicant decides not to submit an environmental impact report, the town lead agency may prepare or cause to be prepared the draft environmental impact statement or may terminate review of the proposed action.
- (2) The town lead agency will require an applicant to submit a fee to defray the expense to it of preparing a draft environmental impact statement or reviewing same if it is prepared by the applicant. Such fees shall be determined in conformance with Section 617.17 of Part 617 of Title 6 of NYCRR. The applicant shall provide an estimate of the project cost. Where the total project cost estimate exceeds one hundred thousand dollars (\$100,000.), elements of the cost estimate shall be certified by the appropriate professionals (i.e., professional engineers, licensed real estate appraisers, etc.).

B. Other actions.

- (1) In the case of an action not involving an applicant, the lead agency shall prepare a draft environmental impact statement.
- (2) Where a draft impact statement is required, the application for the action shall be decreed incomplete until the draft impact statement has been prepared, submitted, accepted and filed by the lead agency.

§ 43-8. Filing of notice of completion; publication.

Upon completion of a draft environmental impact statement prepared by or at the request of the lead agency, a notice of completion containing the information specified in Section 617.10(d) of Title 6 of NYCRR shall be prepared, filed and circulated as provided in Section 617.10(d). In addition, it shall be published in the official newspaper, if any, of the town or, if none, a newspaper having general circulation within the town, and a copy thereof shall also be posted on a signboard of the town. Copies of the draft environmental impact statement and the notice of completion shall be filed, sent and made available as provided in Section 617.10(e) of Title 6 of NYCRR.

§ 43-9. Public hearing.

If the town lead agency determines to hold a public hearing on a draft environmental impact statement, notice thereof shall be filed, circulated and sent in the same manner as the notice of completion and shall be published in the official newspaper of the town, if any, or, if none, in a newspaper having general circulation within the town at least ten (10) days prior to such public hearing. Such notice shall also state the place where substantive written comments on the draft environmental impact statement may be sent and the date before which such comments shall be received. The hearing shall commence no less than fifteen (15) calendar days nor more than sixty (60) calendar days after the filing of the draft environmental impact statement, except where a different

hearing date is required under other statutes which apply to the action under review.

§ 43-10. Change in determination of environmental significance.

If, on the basis of a draft environmental impact statement or a public hearing thereon the lead agency determines that an action will not have a significant effect on the environment, the proposed action may be processed without further regard to this chapter. In such a case, a negative declaration shall be issued in conformance with Section 617.10(b) of Part 617 of Title 6 of NYCRR.

§ 43-11. Final environmental impact statements; procedures.

- A. Except as otherwise provided herein, the lead agency shall prepare or cause to be prepared a final environmental impact statement in accordance with the provisions of Sections 617.8 and 617.14 of Part 617 of Title 6 of NYCRR, provided further that if the action involves an application, the lead agency may request the applicant to prepare the final environmental impact statement. Such final environmental impact statement shall be prepared within thirty (30) days after the close of any hearing or within forty-five (45) days after the filing of the draft environmental impact statement, whichever last occurs; provided, however, that the lead agency may extend this time as necessary to complete the statement adequately or where problems identified with the proposed action require material reconsideration or modification. Where the action involves an application, such final environmental impact statement shall be accompanied by the fee determined in conformance with Section 617.17 of Part 617 of Title 6 of NYCRR.
- B. A notice of completion of a final environmental impact statement shall be prepared, filed and sent in the same manner as provided in § 43-8 herein and shall be sent to all persons to whom the notice of completion of the draft environmental impact statement was sent. Copies of the

final environmental impact statement shall be filed and made available for review in the same manner as the draft environmental impact statement.

- C. No decision to carry out or approve an action which has been the subject of a final environmental impact statement by the lead agency or by any other agency shall be made until after the filing and consideration of the final environmental impact statement.
- D. In the case of an action involving an applicant, the lead agency's decision on whether or not to approve an action which has been the subject of a final environmental impact statement shall be made within thirty (30) calendar days after the filing of the final environmental impact statement except for good cause.
- E. No agency, whether lead agency or not, shall make a final decision to commence, engage in, approve, conditionally approve or deny, an approval of an action that has been the subject of a final federal or a final state environmental quality review environmental impact statement, until it has been given consideration to the final environmental impact statement; and:
 - (1) In the case of a decision to commence, engage in, approve or conditionally approve an action:
 - (a) Until it has made the specific findings prescribed in Subsection F of this section; and
 - (b) Prepared a written statement of the facts and conclusions relied upon in the environmental impact statement supporting its decision and indicating the social, economic and other factors and standards which formed the basis of its decision; or
 - (2) In the case of a decision not to commence, engage in or approve an action, it shall prepare a written statement of the facts and conclusions relied on in the environmental impact statement or comments provided in the review process supporting its decision.

F. When a lead agency decides to carry out or approve an action which may have a significant effect on the environment it shall make the following findings in a written determination:

- (1) Consistent with social, economic and other essential considerations from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the relevant environmental impact statement.
- (2) Consistent with social, economic and other essential considerations to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.
- (3) Consistent with social, economic and other essential considerations, to the maximum extent practicable, from among the reasonable alternatives thereto, the action to be carried out or approved is one which minimizes or avoids adverse environmental effects, including the effects disclosed in the relevant environmental impact statements.
- (4) All practicable means will be taken in carrying out or approving the action to minimize or avoid adverse environmental effects.

§ 43-12. Copies to be kept on file.

- A. For public information purposes, a copy of the determination shall be filed and made available as provided in Section 617.10 of Part 617 of Title 6 of NYCRR.
- B. The town shall maintain files open for public inspection of all notices of completion, draft and final environmental impact statements and written determinations prepared or caused to be prepared by the lead agency.

§ 43-13. Actions involving more than one agency.

Where more than one (1) agency is involved in an action, the procedures of Sections 617.6 and 617.7 of Part 617 of Title 6 of NYCRR and the appropriate section of this chapter shall be followed.

§ 43-14. Designation of lead agency.

The Town Planning Board is herein designated as the town lead agency.

Appendix A

Ministerial acts of town employees include but are not necessarily limited to issuance of the following:

- (1) Bingo licenses.
- (2) Conservation licenses (fishing, hunting and trapping).
- (3) Swimming pool family passes.
- (4) Marriage licenses.
- (5) Marriage transcripts.
- (6) Dog licenses.
- (7) Handicapped persons' parking permits.
- (8) Single structure building permits in conformance with applicable codes.
- (9) Certificates of occupancy.
- (10) Junk dealer's license.

Chapter 46

FEES

§ 46-1. Schedule of fees.

¹ [HISTORY: Adopted by the Town Board of the Town of Kingsbury 12-28-1983 by L.L. No. 1-1983. Amendments noted where applicable.]

§ 46-1. Schedule of fees.

The following schedule of fees is hereby established with respect to licenses, permits and activities required or regulated under the provisions of various chapters of the Code. Applications for the issuance of such licenses and permits shall be subject to the provisions of the specific chapter of the Code which is indicated for each type of license or permit. The business, activity or operation for which the license or permit is required shall be subject to all regulations set forth in the chapter to which reference is made.

Chapter/Type of License, Application or Permit	Fee
Ch. 24, Records	
Copies not exceeding 9 x 14 inches, per page	\$0.25
Ch. 38, Bingo	
License fee/per occasion	\$10.00
Ch. 40, Dogs	

-
1. Editor's Note: This chapter contains listings of all current Town fees except those established for matters pertaining to the Zoning Ordinance; see Ch. 80. Zoning.

Chapter/Type of License,**Application or Permit****Fee**

License fees/annual:

**[Amended 2-14-2000 by
L.L. No. 2-2000; 12-19-2005
by L.L. No. 7-2005]**

Spayed or neutered dogs \$10.00

Unspayed or unneutered dogs \$10.00

Local purebred fees

0-10 dogs \$25.00

11-25 dogs \$25.00

26 dogs or more \$25.00

Pickup fee **[Added****1-14-1991 by L.L. No.****3-1991; amended 2-14-2000****by L.L. No. 2-2000]**

First offense \$25.00

Second offense \$25.00 plus \$10.00

Third offense \$25.00 plus \$20.00

Fourth offense and thereafter \$25.00 plus \$30.00

Weekend and holiday rate \$25.00 plus \$10.00

Impoundment per day

As per contract

[Added 3-23-1987 by L.L.**No. 1-1987; amended****4-23-1990 by L.L. No.****1-1990; 9-14-1992 by L.L.****No. 2-1992; 3-8-1999 by L.L.****No. 3-1999]**

Ch. 43, Environmental Quality
Review

**Chapter/Type of License,
Application or Permit**

Fee

Application for determination of significance [Amended 12-27-1994 by L.L. No. 3-1994]

\$100.00

Ch. 47, Fire Prevention
[Amended 9-10-1990;
12-27-1994 by L.L. No.
3-1994; 12-19-2005 by L.L.
No. 7-2005]

Building permit application
fees

Site plan review \$200.00

Certificate of occupancy,
permanent \$50.00

Installation of
solid-fuel-burning appliance
(with certificate of
compliance) \$40.00

Installation of chimney
(with certificate of
compliance) \$40.00

Residential (one- or
two-family dwelling) \$0.15 per square foot

Garages and accessory
building (attached or
detached and including
porches and carports) \$0.15 per square foot

Additions or alterations
which increase the
habitable living space of a
residence \$0.15 per square foot

Swimming pools (with
certificate of compliance) \$40.00

Chapter/Type of License, Application or Permit	Fee
Variance (any type which requires Zoning Board action)	\$200.00
Farm buildings (any type construction)	\$0.05 per square foot, with a minimum fee of \$25.00
Multiple dwelling (multifamily unit of 3 or more)	\$0.20 per square foot, with a minimum fee of \$300.00
Commercial building	\$0.25 per square foot, with a minimum fee of \$300.00
Industrial building	\$0.25 per square foot, with a minimum fee of \$300.00
Signs	\$50.00
Mobile homes (either inside or outside a mobile home court)	\$100.00 each
Demolition permit	\$50.00
Septic systems (with certificate of compliance)	\$50.00
Building permit applications for the erection of alterations to a residential structure, for compliance with Subchapter B of Article 13 of the New York Uniform	No fee
Fire Prevention and Building Code, specifically §§ 1100, 1101 and 1102 [Added 4-28-1997 by L.L. No. 2-1997]	Fee
Chapter 55, Junkyards [Added 4-13-2009 by L.L. No. 3-2009]	
License application/annual	\$200.00
Ch. 58, Mobile Homes [Amended 12-27-1994 by L.L. No. 3-1994; 12-19-2005 by L.L. No. 7-2005]	

Chapter/Type of License, Application or Permit	Fee
Application for a mobile home park	\$300.00 plus \$20.00 per lot
Applications for annual renewal of permit for a mobile home park	\$25.00 plus \$5.00 per lot
Application for a supplemental permit for a mobile home park	\$100.00 plus \$20.00 per lot
Permit for a mobile home located outside a mobile home park	\$50.00
Application for a trailer camp	\$500.00 plus \$25.00 per lot
Application for annual renewal of permit for a trailer camp	\$50.00 plus \$10.00 per lot
Application for a supplemental permit to increase lots in a trailer camp	\$200.00 plus \$40.00 per lot
Chapter 61, Peddling and Soliciting License/annual [Amended 12-27-1994 by L.L. No. 3-1994]	\$25.00
Additional copies of license	\$2.00
Chapter A84, Subdivision Regulations [Amended 12-27-1994 by L.L. No. 3-1994; 12-19-2005 by L.L. No. 7-2005]	
Application for plat approval for minor subdivision	\$50.00 per lot
Sketch plan/preapplication review	\$50.00
Application for conditional approval of preliminary plat for major subdivision	\$200.00 plus \$50.00 for each lot in proposed subdivision
Inspection fee	\$25.00

**Chapter/Type of License,
Application or Permit****Fee**

Environmental review fees
(Type I action)

1/2 of 1% of cost of action

Chapter A87, Water District
Rules and Regulations, Article
I, Kingsbury Water District No.
1, No. 2 and No. 3 [Added
9-28-1987 by L.L. No. 4-1987;
amended 12-28-1992 by L.L.
No. 5-1992]

For service connections
constructed with the original
distribution system
construction

The net cost to the district
of the meter and
appurtenances

For inspection of meter
installation

\$15.00

For new service connections
made from the main to the curb
box:

3/4-inch service

\$400.00

1 1/2-inch service

\$500.00

Service turn-off

\$15.00

Service turn-on

\$15.00

Any other type of connection
will be made on a case-by-case
basis.

Rates:

Residential, 0 to 10,000
gallons

\$25.00 minimum, \$2.00 for
each additional 1,000
gallons

0 to 20,000 gallons

\$50.00 minimum, \$2.00 for
each additional 1,000
gallons

**Chapter/Type of License,
Application or Permit****Fee**

Penalties

Flat 10% on all payments
due not received by the 20th
of the month in which
payment is due

All standard water meters

\$100.00

Any special meter will be
charged on a case-by-case basis.

Chapter 46A**FIREARMS**

§ 46A-1. Title; statutory authority.

§ 46A-2. Purpose.

§ 46A-3. Definitions.

§ 46A-4. Prohibited acts.

§ 46A-5. Exceptions.

§ 46A-6. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 6-20-2005 by L.L. No. 2-2005. Amendments noted where applicable.]

GENERAL REFERENCES

Officers and employees — See Ch. 15.

Mass public assemblies — See Ch. 36.

Streets and sidewalks — See Ch. 66.

§ 46A-1. Title; statutory authority.

This chapter shall be known as “A Local Law Prohibiting the Possession of Firearms on Town Property.” It is adopted pursuant to § 10 of the Municipal Home Rule Law.

§ 46A-2. Purpose.

- A. This Town Board finds that firearms are dangerous weapons that often cause accidental deaths and injuries and are frequently used in the commission of crimes, particularly homicides and assaults.

- B. This Town Board finds that possession of firearms on Town property poses a serious threat to the health, safety, and general welfare of Town employees and other persons lawfully on the property of the Town.
- C. This Town Board also finds that possession of firearms by persons on Town property may seriously impair the performance of essential government functions by way of threat or intimidation to Town employees or others.
- D. Therefore, the purpose of this chapter is to provide for the safety, health, protection and general welfare of people in the Town of Kingsbury by prohibiting the possession of firearms on Town property.

§ 46A-3. Definitions.

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

FIREARM — A weapon which acts by the force of gunpowder or from which a shot is discharged by the force of an explosion or otherwise.

TOWN PROPERTY — Both real and personal property owned by the Town, including any vehicle, public building, structure, vacant land, park or playground owned, occupied, or operated by the Town of Kingsbury. Real property shall include but not be limited to.

- A. The Town Hall;
- B. The Highway Department buildings;
- C. The Kingsbury community pool; and
- D. The Robert Waite Memorial Park.

§ 46A-4. Prohibited acts.

No person shall possess a firearm on any Town property.

§ 46A-5. Exceptions.

The prohibition of possession of firearms on Town property shall not apply to:

- A. A police officer or peace officer authorized to use the same while acting within the scope of employment;
- B. A government employee or licensed security guard authorized or required by employment or office to possess the same while acting within the scope of such employment or office;
- C. A person in the military service of the State of New York or the United States when duly authorized to possess the same and acting within the scope of duty of such military service; and
- D. A Town official or Town employee, specifically authorized by the Town Board to possess a firearm on Town property, according to any and all restrictions or limitations which the Town Board may place upon such authorization.

§ 46A-6. Penalties for offenses.

A violation of any provision of this chapter shall be an unclassified misdemeanor, punishable by a fine not to exceed \$1,000 or by imprisonment for a term not to exceed one year, or by both such fine and imprisonment. Each day or part of a day on which a violation continues shall constitute a separate violation.

FIRE PREV. & BLDG. CONSTRUCTION

Chapter 47

FIRE PREVENTION AND
BUILDING CONSTRUCTION

ARTICLE I

Administration and Enforcement of Uniform Code

- § 47-1. Purpose and intent.
- § 47-2. Definitions.
- § 47-3. Code Enforcement Officer and inspectors.
- § 47-4. Building permits.
- § 47-5. Construction inspections.
- § 47-6. Stop-work orders.
- § 47-7. Certificates of occupancy.
- § 47-8. Notification regarding fire or explosion.
- § 47-9. Unsafe buildings and structures.
- § 47-10. Operating permits.
- § 47-11. Firesafety and property maintenance inspections.
- § 47-12. Complaints.
- § 47-13. Recordkeeping.
- § 47-14. Program review and reporting.
- § 47-15. Enforcement; penalties for offenses.
- § 47-16. Fees.
- § 47-17. Intermunicipal agreements.

ARTICLE II
Open Burning

- § 47-18. **Legislative intent.**
- § 47-19. **Definitions.**
- § 47-20. **Open burning prohibited.**
- § 47-21. **Exceptions.**
- § 47-22. **Prohibition during hazardous conditions.**
- § 47-23. **Penalties for offenses.**

ARTICLE III
On-Site Wastewater Treatment Systems

- § 47-24. **Applicability.**
- § 47-25. **Declaration of policy; adoption of regulations by reference.**

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

ARTICLE I
Administration and Enforcement of Uniform Code
[Adopted 12-18-2006 by L.L. No. 4-2006¹]

§ 47-1. **Purpose and intent.**

This article provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building

¹ Editor's Note: This local law also repealed former Chapter 47, Part 1, Fire Prevention, adopted 6-10-1985 by L.L. No. 3-1985, which consisted of Articles I through III, §§ 47-1 through 47-13; and renumbered former Articles IV and V of this chapter and their associated sections to follow consecutively as Articles II and III, §§ 47-18 through 47-25, respectively.

Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Town of Kingsbury. This article is adopted pursuant to Section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this article, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this article.

§ 47-2. Definitions.

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

BUILDING PERMIT — A permit issued pursuant to § 47-4 of this article. The term "building permit" shall also include a building permit which is renewed, amended or extended pursuant to any provision of this article.

CERTIFICATE OF OCCUPANCY — A certificate issued pursuant to § 47-7B of this article.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer appointed pursuant to § 47-3B of this article.

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

COMPLIANCE ORDER — An order issued by the Code Enforcement Officer pursuant to § 47-15A of this article.

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

INSPECTOR — An inspector appointed pursuant to § 47-3D of this article.

OPERATING PERMIT — A permit issued pursuant to § 47-10 of this article. The term "operating permit" shall also include an operating permit which is renewed,

amended or extended pursuant to any provision of this article.

PERMIT HOLDER — The person to whom a building permit has been issued.

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

STOP-WORK ORDER — An order issued pursuant to § 47-6 of this article.

TEMPORARY CERTIFICATE — A certificate issued pursuant to § 47-7D of this article.

TOWN — The Town of Kingsbury.

TOWN BOARD — The Town Board of the Town of Kingsbury.

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

§ 47-3. Code Enforcement Officer and inspectors.

- A. The Office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this article. The Code Enforcement Officer shall have the following powers and duties:
- (1) To receive, review, and approve or disapprove applications for building permits, certificates of occupancy, temporary certificates and operating permits, and the plans, specifications and construction documents submitted with such applications;
 - (2) Upon approval of such applications, to issue building permits, certificates of occupancy,

temporary certificates and operating permits, and to include in such building permits, certificates of occupancy, temporary certificates and operating permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;

- (3) To conduct construction inspections, inspections to be made prior to the issuance of building permits, certificates of occupancy, temporary certificates and operating permits, firesafety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this article;
- (4) To issue stop-work orders;
- (5) To review and investigate complaints both on his or her own initiative, and as may be filed in his or her office by any person;
- (6) To issue orders pursuant to Subsection A of § 47-15, Enforcement; penalties for offenses, of this article;
- (7) To maintain records;
- (8) To collect fees as set by the Town Board of the Town of Kingsbury;
- (9) To pursue administrative enforcement actions and proceedings;
- (10) In consultation with this Town's Attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this article, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this article; and
- (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this article.

- B. The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this article.
- D. One or more inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this article. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- E. The compensation for the Code Enforcement Officer and inspectors shall be fixed from time to time by the Town Board.

§ 47-4. Building permits.

- A. Building permits required. Except as otherwise provided in Subsection B of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Code Enforcement Officer.
- B. Exemptions. No building permit shall be required for work in any of the following categories:
 - (1) Construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.38 square meters);
 - (2) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (3) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
 - (4) Installation of fences which are not part of an enclosure surrounding a swimming pool;
 - (5) Construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;

- (6) Construction of temporary motion-picture, television and theater stage sets and scenery;
 - (7) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (8) Installation of partitions or movable cases less than five feet nine inches in height;
 - (9) Painting, wallpapering, tiling, carpeting, or other similar finish work;
 - (10) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
 - (11) Replacement of any equipment, provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
 - (12) Repairs, provided that such repairs do not involve:
 - a) the removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component; b) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; c) the enlargement, alteration, replacement or relocation of any building system; or d) the removal from service of all or part of a fire protection system for any period of time.
- C. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection B of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code, or the Zoning Law of the Town of Kingsbury.
- D. Applications for building permits. Applications for a building permit shall be made in writing on a form

provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

- (1) A description of the proposed work;
- (2) The Tax Map number and the street address of the premises where the work is to be performed;
- (3) The occupancy classification of any affected building or structure;
- (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
- (5) At least two sets of construction documents (drawings and/or specifications) which: a) define the scope of the proposed work; b) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; c) indicate with sufficient clarity and detail the nature and extent of the work proposed; d) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and e) where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.
- (6) If applicable, an original copy of the stormwater pollution prevention plan filed with the Code En-

forcement Officer acting in his or her capacity as the Stormwater Management Officer (SMO) in accordance with the Town of Kingsbury stormwater regulations.

- E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection D(5) of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.
- F. Issuance of building permits. An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the

Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.

- I. Time limits. Building permits shall become invalid unless the authorized work is commenced within 12 months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.
- J. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- K. Fee. The fee specified in or determined in accordance with the provisions set forth in § 47-16, Fees, of this article must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

§ 47-5. Construction inspections.

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an inspector authorized by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
- (1) Work site prior to the issuance of a building permit;
 - (2) Footing and foundation;
 - (3) Preparation for concrete slab;
 - (4) Framing;
 - (5) Building systems, including underground and rough-in;
 - (6) Fire-resistant construction;
 - (7) Fire-resistant penetrations;
 - (8) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
 - (9) Energy Code compliance; and
 - (10) A final inspection after all work authorized by the building permit has been completed.
- C. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of

the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 47-16, Fees, of this article must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 47-6. Stop-work orders.

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (3) Any work for which a building permit is required which is being performed without the required building permit or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall: 1) be in writing; 2) be dated and signed by the Code Enforcement Officer; 3) state the reason or reasons for issuance; and 4) if applicable, state the conditions which

must be satisfied before work will be permitted to resume.

- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit holder, on the permit holder) personally or by registered mail at the address provided on the application for the building permit. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by registered mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.
- D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-work order.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 47-15, Enforcement; penalties for offenses, of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

§ 47-7. Certificates of occupancy.

- A. Certificates of occupancy required. A certificate of occupancy shall be required for any work which is the subject of a building permit and for all structures, buildings or portions thereof which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy.
- B. Issuance of certificates of occupancy. The Code Enforcement Officer shall issue a certificate of occupancy if the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the certificate of occupancy, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy:
 - (1) A written statement of structural observations and/or a final report of special inspections, and
 - (2) Flood hazard certifications.
- C. Contents of certificates of occupancy. A certificate of occupancy shall contain the following information:
 - (1) The building permit number, if any;

- (2) The date of issuance of the building permit, if any;
- (3) The name, address and Tax Map number of the property;
- (4) If the certificate of occupancy is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy is issued;
- (5) The use and occupancy classification of the structure;
- (6) The type of construction of the structure;
- (7) The assembly occupant load of the structure, if any;
- (8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
- (9) Any special conditions imposed in connection with the issuance of the building permit; and
- (10) The signature of the Code Enforcement Officer issuing the certificate of occupancy and the date of issuance.

D. Temporary certificate. The Code Enforcement Officer shall be permitted to issue a temporary certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit. However, in no event shall the Code Enforcement Officer issue a temporary certificate unless the Code Enforcement Officer determines: 1) that the building or structure, or the portion thereof covered by the temporary certificate, may be occupied safely; 2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational; and 3) that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a temporary certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or

to further the purposes and intent of the Uniform Code. A temporary certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate. During the specified period of effectiveness of the temporary certificate, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy or a temporary certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 47-16, Fees, of this article must be paid at the time of submission of an application for a certificate of occupancy or for a temporary certificate.

§ 47-8. Notification regarding fire or explosion.

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

§ 47-9. Unsafe buildings and structures.

Unsafe structures and equipment in this Town shall be identified and addressed in accordance with the procedures

established by Chapter 39 of the Code of the Town of Kingsbury, as now in effect or as hereafter amended from time to time.

§ 47-10. Operating permits.

A. Operating permits required.

- (1) Operating permits shall be required for conducting the activities or using the categories of buildings listed below:
 - (a) Manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR 1225.1;
 - (b) Hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a by-product, fruit and crop ripening, and waste handling;
 - (c) Use of pyrotechnic devices in assembly occupancies;
 - (d) Buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
 - (e) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board.
- (2) Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection A shall be required to obtain an operating permit prior to commencing such activity or operation.

- B. Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- C. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit.
- D. Multiple activities. In any circumstance in which more than one activity listed in Subsection A of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single operating permit to apply to all such activities.
- E. Duration of operating permits. Operating permits shall remain in effect until reissued, renewed, revoked, or suspended.
- F. Revocation or suspension of operating permits. If the Code Enforcement Officer determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code or that any person has caused a substantial change in the operations giving rise to the issuance of the operating permit, such operating permit shall be revoked or suspended.

- G. Fee. The fee specified in or determined in accordance with the provisions set forth in § 47-16, Fees, of this article must be paid at the time of submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

§ 47-11. Firesafety and property maintenance inspections.

- A. Inspections required. Firesafety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at the following intervals:
- (1) Firesafety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every 12 months.
 - (2) Firesafety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every 12 months.
 - (3) Firesafety and property maintenance inspections of all multiple dwellings not included in Subsection A(1) or (2), and all nonresidential buildings, structures, uses and occupancies not included in Subsection A(1) or (2), shall be performed at least once every 12 months.
- B. Inspections permitted. In addition to the inspections required by Subsection A, a firesafety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at any time upon: 1) the request of the owner of the property to be inspected or an authorized agent of such

owner; 2) receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or 3) receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subsection shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

C. OFPC inspections. Nothing in this section or in any other provision of this article shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (OFPC) and the New York State Fire Administrator under Executive Law § 156-e and Education Law § 807-b. Notwithstanding any other provision of this section to the contrary:

- (1) The Code Enforcement Officer shall not perform firesafety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs firesafety and property maintenance inspections of such building or structure at least once every 12 months;
- (2) The Code Enforcement Officer shall not perform firesafety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs firesafety and property maintenance inspections of such building or structure at least once every 12 months;
- (3) The Code Enforcement Officer shall not perform firesafety and property maintenance inspections of a multiple dwelling not included in Subsection A(1) or (2) of this section if OFPC performs firesafety and

property maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in Subsection A(3) of this section; and

- (4) The Code Enforcement Officer shall not perform firesafety and property maintenance inspections of a nonresidential building, structure, use or occupancy not included in Subsection A(1) or (2) of this section if OFPC performs firesafety and property maintenance inspections of such nonresidential building, structure, use or occupancy at intervals not exceeding the interval specified in Subsection A(3) of this section.

D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 47-16, Fees, of this article must be paid prior to or at the time each inspection is performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

§ 47-12. Complaints.

The Code Enforcement Officer shall review and investigate complaints made by any person or observed by himself or herself which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this article, or any other local law or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

- A. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- B. If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or

otherwise proceeding in the manner described in § 47-15, Enforcement; penalties for offenses, of this article;

- C. If appropriate, issuing a stop-work order;
- D. If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 47-13. Recordkeeping.

- A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement personnel, including records of:
 - (1) All applications received, reviewed and approved or denied;
 - (2) All plans, specifications and construction documents approved;
 - (3) All building permits, certificates of occupancy, temporary certificates, stop-work orders, and operating permits issued;
 - (4) All inspections and tests performed;
 - (5) All statements and reports issued;
 - (6) All complaints received;
 - (7) All investigations conducted;
 - (8) All other features and activities specified in or contemplated by §§ 47-4 through 47-12, inclusive, of this article; and
 - (9) All fees charged and collected.
- B. All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or

appurtenances thereto, shall be retained for at least the minimum time period so required by state law and regulation.

§ 47-14. Program review and reporting.

- A. The Code Enforcement Officer shall annually submit to the Town Board a written report and summary of all business conducted by the Code Enforcement Officer and the inspectors, including a report and summary of all transactions and activities described in § 47-13, Recordkeeping, of this article and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code.
- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials this Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of this Town in connection with administration and enforcement of the Uniform Code.

§ 47-15. Enforcement; penalties for offenses.

- A. Compliance orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this article. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a compliance order. The compliance order shall: 1) be in writing; 2) be dated

and signed by the Code Enforcement Officer; 3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this article; 4) specify the provision or provisions of the Uniform Code, the Energy Code, or this article which is/are violated by the specified condition or activity; 5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; 6) direct that compliance be achieved within the specified period of time; and 7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the compliance order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail. The Code Enforcement Officer shall be permitted, but not required, to cause the compliance order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.

- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- C. Civil penalties. In addition to those penalties prescribed by state law, any person who violates any provision of the Uniform Code, the Energy Code or this article, or any term or condition of any building permit, certificate of occupancy, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article, shall be liable to a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this

subsection shall be recoverable in an action instituted in the name of this Town.

- D. Injunctive relief. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this article, or any term or condition of any building permit, certificate of occupancy, temporary certificate, stop-work order, operating permit, compliance order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this article, or any stop-work order, compliance order or other order obtained under the Uniform Code, the Energy Code or this article, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without authorization from the Town Board.
- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 47-6, Stop-work orders, of this article, in any other section of this article, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § 47-6, Stop-work orders, of this article, in any other section of

this article, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of § 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of § 382 of the Executive Law.

§ 47-16. Fees.

A fee schedule shall be established by resolution of the Town Board. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of building permits, amended building permits, renewed building permits, certificates of occupancy, temporary certificates, operating permits, firesafety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this article.

§ 47-17. Intermunicipal agreements.

The Town Board may, by resolution, authorize the Supervisor of this Town to enter into an agreement, in the name of this Town, with other governments to carry out the terms of this article, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

ARTICLE II
Open Burning
[Adopted 11-19-2001 by L.L. No. 3-2001]

§ 47-18. Legislative intent.

The open burning of refuse on the surface of the ground, in pits or in trash burners or barrels creates offensive smoke and odors and results in a residue of unburned refuse which decays and causes offensive odors and attracts flies, rodents and vermin, and creates the unreasonable risks of harm from brush and forest fires, causes air pollution and is generally an unsafe and unhealthy practice, is a menace to public health and should be prohibited.

§ 47-19. Definitions.

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

OPEN BURNING — Any fire where the products of combustion are emitted into the open air and are not directed through a stack or chimney connected to a structure as defined by the New York State Uniform Fire Prevention and Building Code.

REFUSE — All putrescible and imputrescible wastes, including but not limited to garbage, rubbish, yard trimmings, leaves, ashes, street cleanings, dead animals, abandoned vehicles, construction debris, wood, plastics, cans, paper and paper products, rags and tires.

§ 47-20. Open burning prohibited.

No person shall cause, suffer, allow or permit open burning of refuse either on the ground or in barrels, trash burners, pits or outdoor fireplaces in the Town of Kingsbury.

§ 47-21. Exceptions.

Exceptions shall be:

- A. Open fire used exclusively for the purpose of preparing food will be permitted, provided that the fire is properly contained, appropriately sized, and temporary in nature.
- B. Open fires used in conjunction with any normal farm operations as defined in § 35-4 of this Code.
- C. The burning of yard waste consisting of leaves, trimmings and brush less than three inches in diameter is permitted upon verbal or written notification of intent to burn being given to the Office of Code Enforcement. Fires must be attended by a competent adult and must be no closer than 30 feet to a public road or highway and no closer than 50 feet to any structure. Burning is prohibited when weather conditions would create a fire spread hazard or would allow heavy smoke to encroach upon neighboring premises.
- D. Outdoor recreational fires are permitted as long as they are contained so as to limit the size of the fire to three feet in diameter and no more than three feet in height.

§ 47-22. Prohibition during hazardous conditions.

The Fire Chief, his designee, or the Code Enforcement Officer may prohibit any or all outdoor fires when atmospheric or local circumstances make such fires hazardous.

§ 47-23. Penalties for offenses.

A violation of any of the provisions of this article shall, upon conviction thereof, subject the offending party to a fine not to exceed \$1,000.

ARTICLE III
On-Site Wastewater Treatment Systems
[Adopted 1-7-2002 by L.L. No. 1-2002]

§ 47-24. Applicability.

This article shall apply to the certain aspects of the Code of the Town of Kingsbury.

§ 47-25. Declaration of policy; adoption of regulations by reference.

The Town Board of the Town of Kingsbury has reviewed the Town Code of the Town of Kingsbury. In this regard, the Town Board, after due deliberation, wishes to adopt by express reference the New York State Regulations for On-Site Wastewater Treatment Systems, contained in 10 NYCRR App. 75-A. Said adoption shall be placed in Chapter 47 of the Code of the Town of Kingsbury.

FLOOD DAMAGE PREVENTION

Chapter 48

FLOOD DAMAGE PREVENTION

- § 48-1. Findings.
- § 48-2. Purpose.
- § 48-3. Objectives.
- § 48-4. Definitions and word usage.
- § 48-5. Applicability.
- § 48-6. Basis for establishing areas of special flood hazard.
- § 48-7. Effect on other laws; interpretation.
- § 48-8. Penalties for offenses; other remedies; notification of noncompliance.
- § 48-9. Warning and disclaimer of liability.
- § 48-10. Designation of local administrator.
- § 48-11. Development permit.
- § 48-12. Duties of local administrator.
- § 48-13. General provisions for flood hazard reduction.
- § 48-14. Specific provisions for flood hazard reduction.
- § 48-15. Floodways.
- § 48-16. Appeals.
- § 48-17. Variances.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 5-27-87 as L.L. No. 2-1987.¹ Amendments noted where applicable.]

¹ Editor's Note: This local law superseded former Ch. 48, Flood Hazard Areas, which consisted of the following: Art. I, Flood Hazard Reduction, adopted 3-11-75 by resolution; and Art. II, Review of Development Proposals, adopted 4-22-78 by resolution.

GENERAL REFERENCES

Environmental quality review — See Ch. 43.

Mobile homes — See Ch. 58.

Zoning — See Ch. 80.

Subdivision regulations — See Ch. A84.

§ 48-1. Findings.

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

§ 48-2. Purpose.

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

- 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.

- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 48-3. Objectives.

The objectives of this chapter are:

- A. To protect human life and health.
- B. To minimize expenditure of public money for costly flood-control projects.
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. To minimize prolonged business interruptions.
- E. To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard.
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood-blight areas.
- G. To provide that developers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 48-4. Definitions and word usage.

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

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 or VO Zone on a community's Flood Insurance Rate Map (FIRM), with base flood depths from one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

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 through A99, V, VO, VI or V1 through 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 — Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR — The same meaning as "basement."

COASTAL HIGH-HAZARD AREA — The area subject to high-velocity waters, including but not limited to hurricane wave wash. The area is designated on a FIRM as Zone V1 through V30, VE, V0 or V.

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 located within the area of special flood hazard.

ELEVATED BUILDING — A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers) or sheer walls.

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

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any surface.

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 defined but no water surface elevation data is 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 — The official report provided by the Federal Emergency Management Agency. The report contains flood profiles as well as the Flood Boundary - Floodway Map and the water surface elevations of the base flood.

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."

FLOOR — The top surface of an enclosed area in a building, including basement, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction.

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. The term does not include long-term storage, manufacture, 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.

LOWEST FLOOR — Lowest level, including basement or cellar, of the lowest enclosed area. An unfinished or flood-resistant enclosure usable solely for the parking of vehicles, building access or storage in an area other than a basement or cellar 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 one (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 also includes park trailers, travel trailers and similar transportable structures placed on site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other data 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 elevations within the floodplain.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of this chapter.

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

PRINCIPALLY ABOVE GROUND — That at least fifty-one percent (51%) of the actual cash value of the structure, excluding land value, is above ground.

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 § 48-12B of this chapter.

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

START OF CONSTRUCTION — The initiation, excluding planning and design, of any phase of a project or physical alteration of the property, and shall include land preparation, such as clearing, grading and filling; the installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials.

STRUCTURE — A walled and roofed building, a manufactured home or a gas- or liquid-storage tank that is principally above ground.

SUBSTANTIAL IMPROVEMENT:

- (1) Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent

(50%) of the market value of the structure, excluding land values, either:

- (a) Before the improvement or repair is started; or
 - (b) If the structure has been damaged and is being restored, before the damage occurred.
- (2) For the purposes of this definition, "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:
- (a) Any project for the improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
 - (b) Any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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.

§ 48-5. Applicability.

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

§ 48-6. Basis for establishing areas of special flood hazard.
[Amended 6-12-89 by L.L. No. 1-1989]

- A. The areas of special flood hazard have been identified by the Federal Emergency Management Agency on Flood Insurance Rate Maps enumerated on Map Index No. 361235 0001-0004, dated September 7, 1979.

- B. The above documents are hereby adopted and declared to be a part of this chapter and are filed at the Town Clerk's office, Town of Kingsbury.

(Cont'd on page 4809)

§ 48-7. Effect on other laws; interpretation.

- A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.
- 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.

§ 48-8. Penalties for offenses; other remedies; notification of noncompliance.

No structure will hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than two hundred fifty dollars (\$250.) or be imprisoned for not more than fifteen (15) days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein shall prevent the Town of Kingsbury from taking such 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 §§ 48-16 and 48-17, will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 48-9. 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 areas of special flood hazard or that uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Kingsbury, 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.

§ 48-10. Designation of local administrator.

The Zoning Administrator of the Town of Kingsbury is hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 48-11. Development permit.

A development permit shall be obtained before the start of construction of any other development within the area of special flood hazard as established in § 48-6. Application for a development permit shall be made on forms furnished by the local administrator and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures; fill; storage of materials; drainage facilities; and the location of the foregoing.

A. Application stage. The following information is required where applicable:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor, including basement or cellar, of all structures.
- (2) Elevation, in relation to mean sea level, to which any nonresidential structure will be floodproofed.

- (3) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 48-13C(1).
 - (4) Certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 48-14B.
 - (5) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- B. Construction stage. Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the as-built elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certificate 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.

§ 48-12. Duties of local administrator.

Duties of the local administrator shall include but not be limited to:

A. Permit application review. The local administrator shall:

- (1) Review all development permit applications to determine that the requirements of this chapter have been satisfied.
- (2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

- (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purpose of this chapter, "adversely affects" means physical damage to adjacent properties. A hydraulic engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse affect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse affect, then flood damage mitigation measures shall be made a condition of the permit.
 - (4) Review all development permits for compliance with the provisions of § 48-13E, Encroachments.
- B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 48-6, Basis for establishing areas of special flood hazard, 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 § 48-13D(4), in order to administer § 48-14, Specific provisions for flood hazard reduction, and § 48-15, Floodways.
- C. Information to be obtained and maintained. The local administrator shall:
- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar, of all new or substantially improved structures and whether or not the structure contains a basement or cellar.
 - (2) For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed.

(b) Maintain the floodproofing certifications required in §§ 48-13 and 48-14.

(3) Maintain for public inspection all records pertaining to the provisions of this chapter, including variances, when granted, and certificates of compliance.

D. Alteration of watercourses. The local administrator shall:

- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of FHBM, FIRM or FBFM boundaries.

- (1) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
- (2) Base flood elevation data established pursuant to § 48-6 and/or § 48-12B, when available, shall be used to accurately delineate the area of special flood hazard.
- (3) The local administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the area of special flood hazard when base flood elevations are not available.

F. Stop-work orders.

- (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 48-8 of this chapter.
- (2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the

approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 48-8 of this chapter.

G. 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 that the development is in compliance with the requirements of this chapter.

H. Certificate of compliance.

- (1) It shall be unlawful to use or 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 partially 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 either the development permit or the approved variance.
- (2) All other development occurring within the area of special flood hazard will have, upon completion, a certificate of compliance issued by the local administrator.
- (3) All certificates shall be based upon the inspections conducted subject to § 48-12G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

§ 48-13. General provisions for flood hazard reduction.

In all areas of special flood hazard, the following standards are required:

A. Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not to be limited to the use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction materials and methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

- (1) Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
- (2) All new and replacement water supply systems shall be designed to minimize the infiltration of floodwaters into the system.
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate the infiltration of floodwaters.
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed developments, including proposals for manufactured home parks and subdivisions, greater than either fifty (50) lots or five (5) acres.

E. Encroachments.

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the areas of special flood hazard set forth in § 48-12A(3). This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 48-12B or 48-13D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.
- (3) In all areas of special flood hazard where floodway data is provided or available pursuant to § 48-12B, the requirements of § 48-15, Floodways, shall apply.

§ 48-14. Specific provisions for flood hazard reduction.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 48-6, Basis for establishing areas

of special flood hazard, and § 48-12B, Use of other base flood and floodway data, the following standards are required:

A. Residential construction. New construction and substantial improvements of any residential structure shall:

- (1) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation.
- (2) Have fully enclosed areas below the lowest floor that 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) A minimum of two (2) openings having a total net area of not less than one (1) square inch shall be required for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

B. Nonresidential construction.

- (1) New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated to or above the base flood elevation or be floodproofed to the base flood level.
 - (a) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls.

Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

- [1] A minimum of two (2) openings having a total net area of not less than one (1) square inch shall be required for every square foot of enclosed area subject to flooding.
- [2] The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
- [3] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(b) If the structure is to be floodproofed:

- [1] A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- [2] A licensed professional engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level, to which the structure is floodproofed.

- (2) The local administrator shall maintain on record a copy of all such certificates noted in this section.

C. Construction standards for areas of special flood hazard without base flood elevations.

- (1) New construction or substantial improvements of structures, including manufactured homes, shall have the

lowest floor, including basement, elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.

- (2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - (a) A minimum of two (2) openings having a total net area of not less than one (1) square inch shall be required for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

§ 48-15. Floodways.

Located within areas of special flood hazard are areas designated as floodways (see definition, § 48-4). The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by § 48-12B, all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 48-16. Appeals.

- A. The Planning Board as established by the Town of Kingsbury shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Planning Board 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 Planning Board 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 Planning Board 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.
 - (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.
- E. Upon consideration of the factors of § 48-16D and the purpose of this chapter, the Planning Board 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.

§ 48-17. Variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($\frac{1}{2}$) 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 § 48-16D(1) through (12) have been fully considered. As the lot size increases beyond the one-half ($\frac{1}{2}$) acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in this chapter.
- 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 minimize flood damages during the base flood and create no additional threats 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:
- (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.
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- G. Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk.

Chapter 49

FURNACES, RESIDENTIAL OUTDOOR

§ 49-1. Purpose.

§ 49-2. Definition.

§ 49-3. Regulations.

§ 49-4. Authority.

§ 49-5. Variance.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 9-20-2004 by L.L. No. 1-2004. Amendments noted where applicable.]

§ 49-1. Purpose.

The Kingsbury Town Board has reviewed various complaints concerning the operation of residential outdoor furnaces in the Town of Kingsbury ("Town"). The Town perceives that the unregulated use of residential outdoor furnaces may pose a health risk to the residents within the Town. The Town Board also has questions as to whether such use creates a nuisance relative to the smoke emitted from said furnaces. As such, the Town believes that regulation by local law of such uses is in the Town's best interest. The Town is concerned with the public health, safety and welfare in this regard.

§ 49-2. Definition.

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

RESIDENTIAL OUTDOOR FURNACE — Any residential equipment, device or apparatus, or any part

thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space or water source.

§ 49-3. Regulations.

- A. All outdoor furnaces shall be installed, operated and maintained in strict conformance with manufacturer's instructions and the regulations promulgated hereunder. In the event of a conflict, the regulations promulgated hereunder shall apply, unless the manufacturer's instructions are stricter than the regulations promulgated hereunder, in which case the manufacturer's instructions shall apply.
- B. Substantive requirements. All outdoor furnaces shall be installed, operated and maintained pursuant to the following conditions:
 - (1) Fuel. Fuel shall be only natural untreated wood or fuels specifically permitted by the manufacturer. Notwithstanding the foregoing, the following fuels are strictly prohibited:
 - (a) The burning of processed wood products and other non-wood products;
 - (b) Kerosene;
 - (c) Garbage;
 - (d) Painted wood and/or treated wood;
 - (e) Any other item not specifically allowed by the manufacturer or this subsection.
 - (2) Chimney heights and furnace location:
 - (a) Minimum setback from nearest property line: 25 feet.

- (b) The chimney height shall be determined by the distance from the nearest residence not served by the furnace as follows:

Distance From Nearest Residence (feet)	Chimney Height (feet)
50 or less	Height to the eave line of residence not served, plus 2
50 to 100	75% of the eave line, plus 2
100 or more	No less than 15

- (c) The minimum chimney height shall be 15 feet unless greater by the above formula, in any case.

C. Permits.

- (1) No person shall allow, maintain or use an outdoor wood furnace in the Town of Kingsbury without first having obtained a permit from the Town Code Enforcement Officer on the forms prescribed by such official. A fee of \$35 shall be charged.
- (2) Existing outdoor furnaces. All existing outdoor furnaces shall immediately comply with all manufacturer's specifications and § 49-3B(1), entitled Fuel, and within 30 days from the effective date of this chapter comply with the chimney heights contained herein. In addition, all owners shall apply for and receive a permit within one year of the effective date of this chapter.
- (3) Violations. A permit may be suspended in the event the owner fails to comply with this chapter. A violation of this chapter shall be a violation under the Penal Code.

§ 49-4. Authority.

This chapter is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law.

§ 49-5. Variance.

Where the Town finds that extraordinary hardship will occur from the enforcement of this chapter, upon application to the Town Board, said Town Board, may vary the regulations contained herein to afford substantial justice, provided that such variation will not have the effect of nullifying the intent and purpose of this chapter.

Chapter 50

GAMES OF CHANCE

§ 50-1. Definitions.

§ 50-2. Purpose.

§ 50-3. Conduct authorized.

§ 50-4. Restrictions.

§ 50-5. Games on Sundays.

§ 50-6. Penalties for offenses.

§ 50-7. When effective.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 9-12-88 as L.L. No. 8-1988.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Bingo — See Ch. 38.

§ 50-1. Definitions.

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

AUTHORIZED ORGANIZATION — An authorized organization as defined in Subdivision 4 of § 186 of the General Municipal Law.

GAMES OF CHANCE — A game of chance as defined in Subdivision 3 of § 186 of the General Municipal Law.

¹ Editor's Note: This local law passed at referendum held 11-8-88.

§ 50-2. Purpose.

The Town Board of the Town of Kingsbury hereby declares that the raising of funds for the promotion of bona fide charitable, educational, scientific, health, religious and patriotic causes and undertakings is in the public interest.

§ 50-3. Conduct authorized.

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

§ 50-4. Restrictions.

The conduct of games of chance authorized by this chapter shall be subject to those restrictions contained in Article 9-A of the General Municipal Law and in other applicable statutory and case law and the rules and regulations of the New York State Racing and Wagering Board.

§ 50-5. Games on Sundays.

Games of chance on the first day of the week, commonly known as "Sunday," may be conducted pursuant to this chapter and appropriate statutes and regulations.

§ 50-6. Penalties for offenses.

Any person, association, corporation or organization who or which shall make any false statement in any application for any license authorized to be issued for the conduct of games of chance in the Town of Kingsbury or in any statement annexed thereto or who or which

shall violate any of the provisions and restrictions contained in Article 9-A of the General Municipal Law and this chapter shall be guilty of a misdemeanor and shall forfeit any license issued to it under this chapter authorizing the conduct of games of chance in the Town of Kingsbury and shall be ineligible to apply for another license for at least one (1) year hereafter.

§ 50-7. When effective.

Except as may otherwise be provided in Article 9-A of the General Municipal Law of the State of New York, the provisions of this chapter shall not be effective in the Town of Kingsbury, County of Washington, State of New York, unless and until a proposition submitted at a general or special election shall be approved by a vote of the majority of the qualified electors in said Town of Kingsbury, County of Washington, State of New York. Upon an approving vote, this chapter shall take effect immediately upon the filing of said chapter with the office of the Secretary of State.

Chapter 52

HAZARDOUS AND OTHER WASTES

§ 52-1. Findings and purpose.

§ 52-2. Definitions.

§ 52-3. Restrictions.

§ 52-4. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 9-12-88 as L.L. No. 7-1988.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Environmental quality review — See Ch. 43.

§ 52-1. Findings and purpose.

- A. It is hereby determined by the Town Board of the Town of Kingsbury that the landfilling, treatment and/or incineration of solid, liquid or any other waste within the Town of Kingsbury is likely to constitute a hazard and menace to the health and safety of the residents of the Town of Kingsbury.
- B. It is further determined that littering and other types of dumping of solid, liquid or other waste within the Town of Kingsbury is likely to constitute a hazard and menace to the health and safety of the residents of the Town of Kingsbury. [Added 5-29-1990 by L.L. No. 3-1990²]
- C. It is further determined that the citizens of the Town of Kingsbury have vested legislative authority in its Town Board and that said Board is entrusted, among other duties, with the

¹ Editor's Note: This local law passed at referendum held 11-8-88.

² Editor's Note: This local law also provided for the renumbering of former Subsections B and C as C and D, respectively.

protection of the order, conduct, safety, health and well-being of persons and property therein and the protection and enhancement of said town's physical and visual environment.

- D. It is further determined that the town, by local law, may exercise its police power to regulate all aspects of solid, liquid or any other waste within the Town of Kingsbury and to make appropriate rules, regulations, resolutions and laws intended to promote the general well-being of the persons and property situated therein.

§ 52-2. Definitions.

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

LITTERING — The disposal of solid, liquid or other waste by dumping adjacent to any public or private road or thoroughfare and the disposal of solid, liquid or other waste in a waste receptacle without the approval or authorization of the owner of said receptacle. [Added 5-29-1990 by L.L. No. 3-1990]

PERSON — Includes any individual, firm, partnership, corporation, municipality, association of persons or governmental agency.

§ 52-3. Restrictions. [Amended 5-29-1990 by L.L. No. 3-1990]

It shall hereafter be unlawful for any person or entity to engage in littering or to landfill, treat, incinerate and/or store solid, liquid or other waste, including but not limited to garbage, refuse, industrial and commercial waste, rubbish, ashes, incinerator residue, demolition and construction debris and all hazardous wastes, within the Town of Kingsbury. Nothing herein shall be construed to restrict or impede any lawfully conducted solid waste management programs within the Town of Kingsbury that are authorized by the Town Board of the Town of Kingsbury.

§ 52-4. Penalties for offenses. [Amended 5-29-1990 by L.L. No. 3-1990]

Any person violating the provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not less than five hundred dollars (\$500.) for each offense (each day a violation of the terms of this chapter continues constitutes a separate offense) or by imprisonment of not more than thirty (30) days, or both.

HEALTH AND SANITATION

Chapter 53

HEALTH AND SANITATION

- § 53-1. Abatement of unsanitary conditions; order to vacate.
- § 53-2. Definitions.
- § 53-3. Sanitary facilities.
- § 53-4. Garbage and rubbish disposal.
- § 53-5. Rodents and insects.
- § 53-6. Water supply.
- § 53-7. Harboring of animals within Town of Kingsbury.
- § 53-8. Authorization of health officer to enter and inspect premises.
- § 53-9. Order of abatement; respondent responsible for costs.
- § 53-10. Procedure.
- § 53-11. Penalties for offenses.
- § 53-12. County and state health regulations.
- § 53-13. Effective date.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 9-14-1992 as L.L. No. 3-1992. Amendments noted where applicable.]

GENERAL REFERENCES

Dogs — See Ch. 40.
Solid waste — See Ch. 64.
Water District rules and regulations — See Ch. A87.

§ 53-1. Abatement of unsanitary conditions; order to vacate.

Whenever any building or a part thereof shall become unsanitary or any dwelling shall become so unsanitary as to be unfit for human habitation or whenever occupancy of a building or dwelling shall cause an unsanitary condition on or adjacent to the premises thereof and such condition shall be determined by the Health Officer, after due notice to the owner and hearing thereon, to constitute a nuisance or condition detrimental to life and health, the Health Officer may, in addition to other remedies provided by law, issue an order requiring the owner thereof to abate said nuisance or condition by placing said building or dwelling in a sanitary or habitable condition within a time specified in said order. Upon the failure of such owner to comply with said order, the Health Officer may issue a further order, to be affixed conspicuously upon such building or dwelling and served upon the occupant or lessee thereof and upon the owner thereof or his agent, requiring all persons to vacate such building or dwelling and to discontinue its use at such time as shall be stated in said order and until such time as the building or dwelling shall be placed in a sanitary or habitable condition and the nuisance abated. Upon failure of such building or dwelling to be vacated within the time specified, the Board of Health may issue a warrant to the Chief of Police directing that said building or dwelling shall be vacated.

§ 53-2. Definitions.

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

BUILDING — Any other structure which is not a residence or intended to house human beings. This constitutes commercial buildings used for retail, wholesale and warehousing or similar use.

DWELLING — Any building, house or structure or portion thereof which is occupied as, in whole or part, or intended to be used as a home, residence, living or sleeping place of one (1) or more human beings, either permanently or transiently.

§ 53-3. Sanitary facilities.

No person shall occupy any building as a dwelling unless such building has adequate and sanitary facilities for the disposal of sewage. Every person responsible for the plumbing or sanitary facilities of a building shall maintain such facilities in an adequate and sanitary condition.

§ 53-4. Garbage and rubbish disposal.

- A. Every dwelling and building shall be provided with such receptacles as may be necessary to contain all garbage and rubbish, and all such receptacles shall be maintained in good repair. Receptacles for garbage shall be made of metal or rubber, be watertight and provided with tight-fitting covers.
- B. Every dwelling and building and every part thereof, including the lot on which such dwelling is located, shall be kept free from any accumulation of garbage, rubbish and filth.
- C. Garbage must be disposed of in accordance with local ordinances and in any case in such a fashion as not to serve as a breeding or harboring place for vermin or to create a nuisance.

§ 53-5. Rodents and insects.

- A. No person shall cause or suffer the creation of any nuisance or condition that shall attract rodents, insects, pests or other vermin detrimental to health.
- B. Every owner, lessee or occupant of premises on which nuisances exist shall take such steps as may be necessary to prevent any nuisance arising or to cause the removal of existing nuisances.

§ 53-6. Water supply.

No person shall occupy any building or dwelling unless such building has an adequate water supply. No water supply shall be deemed adequate for sanitary purposes unless it has been approved by the New York State Department of Health or any other governmental agency having jurisdiction thereof.

§ 53-7. Harboring of animals, within Town of Kingsbury.

No person shall harbor animals, domestic or otherwise, in such a way as to cause or suffer the creation of any nuisance or condition that shall, in the opinion of the Health Officer, be deemed unsanitary. The owner, lessee or occupant of premises on which any such nuisance(s) or unsanitary condition(s) exists shall take such steps as may be reasonably necessary, in the judgment of the Health Officer, to prevent any such nuisance(s) or unsanitary condition(s) from arising or to cause the removal of said nuisance(s) or unsanitary condition(s).

§ 53-8. Authorization of Health Officer to enter and inspect premises.

The Health Officer or his or her duly authorized representative is authorized to enter upon any parcel of property within the Town of Kingsbury, inclusive of the Village of Hudson Falls, for the purpose of inspecting conditions on said premises and may collect data, take samples and conduct other investigations reasonably related to the gathering of information on the sanitary conditions existing on said premises.

§ 53-9. Order of abatement; respondent responsible for costs.

The Health Officer shall have all powers reasonably necessary to execute his or her duties in this chapter. Without limitation, where it is determined by the Health Officer that the minimum standards of this chapter cannot be met, the Health Officer may direct the owner of the premises at issue to undertake specific repairs, alterations or modifications to the premises and to comply with a schedule established by the Health Officer to plan and to abate any nuisance or

unsanitary condition existing on said premises. When such repairs are not undertaken within the time specified by the Health Officer, the Health Officer or his or her authorized representative may cause such repairs to be made and may recover the costs thereof from the owner of the parcel of property upon which the nuisance or unsanitary conditions exist. Repairs, alterations and modifications to premises shall be in accordance with all necessary permits issued by the Town of Kingsbury or other state and federal regulatory authorities, except for such repairs, alterations and modifications ordered by the Health Officer, in his or her reasonable discretion, on an emergency basis.

§ 53-10. Procedure.

- A. It shall be the duty of the Health Officer to enforce any and every regulation of this Kingsbury Health and Sanitation Code. In the carrying out of said duty, the Health Officer shall file a written determination detailing his or her findings and orders with the Town Supervisor and Zoning Administrator and serve a copy of the same upon the owner of premises falling under his or her scrutiny (the "preliminary determination and order"). Such service shall be effected in such a manner as to afford said owner, lessee and occupant his or her due process rights. The preliminary determination and order may, without limitation, contain the following:
- (1) An order preliminarily enjoining said owner, occupant and tenant from using or otherwise occupying the premises in a manner which allows said nuisance or unsanitary condition(s) to exist, including, without limitation, an order to temporarily vacate the premises.
 - (2) An order setting a time and date, taking into account any potential emergency conditions, at which the owner, lessee and/or occupant shall be directed to appear before the Town Board or its designee(s), sitting as the local Board of Health.
- B. No person shall refuse or fail to comply with any preliminary determination and order of the Health Officer. Any such failure shall automatically trigger review by the Kingsbury Town Board, sitting as the local Board of Health.

- C. The local Board of Health shall have all powers reasonably necessary to enforce this chapter, including, without limitation, the powers conveyed herein to the Health Officer as well as the powers specified in the New York State Public Health Law.

§ 53-11. Penalties for offenses.

- A. Violation a misdemeanor. Pursuant to the provisions of § 12-b of the Public Health Law, any violation of or nonconformance with any provision of this Kingsbury Health and Sanitary Code or of any rule, regulation or determination (preliminary or otherwise) duly made hereunder shall constitute a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. Each day that a violation of this chapter continues shall be deemed a separate violation of this chapter with a maximum fine of one thousand dollars (\$1,000).
- B. An action against any owner, lessee or occupant for a violation of this chapter shall be brought by the local Board of Health in the Kingsbury Justice Court.

§ 53-12. County and state health regulations.

The Town of Kingsbury reserves the right to incorporate any of the regulations established by the Washington County Health Department or the New York State Health Department regarding said sanitary conditions within the Town of Kingsbury, Washington County, New York.

§ 53-13. Effective date.

Except as otherwise specified, this Kingsbury Health and Sanitary Code shall take effect on September 30, 1992.

Chapter 55

JUNKYARDS

ARTICLE I Regulation and Licensing

- § 55-1. Title.**
- § 55-2. Legislative intent.**
- § 55-3. Definitions.**
- § 55-4. License required.**
- § 55-5. Application for license.**
- § 55-6. Certificate of zoning compliance.**
- § 55-7. Hearing on applications.**
- § 55-8. Town Board action.**
- § 55-9. Standards for license.**
- § 55-10. Specific regulations for operation.**
- § 55-11. Waiver or variance standards.**
- § 55-12. Prohibition.**
- § 55-13. License provisions.**
- § 55-14. Financial security.**
- § 55-15. Judicial review.**
- § 55-16. Existing junkyards.**
- § 55-17. Enforcement and inspections; penalties for offenses.**

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

GENERAL REFERENCES

Environmental quality review — See Ch. 43.
Hazardous and other wastes — See Ch. 52.
Health and sanitation — See Ch. 53.
Solid waste — See Ch. 64.
Stormwater — See Ch. 65.
Vehicles and traffic — See Ch. 75.
Zoning — See Ch. 80.

ARTICLE I

Regulation and Licensing
[Adopted 3-9-2009 by L.L. No. 2-2009¹]

§ 55-1. Title.

The Town Code of the Town of Kingsbury is hereby amended by adding thereto a new Chapter 55, entitled "Junkyard Regulation and Licensing Law of the Town of Kingsbury."

§ 55-2. Legislative intent.

A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the Town of Kingsbury and the safeguarding of their material rights against unwarrantable invasion, and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the Town and the general welfare of its citizens. It is further declared that the unrestrained accumulation of junk is a hazard to such health, safety and welfare of the citizens of the Town, necessitating the regulation, restraint and elimination thereof. At the same time, it is recognized that the maintenance of junkyards, as hereinafter defined, is a useful and necessary business and should be encouraged when not in conflict with the express purposes of this section, in compliance with the requirements of this article, and otherwise operated and maintained in a lawful manner.

1. This local law adopted Ch. 81, but said chapter was renumbered to maintain the alphabetical organization of the Code.

§ 55-3. Definitions.

The following definitions apply for purposes of this article notwithstanding any other provision of the Code of the Town of Kingsbury:

CONTAINER — Any portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

CONTINGENCY PLAN — A document describing organized, planned and technically coordinated and financially feasible courses of action to be followed in case of emergency or other special conditions. Such a document prepared in accordance with New York State Environmental Conservation Law §§ 27-2301 and 27-2303 shall be sufficient for purposes of this law.

DISCHARGE — The accidental or intentional releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, burying, abandoning or otherwise disposing into the environment (including, without limitation, surface water or groundwater) of petroleum as defined in § 172 of the New York State Navigation Law or a hazardous substance as defined in § 27-1301(1) of the New York State Environmental Conservation Law (except as to petroleum), or 42 U.S.C. § 9601(14) (except as to petroleum).

GOOD CONDITION — No severe rusting, apparent structural defects or deteriorations and not leaking.

GROUNDWATER — Water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

JUNK — Junk motor vehicles and junk appliances as defined in this article, as well as scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc, ferrous or nonferrous scrap, and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, boxes or crates, used pipe or used pipe fittings, used tires, other discarded materials and

other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled or recycled.

JUNK APPLIANCE — Any household appliance, including but not limited to a stove, washing machine, dryer, dishwasher, freezer, refrigerator, air conditioner, water heater, computer, television, which is stored outside of any residence or enclosed structure for recycling or reclamation purposes.

JUNK MOTOR VEHICLE — Any motor vehicle, or used parts or waste materials from motor vehicles which, taken together, equal in bulk one or more such vehicle(s), which is unlicensed or unregistered; or abandoned, wrecked, stored, discarded, dismantled or partly dismantled; or not in a condition for legal use upon the public highways. The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in a condition for legal use upon the highways.

JUNKYARD —

A. Any of the following:

- (1) Any place of storage or deposit, whether in connection with another business or not, where two or more junk motor vehicles are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose, and where such junk or junk motor vehicle is stored outside of any residence or enclosed structure.
- (2) Any place of storage or deposit for recycling or reclamation of any household appliance, including but not limited to a stove, washing machine, dryer, dishwasher, freezer, refrigerator, air conditioner, water heater, computer, television, which is stored outside of any residence or enclosed structure.

- (3) An establishment having facilities for processing iron, steel or ferrous or nonferrous scrap and whose principal product is scrap iron, steel or ferrous or nonferrous scrap for remelting purposes.
- (4) Any business required to be licensed as a junkyard pursuant to § 136 of the New York State General Municipal Law.
- (5) Any business required to be licensed as a junk dealer pursuant to Article 6 of the New York State General Business Law.
- (6) Any business required to be licensed as a scrap processor pursuant to Article 6-C of the New York State General Business Law.

B. The following shall not be considered a junkyard and shall not be regulated under this article:

- (1) Storage and/or warehousing of used motor vehicle parts in a fully enclosed building(s) associated with a business engaged in selling the same for use in motor vehicles and temporary indoor storage of five or less inoperative motor vehicles only in conjunction with the same.
- (2) The outdoor storage or deposit of one unregistered, old or secondhand motor vehicle except as part of a legally licensed junkyard or legally licensed car sales business.

LEAK-RESISTANT or LEAKPROOF — Designed and maintained to prevent the escape of contained liquids or other materials when appropriately closed, regardless of container orientation (i.e., upright, tipped over).

MERCURY-CONTAINING DEVICES — Any device or material into which elemental mercury or mercury compounds are intentionally added during the manufacture of such devices and in which the continued presence of mercury is required to provide a specific characteristic, appearance or quality or to

perform a specific function. Such items include but are not limited to convenience lighting switches, antilock brake assemblies and high-intensity discharge headlamps.

PERSON — Any individual, association, partnership, corporation, limited-liability company or other organization.

SURFACE WATER — Lakes, ponds, reservoirs, impoundments, streams, drainageways, springs, rivers, creeks, marshes and other wetlands, canals and all other bodies of water, natural or artificial.

§ 55-4. License required.

No person shall operate, establish or maintain a junkyard, nor shall any landowner permit, allow, tolerate or consent to the operation, establishment or maintenance of a junkyard, without a license to operate such junkyard pursuant to this article.

§ 55-5. Application for license.

A. Each person applying for a junkyard license shall submit to the Town Board an application, executed under oath and accompanied by the applicable fee (as established by the Town Board),² which application shall be supplied by the Town of Kingsbury Town Clerk and contain the following information:

- (1) A map or map(s) of the site where the junkyard is proposed, including the following information:
 - (a) Address and real property tax number;
 - (b) Property lines, including the names of owners of adjoining properties;
 - (c) Streams, lakes, wetlands, floodplains and other water bodies on the site and adjoining

2. Editor's Note: See Ch. 46, Fees.

properties, including those available for fire protection purposes;

- (d) The topography of the site and any plans for grading the property to be shown at a contour interval of not more than five feet;
 - (e) The location of all wells and sanitary facilities on the property or within 100 feet of the boundary of the property;
 - (f) The location of any utilities, water, sewer or gas mains or laterals on the site and on adjoining properties;
 - (g) The location of any below-ground or aboveground storage tanks on the site and on adjoining properties;
 - (h) Drainage patterns on the site and on adjoining property;
 - (i) Existing and proposed structures, including fences;
 - (j) Roads and easements providing access to, on or through said property;
 - (k) Proposed storage areas, indicating the type of material which will be stored in each area;
 - (l) Existing and proposed accessways, aisles, parking and loading areas; and
 - (m) Proposed scale location(s).
- (2) A narrative describing the business activities to be conducted and the nature of the materials involved in the intended business activity.
 - (3) A certificate of zoning compliance from the Code Enforcement Officer demonstrating that the

proposed junkyard will comply in all respects with the Zoning Code of the Town of Kingsbury.³

- (4) The name, residence, address and telephone number of each individual owner, partner or, if a corporation, limited-liability company or other organization, each officer, director or member thereof.
- (5) The name and address of the owner of the real property and the nature of the right under which the applicant possesses the property.
- (6) The trade name, address and telephone number of the business.
- (7) A statement as to the applicant's compliance history, including, without limitation, a statement as to whether the applicant has been convicted of, charged with or received any notice of violation regarding any crime, misdemeanor, violation or offense of any federal, state or local law, or any of the following: § 136 of the New York State General Municipal Law, Articles 6 or 6-C of the New York State General Business Law, § 415-a of the New York State Vehicle and Traffic Law, any applicable provision of the New York State Environmental Conservation Law, or any regulations promulgated pursuant to said laws. The statement may include such other facts or evidence deemed necessary to establish the fitness and capability of the applicant to properly conduct the activity or business for which the license is sought.
- (8) Whether the applicant is required to and has obtained a valid junk dealer's license under Article 6 of the New York State General Business Law.
- (9) Whether the applicant is required to and has obtained a valid scrap processor's license under

3. Editor's Note: See Ch. 80, Zoning.

Article 6-C of the New York State General Business Law.

- (10) Whether the applicant is required to and has been registered with the New York State Department of Motor Vehicles and certified by the Commissioner of the same pursuant to New York State Vehicle and Traffic Law and 15 NYCRR Part 81.
 - (11) As required by this article, proposed financial security for closure and environmental site assessment, and proposed environmental liability insurance for corrective measures in the event of a discharge.
 - (12) Proposed contingency plan as required by this article in the event of a fire or discharge or unauthorized material being received at the junkyard.
 - (13) A statement indicating that the applicant has purchased approved motor vehicle refrigerant recycling equipment or refrigerant recapturing equipment in accordance with New York State Environmental Conservation Law § 38-0107.
 - (14) Any other information relating to the proposed junkyard that may be requested by the Town Board.
- B. The applicant shall submit an environmental assessment form pursuant to the State Environmental Quality Review Act (SEQRA).⁴ For unlisted actions, the applicant may submit a long-form or short-form EAF. For Type I actions, the applicant shall submit a long-form EAF. The application shall not be deemed complete until the Town Board has determined that it has received all the application materials required above and either issued a negative declaration or accepted a draft environmental impact statement (DEIS) as satisfactory with respect to scope, content and adequacy as required by SEQRA.

4. Editor's Note: See Ch. 80, Zoning.

- C. The applicant shall agree that if granted the junkyard license applied for, the applicant will conduct the activity or business pursuant to the regulations hereinafter set forth and any additional conditions which may be imposed upon such license, as provided, and that upon the applicant's failure to do so, such junkyard license may be revoked or subjected to enforcement actions pursuant to this article.

§ 55-6. Certificate of zoning compliance.

The applicant must obtain a certificate of zoning compliance prior to making its application to the Town Board. The Code Enforcement Officer shall review the applicant's proposed junkyard, including the map(s) and narrative required by this article, for compliance with the Zoning Code⁵ and, where in compliance with said Zoning Code, issue the applicant a certificate of zoning compliance stating that the proposed junkyard will comply in all respects with the requirements of the Zoning Code. The certificate of zoning compliance does not relieve the applicant of site plan review by the Planning Board as applicable under Article VIII of the Zoning Code.

§ 55-7. Hearing on applications.

The Town Board shall conduct a public hearing within 62 days from the date it determines the application is complete. Notice of the hearing shall be made in a newspaper in general circulation in the Town at least five days prior to the date of the hearing. Written notice of the hearing shall be provided to the applicant at least 10 days prior to the date of the hearing.

§ 55-8. Town Board action.

- A. Within 62 days of the close of the public hearing, the Town Board shall render a decision on the application for a

5. Editor's Note: See Ch. 80, Zoning.

junkyard license based upon the ability of the applicant to meet the junkyard regulations, standards and requirements contained in this article and any other matter within the purposes of this article. The sixty-two-day period may be extended by mutual consent of the applicant and the Town Board. The Town Board shall have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to the proposed junkyard license.

- B. The Town Board shall make findings related to the standards, regulations and requirements, as well as the purposes set forth in this article, and shall enter such findings into the official minutes. The decision of the Town Board shall be considered filed in the office of the Town Clerk on the date it is rendered, and the applicant shall be notified of the decision and the reasons for such decision by mail within five business days of the decision of the Town Board. If denied, the Town Board shall include reasons for such denial.

§ 55-9. Standards for license.

At the time and place set for hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish or maintain the junkyard. In considering such application, the Town Board shall take into account the suitability of the applicant with reference to his ability to comply with the following licensing standards, the regulations and requirements of this article and other reasonable regulations concerning the proposed junkyard, as well as any other matter within the purposes of this article.

- A. Ownership or control: The Town Board shall require the applicant to provide proof of legal ownership or the right to use of the property for a junkyard purpose during the license period.
- B. Location: The Town Board shall take into account the nature and development of surrounding property, such as

the proximity of churches, schools, hospitals, public buildings or other places of public gathering, and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors, smoke, noise, dust or other pollution. The Town Board shall also take into account the available site access to the proposed location, whether the transportation infrastructure is sufficient to provide ingress and egress to the proposed site, as well as accommodating for the increase in scope and intensity of the traffic. No license shall be issued without obtaining a certificate of zoning compliance as provided for in this article.

- C. Aesthetic: The Town Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the Town Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.
- D. Compliance history: The Town Board may also consider the applicant's history of compliance with any federal, state or local law or any of the following: § 136 of the New York State General Municipal Law, Articles 6 or 6-C of the New York State General Business Law, § 415-a of the New York State Vehicle and Traffic Law, any applicable provision of the New York State Environmental Conservation Law, or any regulations promulgated pursuant to said laws.

§ 55-10. Specific regulations for operation.

- A. The junkyard shall be completely surrounded with a fence which completely screens the facility from view and with a suitable gate which shall be closed and locked at all times except during the working hours of such junkyard or when the applicant or his agent shall be within. Such fence shall be erected at a distance not less than 25 feet from any lot line or any public road and not less than 50 feet from any lot line that adjoins property zoned for residential use. Where the topography, natural growth of timber or other considerations accomplish the purposes of this article, in whole or in part, the fencing requirements hereunder may be reduced, but not eliminated, by the Town Board upon granting the license; provided, however, that such natural barrier conforms to the purposes of this article.
- B. For uncovered areas where junk is to be stored for more than 24 hours, a strip of land 25 feet in width shall be kept free of all dry grass, junk, plant growth or other combustible material so as to provide a fire break around the entire junk storage area. Where the design of the junkyard makes all or part of the required buffer strip unnecessary, such requirement may be reduced or eliminated by the Town Board upon granting the license; provided, however, that adequate emergency access is maintained at all times.
- C. All motor vehicles, and parts thereof, and all junk as hereinabove defined, stored either permanently or temporarily by the applicant, shall be kept within the enclosure of the junkyard except for reasonable transportation of same.
- D. No motor vehicles or other junk shall be piled to any height above one foot below the fence line, and not more than 20 feet high in the Ind-75 Industrial District or 12 feet in any other zoning district, and shall be stacked in a safe manner.

- E. No more than 50 unprocessed cars are allowed on the premises and must be stored on a curbed concrete surface. However, the Town Board may allow more than 50 unprocessed cars in such number as it deems reasonable considering the proposed facility and its ability to prevent discharges of leaking or spilled fluids from such cars. The Town Board shall restrict the number of unprocessed cars allowed on the premises as a condition in the junkyard license.
- F. The junkyard, together with all things therein, shall at all times be maintained in a sanitary and orderly condition and arranged in neat rows so as to permit emergency access as well as easy, clean passage and inspection of the premises.
- G. No water shall be allowed to stand in any place on the premises in such manner as to afford a breeding place for mosquitoes.
- H. No garbage or other waste likely to give off a foul odor or attract vermin shall be kept on the premises, nor shall any refuse or garbage of any kind be kept on the premises unless such is junk as defined herein and is in use in the licensed business.
- I. No material shall be burned or buried on the premises.
- J. There shall be maintained at least one fire extinguisher of approved design and capacity for each 40,000 square feet of area. Such fire extinguisher shall be mounted or placed in a conspicuous place and clearly marked.
- K. Suitable rest rooms and sanitary facilities shall be available for the employees of such business.
- L. Sufficient off-street driveway, parking and loading areas shall be provided for the licensee's customers such that all traffic and/or parking will occur outside the roadway rights-of-way and the junkyard does not create a hazard on nearby roadways.

- M. All fluid draining, removal and collection activities shall be conducted on a concrete surface or other surface that allows equivalent protections to surface water and groundwater. Such surfaces shall be cleaned daily, or more frequently when spillage has occurred, using absorbent materials that are collected and properly disposed of.
- N. All fluids shall be completely drained, removed, collected and stored for appropriate use, treatment or disposal.
- O. Junk motor vehicles arriving at the junkyard shall be inspected upon arrival for leaking fluids and unauthorized waste. Leaks should be remedied or contained to avoid discharges of fluids to the environment.
- P. Prior to vehicle crushing or shredding, the following potential environmental contaminants shall be drained, removed, deployed, collected and/or stored, as appropriate and in accordance with best management practices:
- (1) Fluids including, but not limited to, engine oil, transmission fluid, transaxle fluid, front and rear axle fluid, brake fluid, power steering fluid, coolant, and fuel;
 - (2) Lead acid batteries;
 - (3) Small PCB capacitors, mercury switches or other mercury-containing devices;
 - (4) Refrigerants used in automobile air-conditioning systems;
 - (5) Air bags are deployed or removed; and
 - (6) Any other potential environmental contaminants required to be drained, removed, collected and/or stored as required by federal, state or local law.
- Q. Fluids that are stored shall be placed in closed containers. The containers shall be in good condition. The containers shall be clearly and legibly marked as to contents.

Containers shall be stored on a bermed or curbed concrete surface or surface that allows equivalent protection to groundwater and surface water.

- R. No drums, barrels, tanks or other vessels containing any kind of liquid shall be stored outdoors at any time.
- S. Lead acid batteries shall not be stored on the ground. All lead acid batteries shall be covered by a tarp or other means in a manner that severely restricts water from coming into contact with the lead acid battery. Leaking batteries shall be stored in a leakproof container separately from intact lead acid batteries, and provisions shall be in place to absorb any leakage.
- T. Small PCB capacitors, mercury switches and other mercury-containing devices shall be stored in an appropriate, labeled container for recycling or disposal.
- U. No more than 1,000 waste tires off vehicles shall be stored at the facility at any one time unless all federal, state and/or local permits are obtained.
- V. Fluids shall not be discharged on the ground or to surface water, groundwater or the environment.
- W. Ensure the safe handling, processing and storage of any residues, including, but not limited to, any fluids left over after an automobile is crushed and parts have been extracted, in such a manner as to prevent off-site migration or runoff of pollutants.
- X. Dust shall be effectively controlled so as not to constitute a nuisance or hazard to health, safety or property.
- Y. The junkyard shall be maintained so as to prevent or control on-site populations of vectors using techniques appropriate for protection of human health and the environment and which prevent the facility from being a vector-breeding area.

- Z. The junkyard shall have a contingency plan which includes a description of the actions to be taken by junkyard employees in the event of a fire, a discharge or unauthorized material being received at the junkyard.
- AA. The junkyard shall provide fluid retention records to the Town Board on a monthly basis and shall provide the Town Board with a copy of the junkyard's annual report to New York State DEC pursuant to New York State Environmental Conservation Law § 27-2303.
- BB. No junkyard shall be allowed to become a nuisance, nor shall any junkyard be operated in such a manner as to become injurious to the health, safety or welfare of the community or of any residents.

§ 55-11. Waiver or variance standards.

The Town Board may grant a waiver from the dimensional (nonphysical) requirements or regulations of this article and a variance from any nondimensional regulation or requirement. The Town may grant such a waiver or variance only if the following standards are met:

- A. Waiver standard. In granting a waiver of a dimensional (nonphysical) requirement or regulations of this article, the Town Board must consider the benefit to the applicant if the waiver is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such waiver. In making such determination, the Town Board shall also consider: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the waiver; whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a waiver; whether the requested waiver is substantial; whether the proposed waiver will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and whether the alleged difficulty was

self-created, which consideration shall be relevant, but shall not necessarily preclude the granting of the waiver.

- B. Variance standard. The Town Board may grant a variance from a nondimensional requirement or regulation of this article only upon determining that such action would be in keeping with the intent and spirit of this article and the best interests of the Town and that denying such request would result in unnecessary hardship to the applicant. In order to demonstrate unnecessary hardship, the applicant must demonstrate that: the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; that the alleged hardship relating to the property in question is unique and does not apply to other licensed or unlicensed junkyards in the Town; that the requested waiver or variance, if granted, will not produce an adverse impact on the physical or environmental conditions in the neighborhood of the junkyard or would not alter the essential character of such neighborhood; and that the alleged hardship has not been self-created.
- C. Any waiver or variance authorized by the Town Board shall be made by resolution containing the grounds for granting such relief. The Town Board shall require such conditions as will, in its judgment, secure substantially the objectives of the regulation or requirement so waived or varied. Under no circumstances shall the Town Board vary the limitations contained in the prohibition section⁶ of this article.

§ 55-12. Prohibition.

No junkyard shall be licensed to operate within 500 feet of a church, school, hospital, nursing home, public park, public building or other place of public gathering, measured from the property line of such place.

6. Editor's Note: See § 55-12, Prohibition.

§ 55-13. License provisions.

- A. The fee for a junkyard license shall be established from time to time by the Town Board,⁷ which sum shall cover not only the cost of issuing the license itself but also the cost of making the necessary inspections of the premises to ascertain compliance with the license conditions and restrictions and the regulations hereinafter prescribed.
- B. A junkyard license shall be placed and at all times displayed in a conspicuous place upon the licensed premises.
- C. A junkyard license shall be effective from April 1 until March 31 of the next succeeding year, or for the remaining portion thereof when such a license is issued after April 1. An application for such license must be made annually and submitted by March 1 each year that the applicant desires to conduct or continue the junkyard.
 - (1) An applicant who has previously been issued a license under this article (not including temporary licenses) may apply for a renewal license by submitting:
 - (a) An application accompanied by the required application fee.
 - (b) A certificate of zoning compliance.
 - (c) An affidavit by the licensee certifying compliance with all requirements of this article and any conditions of the existing license.
 - (d) A short- or long-form EAF pursuant to SEQRA.
 - (e) A revised estimate of costs for closure and environmental assessment based on current operations at the facility and as proposed during the term of the renewal license.

7. Editor's Note: See Ch. 46, Fees.

- (2) In considering such renewal application, the Town Board shall take into account the suitability of the applicant with reference to his ability to comply with the licensing standards, regulations and requirements of this article and other reasonable regulations concerning the junkyard, as well as any other matter within the purposes of this article.

- D. A junkyard license is personal to the licensee. It will not attach to the title to the real property nor may it be sold, assigned, transferred or otherwise disposed of.
- E. A junkyard license may be revoked by the Town Board for violating any provision of this article or any condition or restriction of the junkyard license according to the procedures in this article. Upon revocation of a license, the Town Board may require the termination of such activities upon the premises and removal of any junk or other materials of the nature described herein which would constitute a junkyard.

§ 55-14. Financial security.

- A. Financial security for closure.

- (1) Application: At the time of application, the applicant shall provide a detailed estimate, prepared by a licensed professional engineer, for closure and environmental site assessment of the property in the event the license is revoked, not renewed or the junkyard otherwise ceases to operate.
 - (a) The estimate must detail, in current dollars, the cost of hiring a third party to:
 - [1] Empty the junkyard to such extent that the junk materials therein no longer require licensing under this article ("closure").

- [2] To conduct a Phase II Environmental Site Assessment to determine the extent of any environmental discharges on the property ("environmental site assessment").

(b) This cost estimate for closure and environmental site assessment must be approved by the Town Board.

- (2) Form of financial security for closure and environmental site assessment. Before a junkyard license is issued, the applicant shall post with the Town a surety bond issued by a surety company (or other acceptable financial guarantee) satisfactory to the Town Board in an amount sufficient to cover estimated costs for closure and environmental site assessment should the junkyard license be revoked, not renewed or the junkyard otherwise ceases operations. The applicant shall maintain such bond (or other acceptable financial guarantee) satisfactory to the Town at all times during the license period until such facility has completed closure to the satisfaction of the Town Board and the environmental condition of the property has been assessed. Failure to maintain such bond (or other acceptable financial guarantee) in effect shall result in immediate revocation of the junkyard license.
- (3) Upon its consideration of an application for a renewal license as required under this article, the Town Board may review the sufficiency of the financial security for closure and environmental site assessment of the junkyard.

B. Financial security for environmental contamination. Before a junkyard license is issued, the applicant shall provide the Town Board with a certificate of pollution legal liability insurance, acceptable to the Town Board, by a financially responsible insurer, and such policy shall name the Town as an additional insured under the policy, but only to the extent that the Town has an insurable interest.

Said policy shall include coverage for cleanup of on-site and off-site contamination from discharges at the junkyard or its operation or maintenance, including property damage and remediation costs, of at least \$5,000,000 per occurrence and \$5,000,000 in the aggregate for the term of the license period. Failure by the applicant to maintain such insurance coverage shall result in immediate revocation of the junkyard license.

- C. The holder of a junkyard license shall furnish the Town Clerk proof of renewal of each insurance policy certificate and surety bond (or other acceptable financial guarantee) required by this article and not less than 60 days before the same would otherwise expire or terminate.

§ 55-15. Judicial review.

Any person or persons, jointly or severally aggrieved by any decision of the Town Board concerning such license application pursuant to this article, or any officer, department, board or bureau of the Town, may have the decision reviewed by the New York State Supreme Court in the manner provided by Article 78 of the Civil Practice Law and Rules, provided the proceeding is commenced within 30 days after the filing of the decision in the office of the Town Clerk.

§ 55-16. Existing junkyards.

- A. Licensed junkyards: Within 30 days of the effective date of this article, a person operating or maintaining a junkyard, as defined herein, and holding a valid license issued by the Town Board pursuant to New York State General Municipal Law § 136 (an "existing licensed junkyard") must apply for a junkyard license pursuant to this article. Such existing licensed junkyard which does not fully meet the regulations and requirements of this article may be granted a temporary junkyard license subject to the requirements contained in this section, which temporary junkyard license will be valid until the date upon which

the existing license pursuant to New York State General Municipal Law would otherwise have expired or for six months, whichever period is longer. At the end of such temporary period, any such existing licensed junkyard must fully comply with all junkyard regulations and requirements contained in this article and obtain a junkyard license as provided in this article; otherwise, such existing licensed junkyard shall be terminated and the person operating any such junkyard shall immediately cease and desist from operating or conducting same and shall close such junkyard by removing from such place any junk or other materials of the nature described herein which would constitute a junkyard.

- B. Except as otherwise provided in this section, all other persons operating and maintaining a junkyard without a valid license issued by the Town Board pursuant to New York State General Municipal Law § 136 must apply for a junkyard license within 30 days of the effective date of this article or otherwise shall immediately cease and desist from operating or conducting same and shall close such junkyard by removing from such place any junk or other materials of the nature described herein which would constitute a junkyard.
- C. Temporary license standards: In determining whether to issue any temporary license(s) under this section, the Town Board shall take into account the suitability of the applicant with reference to his ability to comply with the licensing standards contained in § 55-9A through D, other reasonable regulations concerning such junkyard and any other matter within the purposes of this article, but the Town Board shall not consider compliance with the regulations and financial security sections of this article.⁸ The Town Board may, nonetheless, attach reasonable conditions to such temporary license as may be required to protect the public health, safety, welfare and environment of the Town.

8. Editor's Note: See §§ 55-10 and 55-14, respectively.

§ 55-17. Enforcement and inspections; penalties for offenses.

- A. Enforcement officer. This article may be enforced by the Code Enforcement Officer as designated enforcement officer. The enforcement officer shall have the authority to enforce the provisions of this article, the conditions and restrictions of a junkyard license, and to inspect premises within the Town as necessary for said enforcement.
- B. Inspections.
- (1) The enforcement officer shall make periodic inspections of the Town to ensure that all existing junkyards have licenses and that the requirements of this article are met. The enforcement officer shall inspect all junkyards licensed under this article at least once a year to determine whether such junkyards are being operated in accordance with the provisions of this article, the conditions and restrictions of such license, and other applicable provisions of law.
 - (2) No person shall refuse entry to the Code Enforcement Officer, or the authorized representative of the Code Enforcement Officer, attempting to enter any premises for the purposes of inspection. Such entry shall be permitted not only to areas open to the public but also to all other areas.
- C. Revocation of license. The Town Board may revoke a junkyard license upon reasonable cause should the applicant fail to comply with any provision of this article or any condition or restriction of a junkyard license. Before a junkyard license may be revoked, a public hearing shall be held by the Town Board at which it shall hear from the license holder(s) and all persons wishing to be heard on such matter. Notice of the hearing shall be made in the official newspaper at least five days prior to the date thereof. Written notice of such hearing may be served by personal service or through certified mail, return receipt

requested, to the last known address of the property owner or junkyard operator if different than the property owner. Service of such notice shall be made 10 days before the scheduled hearing. When service is made by certified mail, return receipt requested, service shall be deemed complete upon delivery of the notice to the property owner or junkyard operator.

D. Operation of unlicensed junkyard and other violations. If the enforcement officer shall find that an alleged junkyard exists without the necessary license, or that a licensed junkyard is in violation of this article or the conditions and restrictions of its junkyard license, the enforcement officer is authorized to:

- (1) Issue a written notice to comply, which shall contain the following information: the name of the person to whom the notice shall be addressed; the location of the premises involved; a statement of the facts alleged to constitute an unlicensed junkyard or a violation of this article or the conditions and restrictions on a junkyard license; a demand that the alleged offender bring the premises into compliance with this article and/or its license, if any, within a specified number of days after service of the notice; a statement that failure to comply may result in prosecution; and a copy of the relevant provision(s) of law or condition(s) and restriction(s) alleged to be violated.
- (2) Issue an appearance ticket to any such person and cause such person to appear before the Town Justice.

E. Penalties and remedies.

- (1) Any person found to be in violation of the provisions of this article shall be deemed to have committed an offense against such law and shall be subject to a fine not to exceed \$1,000 or imprisonment for a period not to exceed 30 days, or both. A penalty of \$1,000 may be recovered by the Town in a civil

action. Each day such condition shall continue shall constitute a separate offense.

- (2) The Town Board may enforce the requirements of this article utilizing all provisions of this section and may maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this article or the conditions and restrictions of a junkyard license.
- (3) No remedy specified in this section shall be the exclusive remedy or penalty available to address any offense against this article, and each such remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, any other remedies or penalties specified in this section or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with or after the pursuit of any other remedy or penalty specified in this section or in any other applicable law.

MOBILE HOMES

Chapter 58

MOBILE HOMES

- § 58-1. Purpose.
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- § 58-3. License required.
- § 58-4. Application.
- § 58-5. Licensing procedures.
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- § 58-8. Standards for mobile home parks.
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- § 58-12. Travel trailers outside trailer camps.
- § 58-13. Enforcement.
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- § 58-15. Revocation of license of mobile home outside park.
- § 58-16. Penalties for offenses; additional remedies.
- § 58-17. Compliance with statutes and other laws.
- § 58-18. Exceptions.
- § 58-19. Variances.
- § 58-20. Conditions for special permits.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 10-12-82. Section 58-16 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 80.

§ 58-1. Purpose.

It is the purpose of this chapter to promote the health, safety, morals and general welfare of the inhabitants of the Town of Kingsbury by establishing specific minimum requirements and regulations governing the occupancy and maintenance of mobile homes, mobile home parks, travel trailers and travel trailer camps.

§ 58-2. Definitions.

COUNTY — The County of Washington.

FARM — Land used in agricultural production, of not less than ten (10) acres, used in the preceding two (2) years for the production for sale of crops, livestock and livestock products of an average gross sales value of ten thousand dollars (\$10,000.) or more.

FARMWORKER — One who is employed on a farm for a minimum of twenty (20) hours per week.

INSPECTOR — The person or persons appointed by the Kingsbury Town Board to enforce the provisions of the law.

MOBILE HOME — A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, with or without a foundation. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, as well as two (2) or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers. A doublewide mobile home consisting of two (2) sections of equal length, with a 3/12 minimum truss roof, and placed on a foundation consisting of poured concrete footing below the frost line and

blocks at least one (1) block above grade, shall not be considered a "mobile home" for purposes of these regulations. [Amended 9-12-88 by L.L. No. 5-1988]

MOBILE HOME LOT — A designated site of specific total land area within a mobile home park for the accommodation of one (1) mobile home and its occupants.

(Cont'd on page 5803)

MOBILE HOME PARK — Any parcel of land whereon two (2) or more mobile homes are parked or located or which is planned and improved for the placement of two (2) or more mobile homes and which is held open to the public for the parking or placement of mobile homes.

MOBILE HOME STAND — An area prepared for the placement and support of a mobile home.

OWNER — Any company, corporation or individual who has record title of all or any portion of proposed park.

TOWN — The Town of Kingsbury.

TRAILER CAMP — Any parcel of land whereon two (2) or more travel trailers are parked or located, or which is planned and improved for the placement of two (2) or more travel trailers and which is held open to the public for the parking or placement of travel trailers.

TRAVEL TRAILER — Any vehicle designed or used or intended to be used for temporary living quarters for travel, recreational or vacation purposes.

§ 58-3. License required.

No person, partnership, association or corporation being the owner, lessee or occupant of any land within the Town of Kingsbury shall use or allow the use of such land for a mobile home park or trailer camp unless a license therefor has been obtained as herein provided.

§ 58-4. Application.

A. Each application for a license for a mobile home park or trailer camp shall be in writing and signed by the applicant. The application shall state:

- (1) That the application is for a mobile home park or a trailer camp license, as the case may be.
- (2) The names and addresses of the applicant and of the owner or owners of the premises upon which the park or camp is to be located and:

- (a) If any applicant or owner be a partnership, the names and addresses of each partner thereof.
 - (b) If any applicant or owner be a corporation or association, the names and addresses of each officer and director thereof and of each owner of ten percent (10%) or more of the shares thereof.
 - (3) A complete legal description of the land upon which the park or camp is to be located.
 - (4) The number of mobile home lots or trailer lots to be provided in the park or camp.
 - (5) Any special covenants or restrictions between the owners of the park and the tenants shall be submitted with the application.
- B. Such application shall be filed with the Town Clerk in triplicate.
- C. Such application shall be accompanied by three (3) complete sets of plans and specifications prepared and certified by a registered architect, licensed professional engineer or licensed surveyor. Such plans shall show the date thereof and the name of the applicant, be drawn to a scale, unless otherwise directed by the Planning Board, of not more than fifty (50) feet to one (1) inch, show contour intervals of not greater than five (5) feet, indicate the North point thereof, and shall show and identify:
- (1) The location of the land proposed to be used as a mobile home park or trailer camp.
 - (2) The boundaries of the park or camp.
 - (3) The major physical features of the land within the park or camp and within three hundred (300) feet thereof, including:
 - (a) All watercourses, marshes and area subject to flooding.
 - (b) All wooded areas.

- (4) All existing development within the park or camp, and within three hundred (300) feet thereof, including:
 - (a) Structures.
 - (b) Streets, roads and highways, with suitable indication of the width thereof.
 - (c) Utilities and service facilities.
- (5) All proposed development within the park or camp, including:
 - (a) Entrances, exits, streets and walkways, with suitable indication of the widths thereof.
 - (b) Each proposed mobile home lot or trailer lot, driveway, parking area and refuse collection area, with suitable indication of the dimensions thereof.
 - (c) Structures and improvements.
 - (d) Grading and landscaping.
 - (e) Stormwater drainage.
 - (f) Utilities and service facilities.
 - (g) Public improvements proposed by the town in or adjoining the park or camp within three hundred (300) feet thereof.
 - (h) Any existing zoning.
- D. Such plans shall include three (3) sets of appropriate detailed drawings of and specifications for proposed structures, utilities and other improvements and shall show the method and plan for exterior lighting within the park.
- E. Such application shall also be accompanied by plans approved by the New York State Department of Health or other acceptable certificate indicating compliance by the applicant with all pertinent rules and regulations of the New York State Department of Health and with the State Sanitary Code.

- F. If the applicant is not the owner of the premises upon which the proposed park or camp is to be located, such application shall also be accompanied by an original or certified copy of a lease of the premises to the applicant and a statement signed and acknowledged by the owner or owners of the premises consenting that the premises be used as a mobile home park or trailer camp, as the case may be.
- G. Such applications shall be accompanied by the proper application fee as hereinafter provided.

§ 58-5. Licensing procedures.

- A. Upon receipt of a license application as hereinabove provided, the Town Clerk shall indicate the date of receipt thereon and promptly transmit one (1) copy of the application and all accompanying plans and specifications and other supporting documents to the Inspector, and one (1) copy thereof to the Town Planning Board for review and report pursuant to § 274 of the Town Law of the State of New York. The Town Clerk shall also place a notice in the official town newspaper or newspapers to the effect that such an application has been filed.
- B. The Inspector shall promptly ascertain whether the park or camp concerned complies with the requirements of this law and applicable rules and regulations of the New York State Department of Health and the Sanitary Code of the State of New York. The Inspector shall, after such investigation, and within thirty (30) days of the date of receipt of the application by the Town Clerk, transmit his written approval or disapproval of the application and his recommendations pertaining thereto to the Planning Board.
- C. The Planning Board shall, at its next regular monthly meeting, consider the location and the general arrangement of the mobile home park or trailer camp, including the location and width of streets; the location, size and arrangement of lots; the location of other structures within the park or camp; the location of entrances and exits; and

the location, type and extent of landscaping and screening materials. The Planning Board shall, after such consideration, and within fifteen (15) days of this meeting communicate in writing to the applicant any request for more information and for the answers to any unresolved questions.

- D. The Planning Board at its next regular monthly meeting shall consider both written and verbal replies by the applicant to its request for additional information and shall, by resolution, indicate its approval or disapproval of the application. A majority of the entire Planning Board membership shall be required for approval. The Planning Board Secretary shall notify the applicant of the Planning Board's decision, in writing, within five (5) days thereof.
- E. If the application is approved by the Planning Board, the Inspector shall, upon receipt of the applicable license fee herein provided together with the actual cost to the town of any engineering or other similar services incurred by the town in the consideration of the application, issue a license to be effective from the date thereof through the 31st day of December next succeeding. Such license shall specify the number of mobile home lots or trailer lots which may be used in the park or camp to which it pertains.
- F. If an application is disapproved by the Planning Board, the applicant may present an appeal to the Zoning Board of Appeals. The hearing conducted by the Zoning Board of Appeals shall include the reasons for denial of the application by the Planning Board. Approval by the Zoning Board of Appeals after denial of the application by the Planning Board shall require a majority plus one (1) of the entire Board membership.
- G. No such license shall be transferable or assignable.

§ 58-6. Supplemental licenses.

- A. Any person holding a license for a mobile home park or trailer camp and desiring to add additional lots to such

park or camp shall file an application for a supplemental license.

- B. The application for such supplemental license shall be made and shall be considered in the same manner as an application for a license for a mobile home park or trailer camp as provided in §§ 58-4 and 58-5 hereof. All supplemental licenses shall be effective from the date of issue to the 31st day of December next succeeding.

§ 58-7. Renewal of licenses.

- A. An application for the renewal of any mobile home park or trailer camp license shall be made with the Inspector on or before the first day of December preceding the expiration date of such license.
- B. If the applicant for a renewal license is not the owner of the premises to which the application pertains, the renewal application shall be accompanied by the documents described in § 58-4F hereof.
- C. The Inspector shall determine if the provisions of this law are being complied with by the applicant. If they are, upon receipt of the applicable fee, he shall issue the renewal license to be effective for a period on one (1) year commencing on the first day of January following the expiration of the prior license.
- D. No renewal license shall be transferable or assignable.

§ 58-8. Standards for mobile home parks.

- A. Every mobile home park shall be at least two (2) acres in size and shall be located in an area where grades and soil conditions are suitable for use as mobile home sites, on a well-drained site properly graded to ensure rapid drainage and be free at all times from stagnant pools of water. The park shall be free or shall be made free from heavy or dense growth of brush and woods.

- B. Every mobile home park shall be marked off into mobile home lots.
- (1) The total number of mobile home lots in a mobile home park shall not exceed five (5) per gross acre.
 - (2) Each mobile home lot shall have a total area of not less than seven thousand five hundred (7,500) square feet and no boundary line thereof shall be less than seventy-five (75) feet in length.
- C. No mobile home shall be parked or otherwise located elsewhere than upon a mobile home stand.
- (1) No such stand shall be nearer than a distance of:
 - (a) Thirty (30) feet from an adjacent mobile home in any direction.
 - (b) Forty (40) feet from an adjoining property line.
 - (c) Seventy-five (75) feet from the center line of any state or county street or highway and sixty-five (65) feet from the center line of a town street or highway.
 - (d) Twenty (20) feet from the nearest edge of any right-of-way boundary of any street within the park.
 - (2) Only one (1) mobile home shall be permitted to occupy any one (1) mobile home lot.
- D. Each mobile home lot shall have a mobile home stand. Every such stand shall:
- (1) Permit the practical placement or the removal from the lot of a mobile home and its appurtenant structures and the retention of the home on the lot in a stable condition.
 - (2) Be of sufficient size to fit the dimensions of any mobile home placed thereon, together with its appurtenant structures or appendages.
 - (3) Be constructed of an appropriate durable nonporous material which is adequate for the support of any load

which may reasonably be expected to be placed thereon.

- (4) Have a durable surface and be suitably graded to permit rapid surface drainage.

E. Every mobile home park shall be easily accessible from a public highway or street.

- (1) Any mobile home park containing more than sixteen (16) mobile homes shall have two (2) points of entry and exit, but no mobile home park shall have more than four (4) entry and exit points.
- (2) Every entrance to and exit from a mobile home park shall be so designed and located as to provide safe and convenient movement of persons and vehicles into and out of the park and to minimize friction with the free movement of traffic on the public highways and streets to which it connects. Every entrance and exit shall be:
 - (a) At right angles to the public highway or street to which it connects.
 - (b) Free of any material which would impede the visibility of a driver on a public highway or street.
 - (c) Of sufficient width to facilitate the turning movements of vehicles with mobile homes attached.
- (3) Each mobile home park shall have streets providing convenient access to all mobile home lots and other important facilities within the park. All such streets shall:
 - (a) Be improved to not less than minimum oil-and-stone road specifications of the Town of Kingsbury.
 - (b) Be so designed as to permit safe and convenient vehicular circulation within the park.
 - (c) Be adapted to the topography and have suitable alignment and gradient for traffic safety.

- (d) Intersect at right angles.
 - (e) Have a thirty-foot minimum width or right-of-way.
 - (f) Be maintained to a minimum width of twenty (20) feet.
- F. Except in case of emergency, no parking shall be allowed on any street in any mobile home park.
- (1) At least one (1) off-street parking space shall be provided on each mobile home lot. Each such space shall:
 - (a) Have a minimum length of twenty (20) feet.
 - (b) Be connected to the street providing access to the mobile home lot by a driveway having a minimum width of nine (9) feet.
 - (2) Additional off-street parking spaces shall be provided within the mobile home park at convenient locations for guests and delivery and service vehicles.
 - (a) There shall be one (1) such parking space for each two (2) mobile home lots within the park.
 - (b) Such parking spaces shall be in bays which provide adequate maneuvering space.
 - (3) Every such parking space and driveway shall:
 - (a) Be constructed of an appropriate durable non-porous material adequate for the support of any load reasonably expected to be placed thereon.
 - (b) Have a durable surface and be suitably graded to permit rapid surface drainage.
- G. The following utilities and service facilities shall be provided in each mobile home park and shall be constructed and maintained in accordance with the regulations and requirements of the New York State Department of Health and the Sanitary Code of New York State.

- (1) An adequate supply of pure water for drinking and domestic purposes supplied by pipes to all mobile home lots and service buildings within the park, with proper connections to each building and mobile home.
- (2) A sewage system connected to each mobile home and service building situated in the park, to receive the waste from showers, tub, toilets, lavatories and sinks therein and dispose of the same in a sanitary manner. Sewer connections in unoccupied lots shall be tightly sealed to prevent emission of gas and odors and the breeding or harboring of insects or vermin.
- (3) Garbage cans with tight-fitting covers, in quantities adequate to permit the disposal of all garbage and rubbish from the park. Such cans shall be kept covered and in sanitary condition at all times. An adequate supply of such cans shall be kept within one hundred (100) feet of each mobile home lot. Garbage and rubbish shall be collected and disposed of outside of the park as frequently as may be necessary to ensure that such cans shall not overflow.
- (4) Other service buildings as deemed necessary for the normal operation of the park. Such buildings shall be maintained in a clean, orderly and sanitary condition.
- (5) Underground weatherproof electric service connections and outlets of a type approved by the New York State Board of Fire Underwriters, for the provision of electric service to each mobile home located or to be located in such park; unless underground service is not economically feasible.
- (6) A storage building or other suitable place for the secure and orderly storage of personal property, such as bicycle, baby carriages, lawn furniture and the like, shall be placed on each mobile home lot for the use of the occupants of the mobile home thereon. No combustible or noxious material shall be stored beneath any mobile home, nor shall any personal property be so stored beneath a mobile home as to constitute a health hazard or other public nuisance.

- H. Each mobile home park shall provide common open space, not including roads, conveniently located for the use of the occupants of such park. Such space shall have a total area equal to at least ten percent (10%) of the gross land area of the park.
- I. Every mobile home park shall have lawn or other suitable vegetative ground cover on all areas not used for the placement of mobile homes and other buildings, walkways, roads and parking areas. Trees or shrubs shall be provided to the extent necessary to screen objectionable views and to provide adequate shade and a suitable setting for the mobile homes and other facilities in the park.
- (1) Views which shall be screened include, fuel tanks and other nonresidential uses, garbage storage and collection areas and all abutting yards of adjacent properties.
 - (2) Other planting shall be provided along those areas within the park which front upon public highways and streets to reduce glare from automobile headlights and provide pleasant outlooks for the living units.
- J. No mobile home shall be placed in any mobile home park unless the same shall have a flush toilet, a tub or shower, a sink, cooking and heating facilities and plumbing and electrical systems for connection to outside systems, all which comply with all applicable laws, rules and regulations.
- K. Every mobile home park shall be sufficiently lighted during hours of darkness to provide for the movement of pedestrian occupants of the park to and from mobile homes and service buildings.
- L. The owner or operator of every mobile home court shall keep a permanent record in writing, of all persons occupying or using the facilities of such court, which shall include the following:
- (1) The names and addresses of each occupant of each mobile home.

- (2) Name and address of the owner of each mobile home.
- (3) Year, make, model and color of each mobile home.
- (4) Registration numbers of any motor vehicle regularly maintained by any resident of the mobile home park.

M. Construction shall commence not later than ninety (90) days from date of approval of application.

§ 58-9. Trailer camp standards.

- A. All of the provisions of § 58-8 hereof shall apply to every trailer camp, except as otherwise provided in this section. For the purpose of the regulation of travel trailers and trailer camps, such § 58-8 shall be read and construed as if the terms "mobile home," "mobile home lot," "mobile home park," and "mobile home stand" read "travel trailer," "trailer lot," "trailer park" and "trailer stand."
- B. The total number of trailer lots in any trailer camp shall not exceed twelve (12) per gross acre.
- C. Each trailer lot shall have a total area of not less than two thousand five hundred (2,500) square feet with a minimum dimension of thirty (30) feet.
- D. No travel trailer shall be parked or otherwise located nearer than a distance of twenty (20) feet from an adjacent travel trailer in any direction.
- E. The following utilities and service facilities shall be provided in each trailer camp and the same shall comply with the regulations and requirements of the New York State Department of Health and the Sanitary Code of New York State.
 - (1) An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all buildings and trailer lots within the camp to meet the requirements of such camp. Each lot shall be provided with a cold-water tap, the waste from which shall be emptied into a drain connected to an approved disposal system.

- (2) Toilet and other necessary sanitary facilities for males and females shall be provided in permanent structures. Such facilities shall be housed in either separate buildings or in the same building. In the latter case, such facilities shall be separated by soundproof walls. The male and female facilities shall be marked with appropriate signs and have separate entrances for each.
- (3) Such toilet and other sanitary facilities shall be provided in the following manner:
 - (a) Male facilities shall consist of not less than: one (1) flush toilet for every twenty (20) trailers; one (1) urinal for every twenty (20) trailers; one (1) lavatory for every ten (10) trailers; one (1) shower, with an adjoining dress compartment of at least sixteen (16) square feet for every ten (10) trailers.
 - (b) Female facilities shall consist of not less than: one (1) flush toilet for every ten (10) trailers; one (1) lavatory for every ten (10) trailers; one (1) shower, with an adjoining dress compartment of at least sixteen (16) square feet for every ten (10) trailers.
 - (c) Provide a dumping station facility.
- (4) Lavatory and shower facilities shall be supplied with hot and cold running water.
- (5) The buildings housing such toilet and sanitary facilities shall be well-lighted at all times of the day and night, shall be well-ventilated with screened openings, shall be constructed of moistureproof material, shall be well-heated and shall be clean and sanitarily maintained at all times. The floors of such buildings shall be of water-impervious material.
- (6) Such buildings shall not be located nearer than forty (40) feet nor further than four hundred (400) feet from any travel trailer.

(7) Laundry facilities at suitable locations for the convenience of the occupants of the park. Such facilities shall be equipped with at least one (1) operating washing machine and one (1) operating dryer. Such facilities shall be housed in a permanent structure or structures which shall be adequately lighted, heated and ventilated. Such facilities shall be maintained in a clean, orderly and sanitary condition.

(8) Not less than one (1) public telephone.

F. Waste from all buildings and trailer lots shall be discharged into an approved public or private sewer system in such manner as not to present a health hazard.

§ 58-10. Mobile homes located outside mobile home parks.

A. No mobile home shall hereafter be parked or otherwise placed within the town and outside a licensed mobile home park, except as follows:

(1) The Planning Board may grant a permit, for a period not to exceed one (1) year to the owner of land within the town who intends to construct on such land a dwelling house for his own occupancy or his employee's occupancy. The owner of the land may place or park a mobile home on such land for his own occupancy or his employee's occupancy during the construction of such dwelling. Said permit may be renewed only once, without a fee, for a period not to exceed one (1) year. The mobile home shall be removed from the premises upon expiration of the permit. In addition to the application form the owner shall furnish the information of § 58-10B(1) and the following data:

- (a) Specifications and plans for the dwelling house in accordance with the New York State Building Codes and its placement on the site.
- (b) Evidence of financial ability to complete construction.

- (c) The appropriate fee for a building permit.
- (2) The Inspector may grant a permit, for a period not to exceed one (1) year, to the owner or occupant of land within the Town of Kingsbury to temporarily replace an occupied dwelling destroyed by fire or other disaster in accordance with § 58-10D. Said license is not transferable and becomes void if ownership of the land changes or if the mobile home is unoccupied for more than ninety (90) consecutive days. Said permit may be renewed only once, without a fee, for a period not to exceed one (1) year. In addition to the application form the owner shall furnish the information of § 58-10B(1) and the following data:
 - (a) Specifications and plans for repair and/or replacement of the damaged structure in accordance to the New York State Building Codes.
 - (b) Appropriate fee for a building permit, if applicable.
- (3) The Planning Board may grant a permit to the owner of a farm, who can demonstrate substantial need, to set up a mobile home or mobile homes to be occupied only by a farm worker or workers and his or their families. Such need may include data on the number of cows being milked, acreage farmed, size of greenhouse operation, size of stable operation or other appropriate considerations. Each mobile home shall be located on a lot of at least seventy-five (75) feet by one hundred (100) feet and shall be no closer than one hundred (100) feet to the farm house or any farm building. The lot(s) shall be free from drainage problems and fenced off from farm animals. Said license shall be valid for twelve (12) months from the date of issue.
- (4) [Added 4-13-87¹] The Inspector may grant a permit for a mobile home on a site in a zone specifically allowing such use. Such mobile home shall:

¹ Editor's Note: This ordinance also renumbered former Subsection A(4) as Subsection A(5).

- (a) Be on a parcel meeting minimum zone requirements.
 - (b) Have setbacks as determined by the Zoning and Subdivision Ordinances, as applicable.²
 - (c) Meet Parts 1220 through 1222 of New York State Uniform Fire Prevention and Building Code.
 - (d) Have a foundation consisting of a poured concrete footing below the frost line and blocks at least one (1) block above grade.
- (5) Within thirty (30) days prior to the expiration of a permit for a mobile home outside a mobile home park, the owner shall renew said permit, without a fee, with the Building Inspector. For mobile homes permitted for farm use, evidence of the farm worker-occupant's employment on the farm, such as a W-2 form or its equivalent, shall accompany the renewal application. [Amended 4-13-87]
- B. The owner of land, as above provided for, shall file an application and three (3) copies for a license with the Town Clerk.
- (1) Each such application for a mobile home shall be in writing and signed by the applicant. This application must state and be accompanied by the following:
 - (a) The name and address of the applicant.
 - (b) The location and description of the land.
 - (c) A plan drawn to scale of not smaller than one (1) inch equals twenty (20) feet. This plan must show the boundaries of the land, the location of the mobile home on the land, the location and plan for the proposed water and sewage disposal systems and the location of adjacent properties and structures.
 - (d) A certified or photostatic copy of the deed to the land which indicates that the applicant is the owner of such land.

² Editor's Note: See Ch. 80, Zoning, and Ch. A84, Subdivision Regulations.

- (e) The proper fee from Appendix A.¹
- (2) Review of applications.
- (a) The Town Clerk shall transmit the completed application to the Town Inspector.
- (b) Upon receipt the Inspector shall review all applications' compliance with the provisions of this law and the requirements of the County or State Department of Health.
- (c) With respect to an application for a permit for a mobile home to temporarily replace an occupied dwelling destroyed by fire or other disaster, the Inspector shall issue or deny the permit within five (5) days of receipt of the application.
- (d) With respect to an application for a permit for a mobile home for use during new construction and

(Cont'd on page 5819)

¹ Editor's Note: The contents of original Appendix A, which was included at the end of this ordinance, established a schedule of fees, which can now be found in the Fees Chapter; see Ch. 46, Fees.

for farm use, the Inspector shall transmit the application along with his written findings to the Planning Board within thirty (30) days of receipt of the application.

- (3) The Planning Board shall review the application and the findings of the Inspector and, by resolution, within thirty (30) days of its next regular meeting, indicate its approval or disapproval of a mobile home for use during new construction or a mobile home for farm use.
 - (4) The Inspector or Planning Board shall notify the applicant of the decision and issue a permit to the applicant if the application was approved.
- C. If an application for a permit to place a mobile home outside a mobile home park is denied by the Town Inspector or the Planning Board, the applicant may appeal said decision to the Town Zoning Board of Appeals. Approval by the Zoning Board of Appeals after denial of the application by the Planning Board shall require a majority plus one (1) of the board membership.
- D. Any mobile home parked or placed outside a duly licensed mobile home park shall have an adequate supply of pure water for drinking and domestic purposes and a sewage disposal system. Both systems shall satisfy the requirements of the New York State Department of Health.
- E. No occupied mobile home outside a duly licensed mobile home park shall be parked or placed nearer than:
- (1) A distance of seventy-five (75) feet from the center line of a state or county street or highway and sixty-five (65) feet from the center line of a town street or highway.
 - (2) A distance of forty (40) feet from an adjacent property line.
- F. Not more than one (1) nonfarm mobile home shall be placed or parked on any parcel of land which is located outside a licensed mobile home park.

§ 58-11. Existing mobile homes.

A. A mobile home which is lawfully in existence prior to the enactment of this chapter but not located in a mobile home park may be continued to be used as living quarters by its occupants, provided that:

(1) The owner of the land upon which such mobile home is located shall register such mobile home with the Town Clerk within thirty (30) days of the effective date of this law. Such registration shall be accompanied by a description of the parcel and of the mobile home, and a statement of the ownership of each.

(2) The mobile home meets the requirements of § 58-10C.

B. If the owner of the land desires to substitute a mobile home of superior construction or improve the facilities for the existing mobile home, such owner shall file an application for license pursuant to § 58-10 hereof. The application fee from Appendix A will be required.²

§ 58-12. Travel trailers outside trailer camps.

No travel trailer used as a permanent residence shall hereafter be parked or otherwise placed within the town unless such travel trailer is parked or placed in a duly licensed trailer camp.

§ 58-13. Enforcement.

The Inspector of the Town of Kingsbury, shall enforce all of the provisions of this law.

§ 58-14. Revocation of mobile home park or trailer camp license.

A. If a police officer, the Inspector, or any authorized representative of the town finds that any mobile home park or trailer camp is not being maintained in a clean and

² Editor's Note: The contents of original Appendix A, which was included at the end of this ordinance, established a schedule of fees, which can now be found in the Fees Chapter; see Ch. 46, Fees.

sanitary condition or is not being conducted in accordance with the provisions of this chapter, or that the applicable fees provided for in this chapter have not been paid, or that the applicable registration provisions of this chapter are not being carried out, such facts shall thereupon be reported to the Town Board. Said Town Board may direct the Town Clerk to serve an order in writing upon the holder of the license for such park or camp directing that the conditions therein specified be remedied within ten (10) days after date of service of such order.

- B. If such conditions are not corrected after the expiration of said ten-day period, the Town Board may cause a notice in writing to be served upon the holder of said license requiring the said holder to appear before the Town Board at a time to be specified in such notice and show cause why such license should not be revoked. The Town Board may, after a hearing at which testimony of witnesses may be taken, and the holder of the license shall be heard, revoke such license if said Town Board shall find that the said park or camp is not being maintained in a clean and sanitary condition, or that any provision of this chapter has been or is being violated or that the fees provided for in this chapter have not been paid or for other sufficient cause. Upon the revocation of such license, the premises shall immediately cease to be used for the purpose of a mobile home park or trailer camp and all mobile homes and travel trailers, as the case may be, shall forthwith be removed herefrom and the land returned to its original condition.

§ 58-15. Revocation of license of mobile home outside park.

If a police officer, the Inspector or any authorized representative of the town finds that any mobile home outside a mobile home camp is not being maintained in a clean and sanitary condition or is not being maintained in accordance with the provisions of this chapter, or that the fee provided for in this chapter has not been paid, such facts shall thereupon be reported to the Town Board, and the said Town Board may direct the Town

Clerk to serve an order in writing upon the holder of the license, the owner of the mobile home or the owner of the premises on which it is located, or any or all thereof, directing that the condition therein specified be remedied within five (5) days after the date of service of such order. If such conditions are not corrected, after the expiration of said five-day period, the Town Board may cause a notice in writing to be served upon the person or persons upon whom such order was served requiring the appearance of the person so served before the Town Board at a time to be specified in such notice and show cause why such license should not be revoked. The Town Board may, after a hearing at which testimony of witnesses may be taken and the person or persons so served shall be heard, revoke such license if the Town Board shall find that the said mobile home is not being maintained in a clean and sanitary condition or if they find that any provision of this chapter has been violated or that any fee provided in this chapter has not been paid or for any other sufficient cause. Upon the revocation of such license, the said mobile home shall be removed forthwith from the premises.

§ 58-16. Penalties for offenses; additional remedies.³

Any person who violates any provisions of this chapter shall be guilty of a violation against such chapter punishable by a fine of not more than two hundred fifty dollars (\$250.) and not more than fifteen (15) days imprisonment. In addition, the violation of this chapter or any of the provisions thereof shall subject the person, firm or corporation violating the same to a civil penalty in the sum of fifty dollars (\$50.) and when a violation of this chapter or any of the provisions thereof is continuous each twenty-four (24) hours thereof shall constitute a separate and distinct violation, said penalty to be recovered by the Town of Kingsbury in a civil action. The application of the above penalty or penalties, or the prosecution for the violation of the provisions of this chapter shall not be deemed to prevent the revocation of any license issued pursuant thereto or the enforced removal of conditions prohibited by this chapter.

³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

§ 58-17. Compliance with statutes and other laws.

The issuance of any license pursuant to the provisions of the chapter shall not be deemed to waive compliance by any person with any statute of the State of New York or law, ordinance or health regulation of the town or of the county.

§ 58-18. Exceptions.

None of the provisions of this chapter shall be applicable to the following:

- A. The storage or garaging of travel trailers, not being used for living or sleeping purposes, within a building or structure or to the storage of one (1) unoccupied travel trailer on premises occupied as the principal residence of the owner of such travel trailer; provided, however, that such unoccupied travel trailer shall not be parked or located between the street line and the front building line of such premises.
- B. A mobile home or travel trailer located on the site of a construction project, survey project or other similar work project and which is used solely as a field office or work or tool house in connection with such project, provided that such mobile home or travel trailer is removed from such site within thirty (30) days after the completion of such project.
- C. A sectional house which is prefabricated in sections, transported to the building site then fastened together and placed on a permanent and totally enclosed masonry foundation and contains a minimum of eight hundred (800) square feet of useable living space.

§ 58-19. Variances.

Where there are practical, difficult or unnecessary hardships in the way of carrying out the strict letter of provisions of this chapter, the Town Board, after review and recommendation by the Planning Board, shall have the power in a specific case to vary

any such provisions in harmony with the general purpose and intent of this code, so that the public health, safety and general welfare may be secured and substantial justice done.

§ 58-20. Conditions for special permits.

After consideration of any application's potential impact upon the health, safety and welfare of the town, the Planning Board and/or the Zoning Board of Appeals may impose reasonable conditions upon the issuance of any special permit within the scope of this chapter.

Chapter 61

PEDDLING AND SOLICITING

- § 61-1. Definitions.
- § 61-2. Exemptions.
- § 61-3. License required.
- § 61-4. Application for license.
- § 61-5. Issuance of license.
- § 61-6. Fees.
- § 61-7. Employees of licensee.
- § 61-8. Identification of vehicles.
- § 61-9. Procedure for refusal or revocation of license.
- § 61-10. Restrictions.
- § 61-11. Taking of orders.
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- § 61-13. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 9-28-81. Sections 61-6 and 61-13 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

§ 61-1. Definitions.

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

ESTABLISHED PLACE OF BUSINESS — Includes a building or store in which the person transacts business and deals in the goods, wares and merchandise he hawks, peddles or solicits for during regular business hours.

HAWKER AND PEDDLER — Includes, except as hereinafter expressly provided, any person, either principal or agent, who, in any public street or any public place or by going from house to house or place of business to place of business, on foot or from any animal or vehicle standing in a street or highway, sells or barter, offers for sale or barter or carries or exposes for sale or barter any goods, wares or merchandise, except as hereinafter exempted.

PERSON — Includes one (1) or more persons of either sex, natural persons, corporations, partnerships, associations, joint stock companies, societies and all other entities of any kind capable of being sued.

SOLICITOR — Includes any person who goes from place to place or house to house or who stands in any street or public place taking or offering to take orders for goods, wares and merchandise, except as hereinafter exempted, or for services to be performed in the future or for making, manufacturing or repairing any article or thing whatsoever for future delivery.

§ 61-2. Exemptions.

Nothing in this chapter shall be held to apply to any sales conducted pursuant to statute or by order of any court to any person selling personal property at wholesale to dealers in such articles, to merchants having an established place of business within the town, or their employees, or to the peddling of meats, fish, fruit and similar produce by farmers and persons who produce such commodities, or to dealers in milk, baked goods, heating oil and daily newspapers, to any honorably discharged member of the armed forces of the United States who has procured a license as provided by the General Business Law of the State of New York¹ or to persons soliciting or collecting for any bona fide charitable organization. This chapter shall also not apply so as to unlawfully interfere with interstate commerce. Activities of local schools shall also be exempt from this chapter.

¹ Editor's Note: See §§ 32 and 35 of the General Business Law.

§ 61-3. License required.

It shall be unlawful for any person within the territorial limits of the Town of Kingsbury, Washington County, New York, to act as a hawker, peddler or solicitor as herein defined without first having obtained and paid for, and having in force and effect, a license therefor.

§ 61-4. Application for license.

Every applicant for a license as herein provided shall submit to the Town Clerk a written application, under affidavit, setting forth the following information: that he is a citizen of the United States; that he has never been convicted of a felony or misdemeanor (or if so, giving the details); a detailed statement of the particular business, trade or occupation for which the license is requested; the number and kind of vehicles, if any, to be used by the applicant in carrying on the business for which the license is requested; the kinds of goods, wares and merchandise he desires to sell or the kind of service he desires to render; the name, address and age of the applicant; the name and address of the person, firm or corporation he represents; the names and addresses of all partners, if a partnership, and the names and addresses of the principal officers, if a corporation, and the name and address of a person upon whom a legal notice may be served; and such other information as may be required by the Town Clerk.

§ 61-5. Issuance of license.

Upon the filing of the application, as provided in the preceding section, the Town Clerk shall, upon his approval of such application, issue to the applicant a license as provided in § 61-3, signed by the Town Clerk. Except as hereinafter provided, no license shall be refused except for a specific reason and for the protection of public safety, health, morals or general welfare. A license shall not be assignable. Any holder of such a license who permits it to be used by any other person, and any person who uses such license granted to any other person, shall be guilty of a violation of this chapter. Such license shall automatically expire

on January 1, following the date of issuance of such license, but such license may provide for an earlier expiration date. No license shall be granted to a person under eighteen (18) years of age. No applicant to whom a license has been refused or who has had a license which has been revoked shall make further application until a period of at least one (1) year shall have elapsed since the last previous rejection or revocation, unless he can show that the reason for such rejection or revocation no longer exists. Every licensee, while exercising his license, shall carry the license with him and shall exhibit the same upon demand to any police officer or citizen.

§ 61-6. Fees.

The license fee to hawkers, peddlers or solicitors shall be as indicated in Chapter 46, Fees.²

§ 61-7. Employees of licensee.

Any licensee using a horse and wagon or motor vehicle may employ not more than two (2) persons to assist in selling and delivering the wares, but such person shall so act only while accompanying a licensed peddler, hawker or solicitor.

§ 61-8. Identification of vehicles.

Every vehicle used by a licensed hawker, peddler or solicitor in or about his business shall have the name of the licensee and his address, plainly, distinctly and legibly printed in letters and figures at least two (2) inches in height in a conspicuous place on the outside of each side of every such vehicle, and such name and address shall be kept so printed plainly and distinctly at all times while such vehicle is in use during the continuance of the license.

² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

§ 61-9. Procedure for refusal or revocation of license.

Upon the refusal of the Town Clerk to issue a license to any applicant or upon the determination of the Town Board that any license should be revoked, the procedure described in § 137 of the Town Law shall be complied with. When a license shall be revoked, no refund of any unearned portion of the license fee shall be made. Notice of such revocation and the reason therefor in writing shall be served by the Town Clerk upon the person named in the application or by mailing the same to the address given in the application, and a copy of such notice shall be filed with the Town Clerk.

§ 61-10. Restrictions.

A licensed hawker, peddler or solicitor shall:

- A. Not falsely or fraudulently misrepresent the quantity or quality of any article offered for sale; or offer for sale any unwholesome, tainted or diseased provisions or merchandise.
- B. Keep the vehicles and receptacles used by him in a clean and sanitary condition and the foodstuffs and edibles offered for sale well-covered and protected from dirt, dust and insects.
- C. Not stand or permit the vehicle used by him to stand in one place in any public place or street for more than ten (10) minutes or in front of any premises for any time, if the owner or any lessee of the premises objects.
- D. Not sell any confectionary or ice cream within two hundred fifty (250) feet of any school between the hours of 8:00 a.m. and 4:00 p.m. on school days.
- E. Not permit any vehicle used by him to stop or remain on any crosswalk.
- F. Not create or maintain or stand or place any barrels, boxes, crates or other obstructions upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.

G. Not blow a horn, ring a bell or use any other noisy device to attract public attention to his wares or shout or cry out his wares.

§ 61-11. Taking of orders.

All orders taken by licensed solicitors who demand, accept or receive payment or deposit of money in advance of final delivery shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and one (1) copy shall be given to the purchaser at the time the deposit of money is paid to the solicitor.

§ 61-12. Keeping of records.

It shall be the duty of the Town Clerk to keep a record of all applications and of all licenses granted under the provisions of the chapter, giving the number and date of each license, the name and residence of the person licensed, the amount of the license fee paid and also the date of revocation of all licenses revoked.

§ 61-13. Penalties for offenses.³

Any person who himself or by his agent or employee shall act as a hawker, peddler or solicitor, as herein defined, without a license or who shall violate any of the provisions of this chapter or who, having had his license revoked, shall continue to act as a hawker, peddler or solicitor shall, upon conviction, be punished by a fine of not more than two hundred fifty dollars (\$250.), and each day on which such violation continues shall constitute a separate offense.

³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

Chapter 63

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- § 63-48. Definitions.
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- § 63-50. Additional charges for additional treatment.
- § 63-51. Billing.
- § 63-52. Administration.
- § 63-53. Penalty for nonpayment.
- § 63-54. Unpaid rents.
- § 63-55. Levy of unpaid rent as taxes; collection.
- § 63-56. Sewer Rent Fund.
- § 63-57. Effective date.

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

GENERAL REFERENCES

On site wastewater treatment systems — See Ch. 47. Part 2.
Hazardous and other wastes — See Ch. 52.
Health and sanitation — See Ch. 53.
Water district rules and regulations — See Ch. A87.

Part 1 Rules and Regulations [Adopted 11-14-2005 by L.L. No. 5-2005]

ARTICLE I Statement of Purpose

§ 63-1. Purposes.

The purposes of these rules and regulations are specifically stated as follows:

- A. To prohibit any new connections from inflow sources into the sanitary sewer portions of the sewer system.
- B. To ensure that new sewers and connections to the sewer system are properly designed and constructed.
- C. To prohibit excessive volumes and/or inordinate rates of flow of sewage and wastes into the district sewerage system.
- D. To prohibit the contribution of sewage, industrial wastewater or other wastes of a flammable nature or which create, in any way, a poisonous or hazardous environment for sewerage maintenance and operation personnel.
- E. To prohibit the contribution of sewage, industrial wastewater or other wastes which may cause maintenance

difficulties in the trunk sewers, force mains, pumping stations and other structures and appurtenances of the district sewerage system.

- F. To prohibit the contribution of sewage, industrial wastewater or other wastes which may create operating difficulties at the water pollution control plant as it now exists or may be constructed, modified or improved in the future.
- G. To prohibit or to regulate the contribution of sewage, industrial wastewater or other wastes which require greater expenditures for treatment at the plant than are required for equal volumes of normal sewage.
- H. To require the pretreatment, before introduction into the district sewerage system, or sewers tributary thereto, of such wastes as may otherwise impair the strength and/or durability of the structures appurtenant to the system, by direct or indirect chemical action, or interfere with the normal treatment process.
- I. To provide cooperation with the New York State Department of Environmental Conservation, the Environmental Protection Agency and any other agencies which have requirements or jurisdiction for the protection of the physical, chemical and bacteriological quality of watercourses within or bounding the district.
- J. To protect the public health and to prevent nuisances.

§ 63-2. Scope of regulations.

These rules and regulations set forth uniform requirements for direct and indirect contributors to the wastewater collection and treatment system for the Kingsbury Sewer District Number One and enables the district to comply with all applicable state and federal laws required by the Clean Water Act of 1977 and General Pretreatment Program Regulations (40 CFR Part 403).

§ 63-3. Applicability.

These rules and regulations shall apply to the Kingsbury Sewer District Number One and to those users outside the district who are by contract or agreement with the district users of the district's publicly owned treatment works (POTW), as it now exists or may be constructed, modified or improved in the future.

**ARTICLE II
Definitions****§ 63-4. Terms defined.**

Unless the context specifically indicates otherwise, the meaning of terms in these rules and regulations shall be as follows:

ABNORMAL STRENGTH SEWAGE — Any waste having a suspended solid, BOD, chlorine demand or total phosphate concentration in excess of that found in normal strength sewage, but which is otherwise acceptable into a public sewer under the terms of these regulations.

APPROVAL AUTHORITY — The director in a SPDES state with an approved state pretreatment program and the Administrator of the EPA in a non-SPDES state without an approved state pretreatment program.

A.S.T.M. — The American Society for Testing and Materials.

AUTHORIZED REPRESENTATIVE OF INDUSTRIAL USER —

- A. A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;
- B. A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;

- C. A duly authorized representative responsible for the overall operation of the facilities from which the indirect discharge originates.

BOD: (denoting BIOCHEMICAL OXYGEN DEMAND) — The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C. 68° F. expressed in milligrams per liter (mg/l). Measurement shall be as set forth in the latest edition of "Standard Methods for the Examination of Water and Waste Water."

BUILDING CONNECTION LATERAL — The pipe laid incidental to the original construction of a public sewer from the public sewer up to some point at the side of the street, highway or similar location, and there capped, having been provided and intended for extension and for use at some time thereafter as part of a building or house sewer connection.

BUILDING DRAIN — That part of the horizontal piping of a building drainage system which receives the discharge of all soil, waste and other drainage from inside the walls of any building and conveys the same to the building service sewer five feet outside the foundation wall of each building.

BUILDING SERVICE SEWER — That part of the horizontal piping of a building drainage system beginning five feet from the foundation wall and terminating at its connection with the main sewer, cesspool, septic tank or other disposal terminal.

°C — Degree Centigrade.

CATEGORICAL STANDARDS — The National Categorical Pretreatment Standards or Pretreatment Standards.

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

COMMERCIAL USER — Includes any property occupied by a nonresidential establishment not within the definition of "industrial user" and which is connected to the publicly owned treatment works (POTW).

COMPOSITE SAMPLE — A sample consisting of several effluent portions collected during a specific time period and combined to make a representative sample.

COMPOSITE SEWAGE — Sewage consisting of several effluent portions collected from various discharge lines at a common point.

COOLING WATER — The water discharged from any system or condensation, air conditioning, cooling refrigeration or other sources. It shall contain no polluting substances which would produce BOD, or suspended soils, in excess of 10 parts per million by weight, or toxic substances as limited elsewhere herein.

COUNTY — The County of Washington.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION — The New York State Department of Environmental Conservation.

DIRECT DISCHARGE — Discharge of treated or untreated wastewater directly to the water of the State of New York.

DIRECTOR — The Director, duly appointed by the Town Board of the Town of Kingsbury, shall be the Town Board's authorized agent in matters falling under these rules and regulations issued pursuant hereto and shall exercise the powers stipulated in these rules and regulations and which are subject to the approval and ratification of the Town Board. The Director shall report to the Town Board upon applications for sewer connections, shall inspect the construction of such sewer connections and shall report to the Town Board upon any transgression of these rules and regulations issued pursuant hereto.

DISTRICT — Kingsbury Sewer District Number One.

DISTRICT SEWERAGE SYSTEM — The interceptor sewers, trunk sewers, collector sewers, force mains, pumping station, sewage treatment plants and other appurtenant structures

owned and operated by the Kingsbury Sewer District Number One.

DOMESTIC SANITARY SEWAGE — The solid and liquid wastes from toilet and lavatory fixtures, kitchens, laundries, bathtubs, shower baths, or equivalent plumbing fixtures as discharged from dwellings, business and industrial buildings.

EFFLUENT — Wastewater, after some degree of treatment, flowing out of any treatment device or facilities.

EPA — The United States Environmental Protection Agency.

EXCESSIVE INFILTRATION/INFLOW — The quantities of infiltration/inflow which can be economically eliminated from a sewer system by rehabilitation, as determined by a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions with the total costs for transportation and treatment of infiltration/inflow.

°F — Degree Fahrenheit.

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

FLOW VOLUME — The quantity of waste or liquid.

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

GRAB SAMPLE — A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

HOLDING TANK WASTE — Any waste of domestic origin from holding tanks such as chemical toilets, campers, trailers, human excrement and garbage (scavenger waste). Also included is sewage sludge from small sewage treatment plants.

INDIRECT DISCHARGE — The discharge or the introduction of nondomestic pollutants from any source regulated under

Section 307 (b) or (c) of the Act (33 U.S.C. 1317), into the POTW (including holding tank waste discharge into the system).

INDUSTRIAL USER — Any industrial or commercial establishment with a classification as designated in the "Standard Industrial Classification Manual," 1972 edition, as published by the Executive Office of the President and which utilized the services of the district.

INDUSTRIAL WASTEWATER — Includes the water-carried wastes from any industrial manufacturing processes, trade or business as distinct from sanitary sewage.

INDUSTRIAL WASTEWATER PERMIT — A permit to deposit or discharge industrial wastewater into any sanitary sewer under jurisdiction of the District.

INFILTRATION — Water entering a sewer system, including sewer service connections from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.

INFLOW — The water discharged into a sewer system, including service connection from such sources, but not limited to, roof leaders, cellar, yard, and area drains, foundation drains, cooling water discharge, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, stormwaters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

INTERFERENCE — The inhibition or disruption of the POTW, its treatment processes or operations, or its sludge processes, use of disposal which is a cause of or significantly contributes to either a violation of any requirement of the district's SPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with Section 405 of the Act (33 U.S.C. 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste

Disposal Act (SWDA), or more stringent state criteria (including those contained in any New York State sludge management plan prepared pursuant to Title IV of SWDA applicable to the method of disposal or use employed by POTW).

mg/l (MILLIGRAM PER LITER) — The number of milligrams of dry solids, either dissolved or undissolved, contained in one liter of water, including solids. One milligram per liter may be expressed as 8.345 pounds of dry solids per 1,000,000 United States' gallons of water, including solids. Milligrams per liter may be expressed as parts per million, designated as "ppm," meaning the number of pounds of dry solids contained in 1,000,000 pounds of water, including dry solids, by using the following formula:

$$\text{mg/l} = \text{ppm} \times \text{specific gravity of the solution}.$$

NATIONAL CATEGORICAL PRETREATMENT STANDARD or PRETREATMENT STANDARD — Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) or (c) of the Act (33 U.S.C. 1347), which applies to a specific category of industrial user.

NATURAL OUTLET — Any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

NEW SOURCE — Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(b) of the Act, which will be applicable to such source if such standards are thereafter promulgated in accordance with that section.

NORMAL SEWAGE — Sewage, industrial wastewater or other wastes, which when analyzed show by weight the following characteristics:

- A. BOD: 2,000 pounds, per million gallons (240 milligrams per liter) or less;
- B. Chlorine demand: 208 pounds per million gallons (25 milligrams per liter) or less;
- C. Suspended solids: 2,500 pounds, per million gallons (300 milligrams per liter) or less.

OBJECTIONABLE WASTE — Any wastes that can harm either the sewers, sewer treatment process, or equipment, have an adverse effect on the receiving stream, or otherwise endanger life, health or property or constitute a nuisance.

OTHER WASTES — Garbage (shredded or unshredded), refuse, wood, egg shells, coffee grounds, sawdust, shavings, bark, sand, lime, cinder, ashes and all other discarded matter not normally present in sewage or industrial wastewater.

PERSON — Any individual, firm, company, association, society, corporation, or group contributing directly or indirectly to the district sewage system.

pH — The negative logarithm of the hydrogen ion concentration in moles per liter. It indicates the intensity of acidity and alkalinity of the pH scale running from 0.0 to 14.0. A pH value of 7.0, the midpoint of the scale, represents neutrality. Values below 7.0 represent acidic conditions.

POLLUTED WATER OR WASTE — Any water, liquid or gaseous waste containing any of the following: soluble or insoluble substances of organic or inorganic nature which may deplete the dissolved oxygen content of the receiving stream; settleable solids that may form sludge deposits; grease and oils, floating solids which may cause unsightly appearance; color; phenols and other substances to an extent which would impart any taste or odor to the receiving stream; and toxic or poisonous substances in suspension, colloidal state, solution or gases.

POTW TREATMENT PLANT — That portion of the district's system which is designated to provide treatment (including recycling and reclamation) to wastes received by the district's system.

ppm — Parts per million.

PRETREATMENT — The reduction of the amount of, or alteration of, pollutant properties in wastewater prior to, or in lieu of, discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, production process changes or by other means, except as prohibited by General Pretreatment Regulations for Existing and New Sources of Pollution (40 CFR 403.6).

PROPERLY SHREDDED GARBAGE — Garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in the public SEWER to which it is discharged, with no particle having a dimension greater than 1/2 inch in any dimension.

PUBLICLY OWNED TREATMENT WORKS (POTW) — A treatment works as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned in this instance by the Town. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of these rules and regulations, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the district who are, by contract or agreement with the district, users of the district's POTW.

PUBLIC SEWER — A trunk, main or lateral sewer up to and including the "Y" branch or tee provided for connection thereto and to which all owners of abutting properties have equal rights, and which is controlled by a public body. The public sewer does not include the building or the house sewer, or the building connection lateral after it is connected with a building sewer.

RECEIVING WATERS — A natural watercourse or body of water into which treated or untreated sewage is discharged.

RESIDENTIAL USER — Any user not covered under the definition of "Industrial User" or "Commercial User."

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

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

SCAVENGER WASTES — The matter collected from privies, septic tanks, cesspools and chemical toilets and sludge from small sewage treatment plants (25,000 gallons per day or less).

SEWAGE — A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground-, surface and storm water as may be inadvertently present. The admixture of sewage, as above defined, with industrial wastewater or other wastes also shall be considered "sewage" within the meaning of this definition.

SEWER — A pipe or conduit for carrying sewage.

SHALL — Is mandatory; "may" is permissive.

SIGNIFICANT INDUSTRIAL USER (SIU) — Any industrial user of the district's POTW who:

- A. Is subject to promulgated categorical pretreatment standards;
- B. Has substantial impact, either singly or in combination with other contributing industries, on the operation of the treatment works;

- C. Uses, on an annual basis, more than 10,000 pounds or 1,000 gallons of raw material containing priority pollutants/substances of concern and discharges a measurable amount of these pollutants to the sewer system from the process using these pollutants; or
- D. Discharges more than 5% of the flow or load carried by the treatment plant receiving the waste.

SLUG — Any discharge of water, sewage or industrial wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average twenty-four-hour concentration or flow during normal operation.

SPDES — The State Pollution Discharge Elimination System.

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

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

STORM SEWER — A sewer which carries storm surface waters and drainage, but excludes sewage and industrial wastewater other than cooling waters and other unpolluted waters.

STORMWATER — Includes the runoff or discharge of rain and melted snow or other water from roofs, surfaces of public or private lands, or elsewhere. Stormwater also shall include subsoil drainage as defined in this section.

SUBSOIL DRAINAGE — Includes water from the soil percolating into subsoil drains and through foundation walls, basement floors or underground pipes.

SURFACE WATER — The source of water which occurs when the rate of precipitation exceeds the rate at which water may infiltrate into the soil.

SUSPENDED SOLIDS — Solids that either float on the surface of, or are in suspension in, water, sewage, or other liquids, and which are removable by flotation, skimming and sedimentation. Measurement shall be set forth in the latest edition of Standard Methods.

THE ACT — Public Law 92-500, as amended.

TOWN — The Town of Kingsbury.

TOWN BOARD — The Kingsbury Town Board as the administrative body of the Kingsbury Sewer District Number One.

TOWN SEWER DISTRICT — Any Town sanitary sewer district as created, altered or modified by action of the Kingsbury Town Board.

TOXIC POLLUTANT — Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provisions of Federal Water Pollution Control Act Amendments of 1972, Section 307(a) or other acts.

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

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

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

ARTICLE III
Use of Town and Tributary Sewers

§ 63-5. Use limitations.

- A. Disposal into the district sewerage system and sewers tributary thereto of any pollutant by any person is unlawful except in compliance with federal standards promulgated pursuant to the Federal Water Pollution Control Act Amendments of 1972 and any more stringent state and local standards.
- B. The use of the district sewerage system and sewers tributary thereto shall be strictly limited and restricted to receiving and accepting the sewage, industrial wastewater and other wastes generated on, or discharged from, real property lying within the bounds of the Town sewer district. Notwithstanding the foregoing, the Town Board may authorize, by contract, the use of the district facilities for collection and treatment of normal sewage from real property outside the bounds of the district.
- C. Sewage, industrial wastewater and other wastes will be accepted into the district sewerage system at point of connection and under conditions approved by the Town Board. A permit shall be required for each direct connection to the district sewerage system, and each connection shall be inspected during construction.

§ 63-6. Mandatory use.

All requirements, directives and orders for the mandatory use of the district sewerage system, sewers tributary thereto or municipal systems for the proper discharge of sewage, industrial wastewater and other wastes compatible with these rules and regulations shall only be established and adopted by the local municipality having jurisdiction.

ARTICLE IV
New Sewers, Sewer Extensions, and Building
Connections

§ 63-7. Use of combined sewers.

After the effective date of these rules and regulations, the construction and use of the new combined sewers or extensions to existing combined sewers tributary to the district sewerage system is prohibited.

§ 63-8. Sanitary sewers, appurtenances and building connections.

All new sanitary sewers, sanitary sewer extensions, appurtenances, and building connections within the district shall be properly designed, constructed, and tested in accordance with the appropriate and the latest rules, regulations, and policy as set forth by the EPA and NYSDEC.

§ 63-9. Approval of sanitary sewers and appurtenances.

Plans and specifications for all sanitary sewers and appurtenances shall be approved in writing by the Director before the start of construction, which approval shall not be arbitrarily withheld. Construction shall be in accordance with such approved plans and specifications. Results of leakage tests shall be submitted to the Director during construction.

§ 63-10. Connection permits.

No person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the district for such connection and, if required, paying either a permit fee or connection charge.

§ 63-11. Application for permits.

All applicants for a permit to connect to any public sewer shall fill out and file with the Director a sewer connection application as a prerequisite for the consideration of such a permit. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Director.

ARTICLE V**Prohibited Connections and Discharges****§ 63-12. Prohibited connections.**

The following connections shall be prohibited:

- A. Uncovering any portion of the public sewers or connections thereto, or opening any manhole or appurtenance of the sewage system, except under permit signed by the Director.
- B. Opening a highway or public ground for the purpose of making any sewer connection, or making or causing to be made any connections with the public sewer, except under permit signed by and under the supervision of the Director.
- C. Breaking or cutting or removing any pipe of the public sewer system; or making or causing to be made any connection to the public sewers except through the connection branches provided for that purpose. The location of said connection branches will be designated by the Director.
- D. Connecting or causing to be connected with any public sewer, either directly or indirectly, any sediment traps or any pipes carrying or constructed to carry hot circulating water, acids, germicides, grease, brewery or other industrial or trade waste or any substances detrimental to, or deemed by the Director detrimental to, the municipal sewers or to the operation of the sewage system or the

sewage treatment works, unless adequate and proper preliminary treatment appurtenances and apparatus are installed and maintained at the owner's expense so that the spent water delivered to the public sewers will be neutral in character, as determined by the standard acid-alkalinity tests, and be free from excess suspended matter or excess bactericidal agents, as may be determined by the Town Board.

- E. Steam engine exhaust or blowoff from steam boilers shall not be connected to the public sewers.
- F. Draining from washstands of public or private garages, automobile washing stations, cleaning of dyeing works, laundries or similar establishments where gasoline, oils or any flammable materials are used or stored, unless equipped with an oil separator of size and design approved by the Director.
- G. Allowing any house sewer connected with the public sewer to be also connected with any privy vault, septic tank, cesspool or underground drain and with any channel conveying water or filth, except such soil pipes and other plumbing works as shall have been duly inspected and approved by the Director.

§ 63-13. Prohibited discharges.

It shall be unlawful for any person(s), as described herein, firm or corporation:

- A. To place, deposit, permit or cause to be deposited in an unsanitary manner upon public or private property within the district, or in any area under the jurisdiction of said district, any human or animal excrement, garbage or other objectionable or harmful waste, except as hereinafter provided, except where special permission of the Town Board is given.

- B. To discharge or cause to be discharged into any public sewer, directly or indirectly, any overflow or drainage from manure pits, cesspools or other receptacles storing or constructed to store organic waste.
- C. To throw or to deposit, or to cause to allow to be thrown or deposited, in any fixture, vessel, receptacle, inlet or opening connected directly with any public sewer, any unground table garbage, vegetable parings and the like. The use of the mechanical garbage grinders producing finely divided mass, properly flushed with an ample amount of water, is permitted under these rules and regulations.
- D. To throw or to deposit, or to cause or allow to be thrown or deposited, in any fixture, vessel, receptacle, inlet or opening connected directly with any public sewer, any ashes, cinders, rags or similar waste materials of any kind or character other than feces, urine, necessary toilet paper, liquid house slops or properly ground garbage.

ARTICLE VI

Discharge of Waters not Containing Sewage

§ 63-14. Policy regarding existing local combined sewers and existing stormwater connections.

It is one explicit purpose of these rules and regulations to deter, prevent and eliminate, as far as possible, the introduction of inflow into the district sewerage system and all sewers tributary thereto. However, it is recognized that in certain areas the immediate enforcement of these rules and regulations against existing connections would not be feasible and would be unreasonable. This statement shall not be construed to mitigate in any way the enforcement of these rules and regulations against the construction of any new combined sewers or against any new connections discharging storm waters to the district sewerage system or sewers tributary thereto or to the alleviation of excessive infiltration/inflow; nor shall this statement of policy be used as a reason for not making any

changes, which may be ordered by governmental regulatory agencies.

§ 63-15. Discharge of waters not containing sewage.

- A. No downspout, leader, gutter or pipe, drain or channel which may at any time carry stormwater, surface water or groundwater of any kind, nor any drain from any catch basin, lake, swamp, pond or swimming pool, nor any inlet for surface water, stormwater or groundwater of any kind shall be connected to the district sewerage system or any sewers tributary thereto. However, existing facilities mentioned previously which are presently connected directly or indirectly to combined sewers may remain unless they contribute excessive infiltration/inflow.
- B. Where excessive infiltration/inflow has been determined to exist in sewers tributary to the district sewerage system, the local municipality, Town district or transportation corporation which owns tributary sewers, shall undertake a suitable rehabilitation program to eliminate excessive infiltration/inflow as directed by the Kingsbury Sewer District Number One, but in no event shall the local municipality be required to undertake any such rehabilitation program where, in the opinion of any such municipality, such rehabilitation program shall place an undue financial burden upon the municipality.

ARTICLE VII

Industrial Wastewater, Other Materials and Substances

§ 63-16. Acceptance and rejection of waste.

- A. If any waters or wastes are discharged or are proposed to be discharged to the district sewerage system or sewers tributary thereto, which waters or wastes, in the judgment of the Director, may have a deleterious effect upon said system or sewers, processes, equipment or receiving waters, or may otherwise create a hazard to life or

constitute a public nuisance, or may exceed the concentration limits prescribed for "normal sewage," the Director may:

- (1) Reject the waters or wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the sewers;
- (3) Require control over the quantities and rates of discharge; and/or
- (4) Require payment to cover the added costs of handling and treating the waters or wastes not covered by existing charges or sewer rents.

B. Also, certified tests of industrial wastewater may be required periodically by the district.

C. The discharge of waters or wastes requiring pretreatment, flow control, or additional treatment will not be permitted into the district sewerage system or sewers tributary thereto without previous approval by permit as prescribed under Article VII.

§ 63-17. Wastewater requiring approval by permit.

The following are some of the industries which require approval by permit before discharging wastewater into public sewers: tanning, metal pickling, metal plating, galvanizing, pulp and paper making, brewing, distilling, public laundering, laundromats, soap making, glue manufacturing, meat and poultry packing, food processing, wool scouring, bleaching and dyeing, munitions manufacturing, slaughtering, dairies, dairy products, sugar refining, fat rendering, manufacture of syrups, jam or jelly, cotton textile manufacture or processing, or any industry producing wastes which may have or may create the aforesaid deleterious effect, hazards, nuisances, or added costs. The process or processes employed in the pretreatment and control, if required, of such wastewater shall in each case be satisfactory to and shall have the approval by permit of the

Director as set forth under Article VII. No permit required pursuant to this section shall be arbitrarily denied.

§ 63-18. Prohibited materials, substances, water and wastes.

No person shall discharge or cause to be discharged into the district sewerage system or sewers tributary thereto, any of the following materials, substances or wastes:

- A. Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two successive readings on an explosive hazard meter, at the point of discharge into the system (or at any point in the system), be more than 5% nor any single reading over 10% of the lower explosive limit (LEL) of the meter. Prohibited materials include, but are not limited to: gasoline, kerosene, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides and any other substances which are a fire hazard or a hazard to the system.
- B. Any wastewater having a pH less than 5.0 or greater than 9.5, unless the POTW is specifically designed to accommodate such wastewater, or wastewater having any other corrosive property capable of causing damage or hazard to sewers, structures, equipment or personnel.
- C. Solid or viscous substances, in quantities or of such size or state, which may impair the hydraulic capacity, may cause maintenance difficulties, or may interfere with the proper operation of the district sewerage system and sewers tributary thereto, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, tar, plastics, wood, whole blood, paunch manure, feathers, hair and fleshings, entrails, paper dishes, cups, milk containers, etc., either whole or macerated.

- D. Any liquid or vapor having a temperature higher than 150° F. (65° C.) or in such quantities that the temperature at the treatment works influent exceeds 104° F. (40° C.). If, in the opinion of the Director, lower temperatures of such wastes could harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or could otherwise endanger life, health or property, or constitute or contribute to a nuisance, the Director may prohibit such discharges.
- E. Waters or wastes containing substances which are not amenable to treatment or reduction by the POTW processes employed, or are amenable to treatment only to such a degree that the POTW effluent cannot meet the requirements of regulatory agencies having jurisdiction over the discharge to the receiving waters.
- F. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect on the receiving waters of the POTW, or to exceed the limitation set forth in a Categorical Pretreatment Standard.
- G. Any substance which may cause the POTW's effluent or any other product of the POTW, such as residues, sludges or scums, to be unsuitable for reclamation process. In no case shall a substance discharged into the POTW be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Federal Water Pollution Control Act, any criteria, guidelines, or regulations affecting sludge use or disposal development pursuant to the Solid Waste Disposal Act, or state criteria applicable to the sludge management method being used.

§ 63-19. Prohibited or restricted materials, substances, waters and wastes.

- A. No person shall discharge or cause to be discharged into the district sewerage system or sewers tributary thereto the following described materials, substances, waters or wastes if it appears likely, in the judgment of the Director, that such wastes may have a deleterious effect upon the district sewerage system or sewers tributary thereto, sewage treatment or other processes, equipment, or receiving waters, or may otherwise endanger life, limb, property or constitute a public nuisance.
- B. In forming his or her opinion as to the acceptability of wastes listed below, the Director shall consider their impact upon velocities in the sewers, materials of construction, POTW processes and capacity, degree of treatability and other pertinent factors.
- C. The materials, substances, waters and wastes prohibited or restricted are:
- (1) Any water or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l, or containing substances which may solidify or become viscous at temperatures between 32° F. and 150° F. (0° and 65° C.).
 - (2) Any garbage that has not been properly shredded. The installation and operation of garbage grinders equipped with a motor greater than 3/4 horsepower shall be subject to the review and approval of the Director. (Not more than 30% of ground garbage, on the dry basis, shall pass a No. 40 U.S. Standard sieve.)
 - (3) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Director in compliance with applicable Town, county, state or federal regulations.

- (4) Materials which exert or cause unusual concentration of inert suspended solids, such as, but not limited to, Fuller's earth, lime slurries, and lime residues or of dissolved solids, such as, but not limited to, sodium chloride and sodium sulfate.
 - (5) Waters or wastes which exert or cause unusual volumes of flow or concentration constituting "SLUGS" as defined herein.
 - (6) Any waters or wastes containing excessive discoloration, concentrations exceeding limits which may be established by the Director to meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
 - (7) Any noxious malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
 - (8) Any substance which will cause the POTW to violate its SPDES permit or the receiving water quality standards.
 - (9) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
 - (10) Any waters or waste from a motor vehicle, tank truck or any other mobile conveyance without prior written authorization by the Director, specifying the nature, volume, manner, time and place of discharge.
- D. When the Director determines that a user(s) is contributing to the POTW any of the above-enumerated substances in such amounts as to interfere with the operation of the POTW, the Director shall:

- (1) Advise the user(s) of the impact of the contribution on the POTW; and
- (2) Develop effluent limitation(s) for such user to correct the interference with the POTW.

§ 63-20. Prohibited or restricted toxic pollutants.

- A. No person shall discharge or cause to be discharged into the district sewerage system or sewers tributary thereto any water or wastes containing toxic, poisonous, or other solids, liquids or gases in sufficient quantity, in the judgment of the Director, either singly or by interaction with other processes, equipment, or receiving waters, to endanger life, limb, property or to constitute a public nuisance.
- B. The following is a partial list of such prohibited or restricted substances:
 - (1) Alcohols.
 - (2) Antibiotics.
 - (3) Arsenics and arsenicals.
 - (4) Bromine, iodine, chlorine.
 - (5) Copper and copper salts.
 - (6) Cresols and creosotes.
 - (7) Fluorides.
 - (8) Formaldehyde.
 - (9) Mercury and mercurials.
 - (10) Phenolic compounds.
 - (11) Silver and silver compounds.
 - (12) Sulfonamides, toxic dyes (organic or mineral).

- (13) Zinc compounds.
 - (14) All strong oxidizing agents such as chromates, dichromates, permanganates, peroxide, etc.
 - (15) Chemical compounds producing toxic, flammable or explosive gases, either upon acidification, alkalization, oxidation or reduction.
 - (16) Strong reducing agents such as nitrates, sulphides, sulphites, thiosulphates, etc.
 - (17) Wastes from industrial processes or hospital procedures containing viable pathogenic organisms.
- C. Until operating experience and knowledge indicate otherwise in the judgment of the Director, the tabulated maximum concentrations are established for the following substances at discharge to public sewers and at the influent to the POTW:

Maximum Concentrations (milligrams per liter)		
Substance	At Discharge to Public Sewers	At Sewage Treatment Plant Influent
Bromine, iodine, chlorine	100.0	1.0
Cadium	3.0	0.15
Chromium	3.0	0.5
Chromium hexavalent	2.0	0.2
Copper	10.0	2.0
Cyanide	0.5	0.1
Fluoride	10.0	1.0
Lead as Pb	0.5	0.05

Maximum Concentrations (milligrams per liter)

Substance	At Discharge to Public Sewers	At Sewage Treatment Plant Influent
Mercuric chloride	1.0	0.05
Nickel	2.0	0.8
Silver	0.05	0.01
Zinc	3.0	0.3
RZirconium	10.0	2.0

- D. Discharge concentrations shall be determined from a twenty-four-hour composite sample collected from the building sewer at a point prior to connection to Kingsbury Sewer District Number One collector sewers. Users with multiple discharge outfalls shall not combine wastewater streams unless approved by the district.
- E. The Director may impose lower concentrations at the point of discharge to the public sewers where maximum concentrations at the plant influent are exceeded.
- F. The Director may permit higher concentrations where the substances are effectively removed by the district's POTW and do not constitute or create the aforesaid deleterious effects, dangers or nuisance.
- G. The provisions of this article shall not apply to any municipality discharging sewage from a municipal sewage collection system into the Kingsbury Sewer District Number One sewage system unless the municipality is itself the user in violation.

§ 63-21. Federal categorical pretreatment standards.

Upon the promulgation of the Federal Categorical Pretreatment Standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under

these rules and regulations for sources in that subcategory, shall immediately supersede the limitations imposed under these rules and regulations. The Director shall notify all affected users of the applicable reporting requirements under 40 CFR 403.12.

§ 63-22. State requirements.

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in these rules and regulations.

§ 63-23. Excessive discharges.

No user shall increase the use of process or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with the standards, or any pollutant-specific limitation by the district or state.

**ARTICLE VIII
Waste Connections**

§ 63-24. Sewer connections: general.

- A. Required connections. The owner of any house, building or property used for human occupancy, employment, recreation or other purposes, situated within the district and abutting on any street, alley or right-of-way in which there is located a public sewer, is hereby required at the owner's expense to install suitable sanitary facilities therein, and to connect such facilities directly with the proper public sewer in accordance with these rules and regulations, within 60 days after the date of official notice to do so, provided that such sewer is within 150 feet of any property line of such premises and is otherwise accessible.

- (1) Where a public sewer is not available under the provisions stated herein, the building sewer shall be connected to a private disposal system complying with the provisions of these rules and regulations and all of the state, county and local rules and regulations regarding operation for such work must be obtained prior to commencement of construction as stated herein.
- (2) Each building in the area served by a public sewer, when connected, must be connected separately and independently with the sewer through the house connection branch directly opposite the building or nearest downstream direction. Grouping of buildings on one house sewer will not be permitted, save by special act of and by the Town Board.

B. Notification of the Director:

- (1) The Director shall be notified at least 24 hours before the beginning of any work upon sewers or connections, as to the time of the commencement of such work.
- (2) Persons must report to the Director, in writing, within 24 hours after the completion of any work by them, every connection or disconnection made between any building and the sewer system or between any house connection and the sewer system.

C. Persons authorized to work on sewers. Only persons herein authorized may work in or on public sewers:

- (1) Connections to, alterations to, or repairs to any public sewer or manholes or other appurtenances of such sewage system in the district shall not be made by any person other than a licensed plumber of the Town and personnel of the Kingsbury Sewer District Number One.

- (2) No unauthorized person shall open the cover of, enter or alter any manhole or other appurtenance of any public sewer; place or insert in any public sewer or its appurtenances any foreign material which such sewer or its appurtenances was not intended to receive; nor shall any person damage, destroy, uncover, deface or tamper in any way with the public sewer or its appurtenances.

D. House connections.

- (1) No building connection like from the public sewer to the property line shall be of any internal diameter less than four inches. Inside the property line the diameter of the pipe shall not be less than four inches.
- (2) No public or private building, dwelling or store will be permitted to make any connection whatsoever to the district sewerage system unless same has a soil line extended to a point above thereof and is properly vented or otherwise vented in a manner approved by the Director. In existing public or private buildings, dwellings, or stores which are not properly vented, the use of a house trap shall be optional with the property owner in all cases where such trap has already been installed.
- (3) Grease traps must be installed for restaurants, hotels and apartment houses or wherever the Town Board or its authorized agent may direct. Grease traps must be kept clean at all times at the owner's expense. The size and design of the grease trap shall be approved by the Director. Grease traps should not be preceded by garbage grinders or disposal units.
- (4) Any pressurized sewer connection shall be subject to the approval of the Town Board or its authorized agent.

§ 63-25. Sewer connections: fittings, materials and methods specifications.**A. General connection limitations and specifications.**

- (1) No connection to the public sewers shall be allowed at existing public manholes except where provided in original system design or as approved by the Director.
- (2) All connections to the public sewer, sewer laterals, and all existing sewer pipe shall be of the tee-type junctions with all other types of connections prohibited.
- (3) All pipes, fittings and connections to the public sewer from any sewer or drain shall be permanently sealed against exfiltration and infiltration and shall be tested to comply with the prevailing national standard or the set standard of 100 per day per inch of diameter per mile of length, wherever the Director may require.

B. Sewer pipe and fitting specifications.

- (1) Connection fittings for building service lines shall be molded or fabricated with all gasket connections. Any connection into an existing line shall use a gasketed fitting in conjunction with a repair sleeve coupling or a gasketed saddle tee with all stainless steel clamps. Saddle connections shall conform to the following installation requirements:
 - (a) Saddles must be mounted on pipe with gasketed connection and secured by stainless steel banding.
 - (b) Holes for saddle connections shall be cleanly cut, employing either a mechanical hole cutting device, a keyhole saw or a sabre saw.

- (c) Fittings which are prefabricated using pipe sections, molded saddles and PVC solvent cement may be allowed, provided that the solvent cement used in fabrication has cured 24 hours.
 - (d) Cemented mitered connections without proper gasket seals and socket reinforcement shall not be permitted.
 - (e) Only PVC primer and solvent cement shall be used in cementing in accordance with the cement manufacturers' recommendations and ASTM D-2855.
- (2) All caps and plugs shall be braced, staked, anchored, wired or otherwise secured to the pipe to prevent leakage under the maximum anticipated thrust from internal abnormal operating conditions or test pressure from water or air.

C. Sewer line installation.

- (1) Service lines from buildings, structures, or dwelling units to the collection sewer shall have minimum depth of three feet at the property line and shall be laid with a straight alignment and at a uniform slope of not less than 1/4 inch per foot for four-inch diameter pipe and 1/8 inch per foot for six-inch diameter pipe. Where collection sewers are deeper than seven feet vertical, a standpipe or stack will be permitted. The standpipe or stack does not require concrete encasement; however, it shall be uniformly supported by compacted backfill.
- (2) No trench shall be filled or any part of pipe or fitting covered until at least 24 hours' notice has been given to the Director that the work is ready for inspection and such inspection is made. Every such inspection shall be made as soon as possible after the receipt of notice by the Director, and such Director shall have

the power to apply any proper tests to the pipe or fittings, and the owner or contractor doing such work shall furnish all necessary tools and labor for such test and shall remove any defective material or repair any work improperly done, as the Director shall direct, without expense to the municipality.

D. Trench construction.

- (1) The sewer permit applicant shall be responsible for all conflicting obstructions, and shall bear all expenses arising from obstructions encountered and shall perform all locating, protection, repair of damage, necessary removal, adjustment or relocation of any obstruction.
- (2) No blasting shall be done within five feet of public or private sewers, and utmost care shall be taken to prevent injury thereto. Reimbursement for any repair or damages done as a result of blasting shall be borne by the sewer applicant.
- (3) The trench bottom should be constructed to provide a firm, stable and uniform support along the full length of the pipe.
- (4) Bell holes shall be provided at each joint to permit proper joint assembly and alignment.
- (5) Any part of the trench bottom excavated below grade shall be backfilled to grade and compacted as required to provide firm pipe support.
- (6) When an unsuitable subgrade condition is encountered which will provide inadequate pipe support, additional trench shall be excavated and refilled with suitable foundation material.
- (7) In situations which have natural materials of fine grains, and in conditions where migration of trench wall material into bedding material can be anticipated, either wide trench construction or

well-graded bedding material without voids shall be used.

E. Haunching.

- (1) Material shall be placed and consolidated under the pipe haunch to provide adequate side support to the pipe while avoiding both vertical and lateral displacement of the pipe from proper alignment.
- (2) Where coarse materials with voids have been used for bedding, the same coarse material shall also be used for haunching.
- (3) Haunching shall be placed up to the pipe spring line.

F. Initial backfill.

- (1) Initial backfill shall be completed to a point at least six inches over the top of the pipe.
- (2) If the final backfill contains large particles which may dislodge or damage the pipe, the depth of the initial backfill shall be increased to a point of not less than 12 inches over the pipe.

G. Final backfill.

- (1) Boulders, debris, frozen earth and rubble, which could damage the pipe, shall be excluded from backfill material.
- (2) Special compaction, as specified by the Director may be required under improved surfaces, shoulders of streets, roads, aprons, curbs, and walks.
- (3) Natural compaction accomplished by the loose placing of materials into the trench, rolling of the surface layer, mounding of the surface and filling and maintaining of all sunken trenches may be allowed on all neutral grounds which are free of

traffic, lawns, open fields and unimproved rights-of-way.

§ 63-26. Industrial connections.

All measurements, tests and analyses of characteristics of waters and wastes to which reference is made shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, and shall be determined on samples collected at suitable points. The design, installation and operation of pretreatment and equalization facilities, which the Town Board or its appointed agent has deemed necessary for municipal acceptance of industrial waste, shall be subject to review and approval by the Town Board or its appointed agents and subject to requirements from all applicable codes. These facilities shall be maintained at the industry's expense and shall include:

- A. A suitable control manhole, channel or flume, together with such appurtenances in the effluent sewer to facilitate observation, sampling and measurement of the untreated, pretreated and equalized wastes. Such manhole, channel or flume shall be accessibly and safely located and shall be constructed in accordance with plans approved by the Director. The manhole shall be installed at the industry's expense, and shall be maintained by it so as to be safe and accessible at all times.
- B. Industries shall install a suitable recording flow meter at the control manhole, channel or flume, which will continuously measure and record the rate of flow of any waters and wastes. The flow meter shall be selected and installed in accordance with plans approved by the Director and shall be maintained to produce a continuous record of all water and wastes entering the public sewer. The flow meter shall be installed, maintained, operated at the industries' expense.
- C. Industries, when required by the Director, shall install a sampling device at the control manhole, channel or flume

which will sample the wastewater at fifteen-minute intervals or less and composite the sample in the proportion to the rate of flow at the time of sampling. The sampling device shall have a storage container of sufficient volume to retain a mixture of samples over 24 hours with refrigeration equipment to maintain the composited sample at a temperature of 4° C. (39.2° F.) plus or minus 2° C. (3.6° F.) and in darkness. The sample device shall be selected and installed in accordance with plans approved by the Director. The sampling device shall be maintained, cleaned and operated by the industry subject to the approval of the Director. The sampling device shall be installed and maintained at the industries' expense.

- D. Industries, where required by the Town Board or its authorized agents, shall install a suitable recording pH meter at the control manhole, channel or flume which will continuously measure and record the pH of any water and wastes. The pH information shall be transmitted by an electric or mechanical system to the control building of the sewage treatment plant and similarly recorded. An alarm system shall be connected to the pH meter to notify the industry and the operator of the sewage treatment plant when pH exceeds the limits set forth by these rules and regulations. The pH meter recording and telemetering system and alarm system shall be selected and installed in accordance with plans approved by the Director and shall be maintained and operated by the industry, subject to approval by the Director. The pH meter, recorders, telemetering system and alarm system shall be installed and maintained at the industries' expense.
- E. While performing the necessary work at any industrial property, the Town Board or its duly authorized agents shall observe all safety rules applicable to the premises established by the company, and the company shall be held blameless for any injury or loss to the Town, and the Town shall indemnify the company against loss or damage to its property by Town employees and against liability claims and demands for personal injury or property damages

asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required above.

- (1) If the industry is found to be violating any provision of this agreement, it shall be served with written notice stating the nature of the violation and providing a reasonable time for the satisfactory correction thereof. The industry shall, within the period stated in such notice, permanently cease all violation.
- (2) If the industry violates any provisions of these rules and regulations, it shall become liable to the Town for any expense, loss or damage occasioned the Town by reason of such violation.
- (3) If the industry shall continue any violation beyond the time limit provided herein, the Town may, upon recommendation of the Director, reject the wastes and sever the connection to the public sewer.
- (4) Notwithstanding any provisions of these rules and regulations, disposal into the public sewers is unlawful except in compliance with federal standards promulgated pursuant to the Federal Water Pollution Control Act Amendments (FWPCA) of 1972 and any more stringent state and local standards.
- (5) Each major contributing industry shall comply with federal pretreatment standards and any other applicable requirements promulgated by the Federal Environmental Protection Agency in accordance with Section 307 of FWPCA. Further, each major contributing industry shall submit a report in compliance with the requirements of Section 307 on the 15th day of the months of March, September, and December, or as otherwise prescribed by the

Sewer Inspector. A major contributing industry is described as any of the following:

- (a) An industry that has a flow of 50,000 gallons or more per average workday.
- (b) An industry that has a flow greater than 5% of the flow carried by the municipal system receiving the waste.
- (c) An industry that has in its waste a toxic pollutant in toxic amounts as defined in standards issued under Section 307a of the FWPCA.
- (d) An industry that has a significant impact, either singly or in combination with other contributing industries, on the treatment works or the quality of its effluent.

ARTICLE IX Industrial Wastewater Permit

§ 63-27. Permits; when required.

Except upon the issuance of a permit therefor by the Director and upon such terms and conditions as may be established by the Director in the issuance of such a permit, it shall be unlawful for any person:

- A. To discharge sewage directly into the district sewerage system.
- B. To discharge directly or indirectly into the district sewerage system, or tributary public sewers or into any private sewer or any combined sewer, sewage combined with industrial wastewater or other wastes, which, at the point of discharge, exceed the concentration limits prescribed for normal sewage under Article II herein, or fall within the categories prohibited or restricted under Article VI herein. Each significant industrial user

proposing to connect to or to contribute to the POTW shall obtain an industrial wastewater permit before connecting to or contributing to the POTW. Each existing significant industrial user connected to or contributing to the POTW shall obtain an industrial wastewater permit within 180 days after the effective date of these rules and regulations.

§ 63-28. Permit application.

A. Significant industrial users required to obtain an industrial wastewater permit shall complete the application form available from the district. Existing significant industrial users shall apply for a discharge permit within 60 days after the effective date of these rules and regulations. Proposed new industrial and commercial users shall apply at least 90 days prior to connecting to or contributing to the POTW. In support of the application, the user shall submit, in units and terms appropriate for evaluation as determined by the Director, the following information:

- (1) Name, address and location (if different from classification the address).
- (2) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended, or its most recent edition.
- (3) Wastewater constituents and characteristics, including, but not limited to, those mentioned in Article VI of these rules and regulations as determined by a reliable analytical laboratory, sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR 136, as amended.
- (4) Time and duration of contribution.

- (5) Average daily and maximum daily wastewater flow rates, including daily, monthly and seasonal variations if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by the size, location and elevation.
- (7) Description of activities, facilities and plant processes on the premises, including all materials which are or could be discharged.
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by the state or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards.
- (9) If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
 - (a) The schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components,

commencing construction, completing construction, etc.).

- (b) No increment referred to in Subsection A(9)(a) shall exceed nine months.
 - (c) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Director stating, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the day on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the Director.
- (10) Each product by type, amount, process or processes rate of production.
 - (11) Type and amount of raw material processed (average and maximum per day).
 - (12) Number and type of employees, and hours of operation of pretreatment system.
 - (13) Any other information as may be deemed by the Director to be necessary to evaluate the permit applicable.
- B. Upon receipt of all required information, the application shall be processed and the determination of significant industrial user shall be made.
 - C. Permit modification. Within nine months of the promulgation of a National Categorical Pretreatment Standard, the industrial wastewater permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. When a user, subject to a

National Categorical Pretreatment Standard, has not previously submitted an application for an industrial wastewater permit as required by Article IX of these rules and regulations, the user shall apply for a permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard. In addition, the user with an existing industrial wastewater permit shall submit to the Director, within 180 days after the promulgation of an applicable Federal Categorical Pretreatment Standard, the information required by Subsection A(8) and (9) of this section.

§ 63-29. Terms and conditions.

A. Terms and conditions as may be required and imposed by the Director in the issuance of the permit are as follows:

- (1) A limitation upon the volume of sewage and the rate of flow permitted from the premises.
- (2) The installation and maintenance by the permittee, at his own expense, of facilities or equipment for intermittent or continuous measurement of sewage, industrial wastewater or other wastes discharged from the premises into a public sewer and maintenance of appropriate records of all measurements.
- (3) The installation and maintenance by the permittee, at his own expense, of detention tanks or other facilities or equipment for reducing the maximum rates of discharge of sewage to such a percentage of the twenty-four-hour rates as may be required by the Director.
- (4) The installation and maintenance by the permittee, at his own expense, of such pretreatment facilities as may be required by the Director.

- (5) The installation and maintenance by the permittee, at his own expense, of a suitable control or sampling manhole in any sewer discharging to a public sewer for which a permit is issued.
 - (6) The installation and maintenance by the permittee, at his own expense, of grease, oil and sand interceptors, separators or traps that are necessary for the proper handling of liquid wastes containing such substances in excessive quantities or any flammable waste or other harmful ingredients.
 - (7) The submission to and approval by the Director of the plans for any of the facilities or equipment required to be installed and maintained by the permittee.
 - (8) Such other terms and conditions as may be necessary to protect the district sewerage system and the public sewer tributary to it and to carry out the intent and provisions of these rules and regulations.
- B. Such terms and conditions may also provide that subsequent to the commencement of operation of any pretreatment facilities, periodic reports with certified test results shall be made by the permittee to the Director, setting forth adequate data upon which the acceptability of the sewage, industrial wastewater or other wastes, after treatment, may be determined.
- C. Where pretreatment of flow-equalizing facilities are provided for any water or wastes, they shall be maintained continuously in satisfactory and effective operation by the permittee at his expense.
- D. A violation by the permittee of the permit shall be a cause for revocation or suspension of the permit.

§ 63-30. Permit duration and transfer.

- A. Permits shall be issued for a specific time period, not to exceed three years. A permit may be issued for a period less than a year or may be stated to expire on a minimum of 180 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the DISTRICT during the term of the permit as limitations or requirements, as identified in Article VI, are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- B. Permit transfer. An industrial wastewater permit is issued to a specific user for a specific operation. A permit shall not be reassigned or transferred or sold to a new owner, a new user different premises, or a new or changed operation.

§ 63-31. Reporting requirements for permittee.

- A. Compliance date report. Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the Director a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by such pretreatment standards or requirement. The report shall state whether the applicable pretreatment standard or requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user and certified to by a qualified professional.

B. Periodic compliance reports.

- (1) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Director during the months of June and December, unless required more frequently in the pretreatment standard or by the Director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a report of average daily flow which occurred during the reporting period. At the discretion of the Director and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Director may agree to alter the months during which the above reports are to be submitted.
- (2) The Director may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate. In such cases, the report required by Subsection B(1) of this section shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. Their reports shall contain the results of sampling and analyses of the wastewater, including the concentration, or production and mass where requested by the Director, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All analysis shall be performed in accordance with procedures established by the Administrator pursuant to Section 304 (g) of the Act and contained in 40 CFR Part 136 and amendments thereto or with any other test procedures in accordance with the techniques approved by the Director.

§ 63-32. Pretreatment.

- A. Users shall provide necessary wastewater pretreatment as required to comply with all Federal Categorical Pretreatment Standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the district shall be provided, operated and maintained at the user's expense. Detailed plans and descriptions of the pretreatment facilities and operating procedures shall be submitted to the district for review, and shall be acceptable to the district before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the district under the provisions of these rules and regulations. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be accepted to the district prior to the user's initiation of the change.
- B. The district shall annually publish in a newspaper of general circulation a list of the users which were not in compliance with any pretreatment requirements or standards at least once during the 12 previous months. The notification shall also summarize any enforcement actions taken against the user(s) during the same 12 months.
- C. All records relating to compliance with pretreatment standards shall be made available to officials of the EPA or approval authority upon request.

§ 63-33. Confidential information.

- A. Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests

and is able to demonstrate to the satisfaction of the district that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the users.

- B. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to these rules and regulations, the National Pollutant Discharge Elimination System (SPDES) permit, state disposal system permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.
- C. Required notice of change in volume or character of wastes. Any industrial user, which is connected to the district POTW and is discharging wastewater thereto, shall notify the Director 15 days prior to the commencement of any action, alteration or construction that will result in a significant change in the flow volume or character of this discharge. Notification of discharge under emergency conditions and spillage of wastewater not in accordance with standards shall be made as required in this article.

§ 63-34. Pretreatment standards.

In compliance with Public Laws 84-660 and 92-500 of the Water Pollution Control Acts and amendments thereto, these regulations adopt and use as a guide the National Pretreatment Standards and the Environmental Protection Agency's (EPA) Pretreatment Guidelines. The district recognizes that, in some cases, these pretreatment standards may not be sufficient to protect the operation of its POTW treatment plant and enable

it to comply with the terms of the SPDES permit. In such cases, the district reserves the right to impose more stringent pretreatment standards than those specified in the EPA regulations.

ARTICLE X
Disposition of Scavenger Wastes

§ 63-35. License required.

The discharge of scavenger wastes into the district sewerage system and sewers tributary thereto will be permitted only with approval of the Town Board. Persons desiring to so discharge scavenger wastes shall be required to obtain a license from the Director and the Department of Environmental Conservation. "Scavenger wastes" under this article shall mean suitably conditioned human excrement in a fluid state, and this only when such material is collected from septic tanks, cesspools or approved types of chemical toilets, and also sewage sludge from small sewage treatment plants all located within the limits of the Town of Kingsbury. This discharge of such wastes from sources outside of the Town of Kingsbury is prohibited.

§ 63-36. Conditions for discharge of scavenger wastes.

The discharge of scavenger wastes shall be made only at the location stated on said license unless the Director requires another location. The time and conditions for permissible discharge shall be set forth on the license unless revised by the Director.

§ 63-37. Regulations relating to licenses.

- A. An application for a license is required. Any false or misleading statement in any application for a license will invalidate the license. All licenses issued by the Director

will be for one year. Such a license may be suspended or revoked at any time by the Director.

- B. All acts performed in connection with the license shall be subject to regulations of the district and all local and general laws, ordinances and regulations which are now or may come into effect. Such acts shall also be subject to inspection by the Director or his representatives.

ARTICLE XI Enforcement and Penalties

§ 63-38. Penalties for offenses.

- A. A violation of the provisions of Articles III to X, inclusive, or of § 63-35 or 63-36 of Article X of these rules and regulations is an offense, and each such violation may be punishable by a fine of not exceeding \$100. In lieu of, or in addition to, such fine, each such violation shall be subject to a civil penalty not exceeding \$1,000 for any one case, to be recovered in an action or proceeding brought by the Town Attorney in the name of the Town in a court of competent jurisdiction. Each day of a continuing violation shall be subject to a separate such fine or civil penalty.
- B. The Town Attorney may maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with these rules and regulations or restrain by injunction any violation of these rules and regulations, notwithstanding the provisions of Subsection A hereof for a penalty or other punishment.
- C. Where any violation of these rules and regulations causes expense to the Town, such violation may also be punishable by a civil suit against the violator, brought by the Town Attorney in the name of the Town in a court of competent jurisdiction, to recover such additional cost.
- D. The provisions of this article shall not apply to any municipality discharging sewage from a municipal sewage

collection system into the district sewerage system unless the municipality is itself the user in violation.

§ 63-39. Harmful contributions.

- A. The district may suspend the wastewater treatment service and/or an industrial wastewater permit when such suspension is necessary, in the opinion of the Director, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes the district to violate any condition of its SPDES permit.
- B. Any user notified of a suspension of the wastewater treatment service and/or the industrial wastewater permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the District shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The district shall reinstate the industrial wastewater permit and/or the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the district within 15 days of the date of occurrence.

§ 63-40. Revocation of permits.

Any user who violates the following conditions of these rules and regulations, or applicable state and federal regulations, is subject to having his industrial wastewater permit revoked in accordance with the procedures in this section:

- A. Failure of a user to factually report the wastewater constituents and characteristics of his discharge;
- B. Failure of the user to report significant changes in operations, wastewater constituents and/or characteristics;
- C. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
- D. Violation of conditions of the permit.

§ 63-41. Notification of violation.

Whenever the district finds that any user has violated or is violating these rules or regulations, wastewater permit, or any prohibition, limitation or requirements contained herein, the district may serve upon such person a written notice stating the nature of the violation. Within 30 days of the date of the notice a plan for the satisfactory correction thereof shall be submitted to the district by the user.

§ 63-42. Falsifying information.

Any user who knowingly makes any false statements, representations, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to these rules or regulations or to the industrial wastewater permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

ARTICLE XII
General Provisions

§ 63-43. Powers and authority of inspectors.

- A. The Director, EPA, NYSDEC, or their representatives with proper credentials may enter upon private lands for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of these rules and regulations.
- B. The Director or his representative shall be allowed to inspect and copy industry records that pertain to the pretreatment and discharge of all wastes discharged to the district. Records shall be accessible within a reasonable time after the request is made by the district.
- C. While performing the necessary work on private lands referred to in this section above, the Director or his duly authorized representatives shall observe all safety rules established by the owner and/or occupant of the premises.
- D. Where a company or premises has security measures in force which require proper identification and clearance before entry into said company or premises, such company or premises shall either make the necessary arrangements with its security guards to allow district employees immediate access to the locations necessary for the purpose of inspection, observation, measurement, sampling and testing or the company or premises shall install outside the premises or security limits suitable control manholes, approved by the Director, which will at all times be accessible to district employees.

§ 63-44. Accidental discharge notification.

In the event of a discharge of any of the above-stated prohibited discharges for reasons of accident or otherwise, the person(s), firm or corporation performing the prohibited discharge shall immediately notify the Director of the violation so that

necessary precautions may be taken to protect the sewage works.

§ 63-45. Protection from damage.

Any persons who maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the district sewerage system or public sewer tributary thereto shall be subject to prosecution pursuant to the applicable provisions of the Penal Law of the State of New York as well as being in violation of these rules and regulations.

§ 63-46. Conflicts.

- A. In the event of any conflict between a participating municipality and/or users and the Director, the matter shall be reviewed by the Town Board, and an opportunity shall be granted to the municipality to present its position to the Town Board.
- B. In the event of any conflict between the participating municipalities and/or users and the Town Board concerning the interpretation of any part of these rules and regulations, the determination of the Town Board shall be final and conclusive unless reversed by order of a court in a proceeding commenced pursuant to CPLR Article 78.

Part 2
Sewer Rents
[Adopted 11-14-2005 by L.L. No. 6-2005]

ARTICLE XIII
Establishment and Administration

§ 63-47. Legislative intent.

There is hereby established a Sewer Rent Law for Kingsbury Sewer District Number One (hereinafter, the "district"), pursuant to Article 14-F of the General Municipal Law and the Municipal Home Rule Law of the State of New York in order to pay costs for the district, including all costs for the operation, maintenance and repair of the sewer system.

§ 63-48. Definitions.

As used in this Part 2, the following terms shall mean and include:

INDUSTRIAL WASTE — Any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing trade or business or from the development or recovery of any natural resources.

NONRESIDENTIAL PROPERTY — A building, structure or land use designed and occupied for any commercial activity or business use.

OTHER WASTES — Garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuff, acids, chemicals and all other discarded matter not sewage or industrial waste.

PART — All lateral sewers or all branch sewers or all interceptor sewers or all trunk sewers and sewage treatment and disposal works, and each part with necessary appurtenances, including sewage pumping stations.

RESIDENTIAL PROPERTY — A building, structure or land use designed and occupied exclusively as a human dwelling and upon and in which no commercial activity or business use is maintained unless such activity or use is deemed a "home occupation," as defined and as may be amended from time to time in the zoning laws of the Town.¹

SEWAGE — The water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present. The admixture with sewage, as above defined, of industrial waste or other wastes, as hereafter defined, also shall be considered sewage.

SEWER RENTS — As established by the Town Board of the Town of Kingsbury for the respective sewer district identified herein.

SEWER SYSTEM — All sewer pipes and other appurtenances which are used or useful, in whole or in part, in connection with the collection, treatment and/or disposal of sewage, industrial waste and other wastes and which are owned, operated or maintained by the sewer district, including pumping stations and sewage treatment and disposal works and all extensions, additions and improvements which may be made to such system. Whenever the term "sewer system" is used herein, it shall refer to the district or all sewer districts as may be required by the context of the paragraph or section in which the word appears.

§ 63-49. Establishment of sewer rents. [Amended 2-11-2008 by L.L. No. 2-2008]

The annual charge for all occupied properties in Kingsbury Sewer District No. 1 shall be \$4 per 1,000 gallons of water consumption, as indicated by the current water meter readings, billed on a quarterly basis.

1. Editor's Note: See Ch. 80, Zoning.

§ 63-50. Additional charges for additional treatment.

For treatment of industrial wastes or other wastes as defined herein, if any additional treatment is required because of undue concentration of solids or any other substances which add to the operating costs, the Town Board is authorized to fix and determine such additional sewer rent charges therefor, as shall be equitable, in addition to the sewer rents set forth in the preceding section.

§ 63-51. Billing.

Sewer rents shall begin to occur as of January 1 each year for use in that year and shall be billed as early in the year as possible, but not later than May 1 of any year.

§ 63-52. Administration.

- A. Where payable. All sewer rents shall be due and payable at the office of the Town Tax Collector.
- B. Mailing of bills. Bills will be sent out to all property owners by the Town Tax Collector, and the failure of any property owner to receive a bill promptly shall not excuse nonpayment of the same, and in the event that the property owner fails to receive a bill promptly, he shall demand the same at the Town Tax Collector's office.
- C. When due. Bills will be rendered at the net amount and will be due on the last business day of the calendar month in which rendered.

§ 63-53. Penalty for nonpayment.

If bills are not paid by the last business day of the calendar month in which rendered, a penalty of 10% shall be added to each billing not paid, except that there shall not be assessed a penalty on a penalty until October 31 when said bills shall be

turned over to Washington County for payment and assessed on taxes due the next year.

§ 63-54. Unpaid rents.

Sewer rents shall constitute a lien upon the real property served by the sewer system or such part or parts thereof for which sewer rents are hereby established and imposed. The lien shall be prior to and superior to every other lien or claim except the lien of an existing tax assessment or other lawful charge imposed by or for the state or a political subdivision or district thereof.

§ 63-55. Levy of unpaid rent as taxes; collection.

The Town Tax Collector shall annually, on or before the first day of November, certify the amounts of all unpaid sewer rents, including penalties, computed to the 31st day of October, with a description of the real property affected thereby and the name of the person in whose name such real property is assessed and shall present such certificate to the Town Board, which shall enter the same or an abstract thereof in the minutes of the meeting. The Town Board shall levy such amounts against the real property liable therefor as part of the annual Town tax levy, setting forth such amounts in separate columns in the annual tax roll. The sewer rent fund shall be credited with the amount of all such unpaid sewer rents, including penalties, and such amounts, when collected, shall be credited to the general fund. The amounts so levied shall be collected and enforced in the same manner and at the same time as other Town taxes.

§ 63-56. Sewer Rent Fund.

- A. Revenues derived from sewer rents, including penalties, shall be credited to a special fund for the sewer district, to be known as the "Kingsbury Sewer District Number 1 Sewer Rent Fund." Monies in such fund shall be used in the following order:

- (1) For the payment of the costs of operation, maintenance and repairs of the sewer system or such part or parts thereof for which sewer rents have been established and imposed.
- (2) For the payment of the interest on and amortization of, or payment of, indebtedness which has been or shall be incurred for the construction of sewage treatment and disposal works with necessary appurtenances, including pumping stations, or for the extension, enlargement, or replacement of, or addition to, such sewer system, or part or parts thereof.
- (3) For transportation charges imposed by any other municipality or entity for the transport of sewage via such other municipality's sewer mains, interceptors or lines.
 - (a) Such revenues from sewer rents shall not be used:
 - [1] To finance the cost of any extension or any part of a sewer system (other than any sewage treatment or disposal works with necessary appurtenances, including pumping stations) to serve unsewered areas if such part has been constructed wholly or partly at the expense of the real property especially benefitted; or
 - [2] For the payment of the interest on, and the amortization or payment of, indebtedness which is to be paid in the first instance from assessments upon the benefitted real property.

§ 63-57. Effective date.

This Part 2 shall take effect upon filing with the Secretary of State and compliance with the provisions of the New York State General Municipal Law and for all billing periods which begin on and after January 1, 2006.

SOLID WASTE

Chapter 64

SOLID WASTE

ARTICLE I

Solid Waste Treatment and Disposal

- § 64-1. Title.
- § 64-2. Definitions.
- § 64-3. Legislative intent.
- § 64-4. Purpose.

ARTICLE II

Litter

- § 64-5. Supersession of statute.
- § 64-6. Title and authority.
- § 64-7. Legislative intent.
- § 64-8. Definitions.
- § 64-9. Littering in public places.
- § 64-10. Storage of garbage.
- § 64-11. Spilling or scattering of materials.
- § 64-12. Presumption of responsibility.
- § 64-13. Administration and enforcement.
- § 64-14. Penalties for offenses.
- § 64-15. Injunctive and other relief.
- § 64-16. Town Board hearing and order.
- § 64-17. Applicability.

§ 64-18. Effect on approval requirements.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury as indicated in article histories.]

GENERAL REFERENCES

Hazardous and other wastes — See Ch. 52.

ARTICLE I**Solid Waste Treatment and Disposal
[Adopted 3-12-1991 by L.L. No. 4-1991]****§ 64-1. Title.**

This article shall be entitled "Solid Waste Treatment and Disposal in the Town of Kingsbury, Washington County, 1991."

§ 64-2. Definitions.

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

PUTRESCIBLE — The tendency of organic matter to decompose with the formation of malodorous by-products.

RECOVER — Any act or process by which recyclables are separated from the solid waste stream.

RECYCLABLES — Solid waste that exhibits the potential to be used repeatedly in place of a virgin material.

RECYCLABLES HANDLING AND RECOVERY FACILITY — A solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream or at which previously separated recyclables are collected.

RECYCLE — To use recyclables in place of virgin materials in manufacturing a product.

REFUSE — Anything putrescible or nonputrescible that is discarded or rejected as useless or worthless.

RESIDUALS — Sludge, sewage sludge, septage, air pollution control facility waste or any other such waste having similar characteristics or effects; and solid waste remaining after the processing of solid waste by composting methods that was not made into compost suitable for use.

SOLID WASTE — All putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludge from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal.

§ 64-3. Legislative intent.

- A. The preservation and improvement of the quality of the environment within the Town of Kingsbury in the face of growth, urbanization and change, with the accompanying demands on natural resources, are found to be of increasing and vital importance to the health, welfare and economic well-being of present and future inhabitants of the Town of Kingsbury.
- B. It is recognized that the integrity of the Town's environment is in the natural beauty of its surrounding community which cannot be protected without the full cooperation and participation of all people of the Town of Kingsbury working in partnership with local, county and state officials. The establishment of a Solid Waste Treatment and Disposal Plan for the Town of Kingsbury,

Washington County, is a necessary step in creating a unified action on environmental issues.

- C. It is the belief of the Town, upon analysis of Kingsbury's waste stream, that potential exists for expansion of efforts to increase waste reduction, ongoing composting and recycling.
- D. Furthermore, the Town of Kingsbury recognizes that solid waste is a continuous process and that the Town must consider the development of ongoing solid waste management capabilities. This is important if Kingsbury is to achieve long-term success in implementing waste reduction and recycling goals.
- E. It is the intent of the Town to assert its rights to establish procedures and standards for its Town so as to protect its public health and its environment by ensuring the safe, proper and suitable management of solid waste within the borders of the Town of Kingsbury.

§ 64-4. Purpose.

- A. The Town Board of the Town of Kingsbury, pursuant to the powers of the Municipal Home Rule Law and by the powers invested in the enabling legislation, New York State Laws of 1987, Chapter 681, shall declare the Town of Kingsbury to preempt and supersede Chapter 681, an act in relation to solid waste treatment and disposal in Washington County (1987), to the extent that the Town of Kingsbury hereby retains its rights and powers to implement said local laws within the Town of Kingsbury with respect to collecting, receiving, transporting, delivering, storing, processing and disposing of solid waste or the recovery by any means of any materials or energy product or resources therefrom, including delivery in any recycling efforts.
- B. This article does not specifically exclude the ability of the Town pursuant to its governing laws and the Municipal Home Rule law to enter into an agreement with said

County of Washington or other municipal entities or the private sector regarding solid waste collection or the receiving, transporting, delivering, storing, processing and disposing of solid waste or its recovery within the Town of Kingsbury.

§ 64-5. Supersession of statute.

This article, pursuant to the Municipal Home Rule Law of the State of New York, specifically supersedes Chapter 681 of the laws of 1987, Washington County — Solid Waste Treatment and Disposal, as it relates to the ability and powers of Washington County in collecting, receiving, transporting, delivering, storing, processing and disposing of solid waste or recovery. Said article hereby asserts the powers to adopt and amend local laws within its borders so that the local laws enacted by the county shall not take precedence over and shall not supersede said article of this Town.

ARTICLE II

Litter

[Adopted 9-19-2005 by L.L. No. 4-2005]

§ 64-6. Title and authority.

This article shall be known as "A Local Law Regulating Litter." It is adopted pursuant to § 10 of Municipal Home Rule Law.

§ 64-7. Legislative intent.

- A. This Town Board finds that a clean, wholesome, attractive environment is necessary for the health, safety and well being of the inhabitants of the Town of Kingsbury.
- B. This Town Board further finds that the unrestrained accumulation of litter is hazardous to the health, safety

and well being of the citizens of the Town, necessitating the regulation thereof.

- C. Therefore, the purpose of this article is to provide for the health, safety and well-being of the inhabitants of the Town of Kingsbury by regulating the storage and disposal of garbage, rubbish, refuse and discarded substances.

§ 64-8. Definitions.

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

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer of the Town of Kingsbury or any such person appointed by the Town Board to enforce the provisions of this article.

LITTER — Any putrescible animal and vegetable waste, liquid or solid, likely to ferment or decompose and produce noxious odors or become injurious to public health commonly known as "garbage" and any putrescible and nonputrescible solid waste, including rubbish and refuse, such as ashes, street cleanings, dead animals, abandoned automobiles, dismantled automobiles and parts thereof, scrap metal, junk, machinery, and solid market and industrial waste, paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery, building materials, trash and any other material which, when scattered, thrown or discarded on any property, tends to create a danger to public health, safety and welfare and/or render the streets, private grounds, or public places unsightly.

§ 64-9. Littering in public places.

No person shall throw or deposit, or cause to be thrown or deposited, any litter in or upon any public property whatsoever within the Town of Kingsbury except in such receptacles designated by the Town for such purposes.

§ 64-10. Storage of garbage.

No person shall throw, deposit, accumulate, store, or cause to be thrown, deposited, accumulated, or stored, any litter in or upon any private property within the Town of Kingsbury except in a securely closed receptacle or dumpster used for the collection and removal of the same.

§ 64-11. Spilling or scattering of materials.

- A. The owner or person in control of private property shall maintain his or her private receptacles for collection in such manner that litter will not be carried or deposited by the elements upon any public place or private property.
- B. Any spillage or scattering of litter out of a receptacle shall be collected by the person who set out such container or bundle and shall be lawfully disposed of by him.

§ 64-12. Presumption of responsibility.

- A. If evidentiary proof of the name or address of any individual is found among litter illegally placed or spilled or scattered within the Town, such evidence shall create the presumption that the aforesaid individual perpetrated and is responsible for the improper disposal or storage of it.
- B. The owner of any real property within the Town upon which litter is stored or scattered in violation of this

article shall be guilty of the respective violation regardless of whether such real property owner improperly stored or scattered the litter.

§ 64-13. Administration and enforcement.

The Code Enforcement Officer shall be responsible for the administration and enforcement of this article and shall act upon any written complaint or his or her observation of an alleged or possible violation of this article. The Code Enforcement Officer and police officers may issue appearance tickets as specified in § 64-14 hereof. The Code Enforcement Officer may also request the Town Board to take action under § 64-15 and/or § 64-16 hereof, and the Town Board may take action on its own initiative under § 64-15 and/or § 64-16 hereof.

§ 64-14. Penalties for offenses.

The Code Enforcement Officer, or any person defined as a "peace officer" pursuant to the New York State Criminal Procedure Law, is authorized to issue an appearance ticket, in compliance with the provisions of the Criminal Procedure Law, to any person who is violating any provision of this article, requiring such person to appear before a Town Justice. Such a violation shall constitute a violation punishable by a fine not exceeding \$250, by a sentence of community service or restitution, by imprisonment in the Washington County Jail for a term not to exceed 15 days, or by a combination thereof. Each day or part of a day on which a violation continues shall constitute a separate violation.

§ 64-15. Injunctive and other relief.

The Town Board may authorize an action or proceeding to be brought in the name of the Town seeking injunctive and other relief with regard to an alleged violation of any provision of this article.

§ 64-16. Town Board hearing and order.

- A. Upon finding that a violation of this article may exist that is, or may become, dangerous or unsafe to the public, the Town Board may direct that notice be given to the owner of the property upon which the alleged violation exists. The notice shall set forth that a public hearing will be held, and that if it is determined by the Town Board at such hearing that such a violation does exist, the owner will be required to remedy the violation within the specified number of days and if the owner fails to do so, the Town may act to remedy the violation and charge the owner for the costs of same.
- B. Such notice shall be served by personal service of a copy thereof upon the property owner, the owner of the litter, and/or to the person responsible for improperly scattering or disposing of the same, or, if no such person can be reasonably found, by mailing such person by registered mail a copy of the notice directed to his or her last known address and posting a copy at such address in such number of days in advance of the hearing date as is reasonable under the circumstances.
- C. Upon the conclusion of the public hearing, if the Town Board finds that there exists a violation of this article upon the subject property that is, or may become, dangerous or unsafe to the public, the Town Board shall issue an order directing the property owner to remedy the violation within a specified number of days that is reasonable under the circumstances, and stating that if the property owner fails to remedy the violation within the specified number of days, the Town may act to remedy the violation and charge the owner for the costs of same.
- D. If the property owner fails to remedy the violation within the specified number of days, and the Town acts to remedy the violation, the Town may personally deliver, or mail in the manner specified above, a bill to the property owner for the costs of remedying the violation.

- E. If the property owner does not pay the Town the full amount set forth in such bill within 30 days after the delivery or mailing of same, the Town Board may cause to be recorded in the Town Clerk's office a sworn statement by the Code Enforcement Officer showing the costs for the remedial work, the date(s) on which the work was performed and the location of the property on which the remedial work was conducted. The recording of such sworn statement shall constitute a lien on the property which shall remain in full force and effect until full payment has been made. Said amount shall be collected in the manner fixed by law for the collection of taxes. In the event that said amount is not paid in full on or before the date the tax bill upon which it appears is last due without penalty, said amount shall be subject to the same delinquent penalty as the delinquent penalty for Town real property taxes. Sworn statements recorded in accordance with the provisions hereof shall be full notice to every person concerned that said amount of the statement constitutes a charge against the property designated thereon and that the same is due and collectible as provided by law.

§ 64-17. Applicability.

This article shall not apply to the fertilization of any agricultural lands in the Town.

§ 64-18. Effect on approval requirements.

This article shall not be construed to affect or supersede the Town's Zoning Ordinance. This article shall not be construed to affect or supersede the applicability or requirements of any other state law for which an applicant may need approvals, including, without limitation, any applicable Department of Environmental Conservation requirements, including the State Environmental Quality Review Act (SEQRA), or any other state agency requirements.

STORMWATER

Chapter 65

STORMWATER

Part 1

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

ARTICLE I

General Provisions

- § 65-1. Purpose and intent.**
- § 65-2. Definitions.**
- § 65-3. Applicability.**
- § 65-4. Responsibility for administration.**

ARTICLE II

Prohibitions

- § 65-5. Discharge prohibitions.**
- § 65-6. Prohibition against failing individual sewage treatment systems.**
- § 65-7. Prohibition against activities contaminating stormwater.**

ARTICLE III

Requirements

- § 65-8. Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.**
- § 65-9. Suspension of access to MS4.**

KINGSBURY CODE

§ 65-10. Industrial or construction activity discharges.

ARTICLE IV
Monitoring and Enforcement

§ 65-11. Access and monitoring of discharges.

§ 65-12. Notification of spills.

§ 65-13. Enforcement.

§ 65-14. Appeal of notice of violation.

§ 65-15. Corrective measures after appeal.

§ 65-16. Injunctive relief.

§ 65-17. Alternative remedies.

§ 65-18. Violations deemed a public nuisance.

§ 65-19. Remedies not exclusive.

Part 2
Stormwater Management and Erosion
and Sediment Control

ARTICLE V
General Provisions

§ 65-20. Findings.

§ 65-21. Purpose.

§ 65-22. Statutory authority.

§ 65-23. Applicability.

§ 65-24. Reference.

STORMWATER

ARTICLE VI

Stormwater Management, Erosion and Sediment Controls

- § 65-25. Definitions.
- § 65-26. Responsibility for administration.
- § 65-27. Stormwater pollution prevention plans.
- § 65-28. Performance and design criteria for stormwater management and erosion and sediment control.
- § 65-29. Maintenance and repair of stormwater facilities.

ARTICLE VII

Administration and Enforcement

- § 65-30. Construction inspection.
- § 65-31. Performance guarantee.
- § 65-32. Enforcement and penalties for offenses.
- § 65-33. Fees for services.

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

GENERAL REFERENCES

Flood damage prevention — See Ch. 48.
Hazardous and other wastes — See Ch. 52.
Sewers — See Ch. 63.
Solid waste — See Ch. 64.
Zoning — See Ch. 80.
Subdivision regulations — See Ch. A84.

Part 1
Illicit Discharges, Activities and
Connections to Storm Sewer System
[Adopted 12-18-2006 by L.L. No. 5-2006]

ARTICLE I
General Provisions

§ 65-1. Purpose and intent.

- A. The purpose of this part is to provide for the health, safety, and general welfare of the citizens of the Town of Kingsbury 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 part establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES general permit for municipal separate storm sewer systems. The objectives of this part are:
- (1) To meet the requirements of the SPDES general permit for stormwater discharges from MS4s, Permit No. GP-02-02, or 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 illicit connections, activities and discharges to the MS4;
 - (4) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this part; 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.

- B. This part is adopted pursuant to the authority granted to the Town Board under Article 10 of the Municipal Home Rule Law of the State of New York.

§ 65-2. Definitions.

Whenever used in this part, unless a different meaning is stated in a definition applicable to only a portion of this part, the following terms will have meanings set forth below:

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

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

CONSTRUCTION ACTIVITY — Activities requiring authorization under the SPDES permit for stormwater discharges from construction activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DEPARTMENT — The New York State Department of Environmental Conservation.

DESIGN PROFESSIONAL — New York State-licensed professional engineer or licensed architect.

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.

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

- A. Any conveyances which allow any nonstormwater discharge including 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
- B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGE — Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 65-5 of this part.

INDIVIDUAL SEWAGE TREATMENT SYSTEM — A facility serving one or more parcels of land or residential households, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into the groundwaters of New York State, except where a permit for such a facility is required

under the applicable provisions of Article 17 of the Environmental Conservation Law.

INDUSTRIAL ACTIVITY — Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

MS4 — Municipal separate storm sewer system.

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

- A. Owned or operated by the Town of Kingsbury;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW), as defined at 40 CFR 122.2.

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

PERSON — Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT — Dredged spoil; filter backwash; solid waste; incinerator residue; treated or untreated sewage, garbage, sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; and industrial, municipal, agricultural waste and ballast discharged into water, which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

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

SPECIAL CONDITIONS:

- A. Discharge compliance with water quality standards. The condition that applies where the Town has been notified that the discharge of stormwater authorized under its MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the Town must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) listed waters. The condition in the Town's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total maximum daily load (TMDL) strategy. The condition in the Town's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges.
- D. The condition, if any, in the Town's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT — A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO) — An employee, the municipal Engineer or other public official(s) designated by the Town of Kingsbury to enforce this part. The SMO may also be designated by the Town to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices. Unless otherwise designated by resolution of the Town Board of the Town of Kingsbury, the SMO for the Town of Kingsbury shall be the same individual serving as the Code Enforcement Officer of the Town of Kingsbury.

303(d) list — A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department 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.

TOWN — The Town of Kingsbury.

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

§ 65-3. Applicability.

This part shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 65-4. Responsibility for administration.

The Stormwater Management Officer(s), SMO(s), shall administer, implement, and enforce the provisions of this part.

ARTICLE II
Prohibitions

§ 65-5. Discharge prohibitions.

- A. Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in § 65-5A. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:
- (1) The following discharges are exempt from discharge prohibitions established by this part, unless the Department or the Town has determined them to be substantial contributors of pollutants; waterline flushing or other potable water sources; landscape irrigation or lawn watering; existing diverted stream flows; rising groundwater; uncontaminated groundwater infiltration to storm drains; uncontaminated pumped groundwater; foundation or footing drains; crawl space or basement sump pumps; air-conditioning condensate; 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. Such exempt discharges shall be made in accordance with an appropriate plan for reducing 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 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 part.

- (3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.
- (4) The prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

B. Prohibition of illicit connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is 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 part if the person connects a line conveying sewage to the Town's MS4 or allows such a connection to continue.

§ 65-6. Prohibition against failing individual sewage treatment systems.

No persons shall operate a failing individual sewage treatment system in areas tributary to the Town's MS4. A failing individual sewage treatment system is one which 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. 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.
- F. Contamination of off-site groundwater.

§ 65-7. Prohibition against activities contaminating stormwater.

- A. Activities that are subject to the requirements of this section are those types of activities that:
 - (1) Cause or contribute to a violation of the Town's MS4 SPDES permit.
 - (2) Cause or contribute to the Town being subject to the special conditions as defined in § 65-2, Definitions, of this part.
- B. Such activities include failing individual sewage treatment systems as defined in § 65-6, improper management of pet waste or any other activity that causes or contributes to violations of the Town's MS4 SPDES permit authorization.

- C. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the Town's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the Town's MS4 SPDES permit authorization.

ARTICLE III
Requirements

§ 65-8. Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.

- A. Best management practices. Where the SMO has identified illicit discharges as defined in § 65-2 or activities contaminating stormwater as defined in § 65-7, the Town may require implementation of best management practices (BMPs) to control those illicit discharges and activities.
- (1) The owner or operator of a commercial or industrial establishment shall provide, at his own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.
 - (2) Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge as defined in § 65-2 or an activity contaminating stormwater as defined in § 65-7, 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 MS4.
 - (3) 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. Where individual sewage treatment systems are contributing to the Town's being subject to the special conditions as defined in § 65-2 of this part, the owner or operator of such individual sewage treatment systems 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 three 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 75A to the maximum extent practicable.
 - (b) A design professional licensed to practice in New York State 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 Town at the completion of construction of the repair or replacement system.

§ 65-9. Suspension of access to MS4.

- A. 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 MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.
- B. Suspension due to the detection of illicit discharge. Any person discharging to the Town's MS4 in violation of this part may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. 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 he/she 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. A person commits an offense if the person

reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the SMO.

§ 65-10. 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 Town prior to the allowing of discharges to the MS4.

ARTICLE IV
Monitoring and Enforcement

§ 65-11. Access and monitoring of discharges.

- A. Applicability. This article applies to all facilities that the SMO must inspect to enforce any provision of this part, 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 part.
- B. Access to facilities.
 - (1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this part as often as may be necessary to determine compliance with this part. 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 part.

- (3) The Town shall have the right to set up on any facility subject to this part 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 Town has the right to require the facilities subject to this part to install monitoring equipment as is reasonably necessary to determine compliance with this part. 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.
- (5) Unreasonable delays in allowing the Town access to a facility subject to this part is a violation of this part. A person who is the operator of a facility subject to this part commits an offense if the person denies the Town reasonable access to the facility for the purpose of conducting any activity authorized or required by this part.
- (6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this part, 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 part or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 65-12. Notification of spills.

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 MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. 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. In the event of a release of nonhazardous materials, said person shall notify the Town in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Town within three business days of the telephone notice. 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 three years.

§ 65-13. Enforcement.

- A. Notice of violation. When the Town's SMO finds that a person has violated a prohibition or failed to meet a requirement of this part, he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
- (1) The elimination of illicit connections or discharges;
 - (2) That violating discharges, practices, or operations shall cease and desist;
 - (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (4) The performance of monitoring, analyses, and reporting;
 - (5) Payment of a fine; and
 - (6) The implementation of source control or treatment BMPs. 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 work will be done by a designated governmental agency or a contractor, and the expense thereof shall be charged to the violator.

- B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this part shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this part shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation.

§ 65-14. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the SMO to the Town Board of the Town of Kingsbury within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of

the municipal Clerk and mail a copy of its decision by certified mail to the discharger.

§ 65-15. 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 five business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.
- B. If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

§ 65-16. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this part. If a person has violated or continues to violate the provisions of this part, the SMO may petition for a 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.

§ 65-17. Alternative remedies.

- A. Where a person has violated a provision of this part, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Code Enforcement Officer, where:
- (1) The violation was unintentional;
 - (2) The violator has no history of previous violations of this part;
 - (3) Environmental damage was minimal;
 - (4) Violator acted quickly to remedy violation; and
 - (5) Violator cooperated in investigation and resolution.
- B. Alternative remedies may consist of one or more of the following:
- (1) Attendance at compliance workshops.
 - (2) Storm drain stenciling or storm drain marking.
 - (3) River, stream or creek cleanup activities.

§ 65-18. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this part 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.

§ 65-19. Remedies not exclusive.

The remedies listed in this part 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.

Part 2
Stormwater Management and Erosion
and Sediment Control
[Adopted 12-18-2006 by L L No 6-2006]

ARTICLE V
General Provisions

§ 65-20. Findings.

The Town Board of the Town of Kingsbury finds that land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transportation and deposition; that stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species; that clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat; that improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing streambank erosion and sedimentation; that impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow; that substantial economic losses can result from these adverse impacts on the waters of the Town of Kingsbury and State of New York; that stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities; that 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 the public's health and safety; and that 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.

§ 65-21. Purpose.

The purpose of this part is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the Town of Kingsbury and to address the findings of fact noted in § 65-20 above. This part seeks to meet these purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 and 5 of the SPDES general permit for stormwater discharges from municipal stormwater sewer systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- B. Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) general permit for construction activities, GP-02-01 or as amended or revised;
- C. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion, and maintain the integrity of stream channels;
- D. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- E. Minimize the total annual volume of stormwater runoff which flows from any specific site during or following development to the maximum extent practicable; and
- F. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution wherever possible

through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 65-22. Statutory authority.

This part is adopted pursuant to the authority granted to the Town Board under Article 10 of the Municipal Home Rule Law of the State of New York.

§ 65-23. Applicability.

This part shall be applicable to all land development activities as defined in this part except for the following:

- A. Agricultural activities as defined in this part.
- B. Silvicultural activities, except for landing areas and logging roads which shall be subject to this part.
- C. Routine maintenance activities that disturb less than one acre and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- D. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- E. Any part of a subdivision if a plat for the subdivision has been approved by the Town of Kingsbury Planning Board on or before the effective date of this part.
- F. Land development activities for which a building permit has already been approved on or before the effective date of this part.
- G. Cemetery graves.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

- I. Emergency activity immediately necessary to protect life, property or natural resources.
- J. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- K. Landscaping and horticultural activities in connection with an existing structure.

§ 65-24. Reference.

This part shall be known as the "Town of Kingsbury Stormwater Regulations."

ARTICLE VI Stormwater Management, Erosion and Sediment Controls

§ 65-25. Definitions.

Whenever used in this part, unless a different meaning is stated in a definition applicable to only a portion of this part, the following terms will have meanings set forth below:

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 the

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 the vegetative surface cover.

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

DEPARTMENT — The New York State Department of Environmental Conservation.

DESIGN MANUAL — The New York State Stormwater Management Design Manual, most recent version, including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER — A person who undertakes land development activities.

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, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT — A state pollutant discharge elimination system 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 clearing, grading, excavating, soil disturbance or placement of fill, that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

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

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

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 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 — A 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, habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES, GP-02-01 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS, GP-02-02 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA-established water quality standards and/or to specify stormwater control standards.

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

STOP-WORK ORDER — An order issued which requires that all 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, based on monitoring studies.

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

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

STORMWATER MANAGEMENT OFFICER — The Town of Kingsbury Code Enforcement Officer, or such other officer as may be titled the Stormwater Management Officer by the Town Board, which officer shall accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

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

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

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

SURFACE WATERS OF THE STATE OF NEW YORK — Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the

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

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.

§ 65-26. Responsibility for administration.

The Stormwater Management Officer(s), SMO(s), shall administer, implement, and enforce the provisions of this part.

§ 65-27. 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 stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this part.
- B. Contents of stormwater pollution prevention plans.
 - (1) All SWPPPs shall provide the following background information and erosion and sediment controls:

- (a) Background information about the scope of the project, including location, type and size of project.
- (b) 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); and be at a scale of no smaller than one inch equals 100 feet.
- (c) Description of the soil(s) present at the site;
- (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than one acre shall be disturbed at any one time unless pursuant to an approved SWPPP;
- (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- (f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials,

including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;

- (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
- (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- (j) Temporary practices that will be converted to permanent control measures;
- (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
- (m) Name(s) of the receiving water(s);
- (n) Delineation of SWPPP implementation responsibilities for each part of the site;
- (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and

- (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities as defined in § 65-25 of this article and meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in § 65-27B(2) below as applicable:
 - (a) Condition A: Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (b) Condition B: Stormwater runoff from land development activities disturbing five or more acres.
 - (c) Condition C: Stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- (3) SWPPP requirements for Conditions A, B and C:
 - (a) All information in § 65-27B(1) of this part.
 - (b) Description of each postconstruction stormwater management practice.
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice.
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater

management system for the applicable design storms.

- (e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.
 - (f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice.
 - (g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.
 - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Article VI, § 65-29 of this part.
- C. Plan certification. The SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this part.
- D. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.
- E. Contractor certification.
- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance

and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

- (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.
- F. Copy of SWPPP. 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.

§ 65-28. Performance and design criteria for stormwater management and erosion and sediment control.

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

- A. Technical standards. For the purpose of this part, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this part:
 - (1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or

its successor, hereafter referred to as the Design Manual);

- (2) New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual).
- B. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 65-29. Maintenance and repair of stormwater facilities.

- A. Maintenance 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 part. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
 - (2) The applicant or developer or his representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every seven days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.
- 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 Town of Kingsbury to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this part. The easement shall be recorded by the grantor in the Washington County Clerk's Office after approval by the counsel for the Town of Kingsbury.

- C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this part shall operate and maintain the stormwater management practices to achieve the goals of this part. 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 part.
 - (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 Article VI, § 65-28B.
- D. Maintenance agreements. The Town of Kingsbury shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the Washington 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 Schedule B of this part entitled Sample Stormwater Control

Facility Maintenance Agreement.¹ The Town of Kingsbury, 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 part and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

ARTICLE VII
Administration and Enforcement

§ 65-30. Construction inspection.

A. Erosion and sediment control inspection.

- (1) The Stormwater Management Officer may require such inspections as necessary to determine compliance with this part 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 part and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Stormwater Management Officer at least 48 hours before any of the following as required by the Stormwater Management Officer:
 - (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;

¹ Editor's Note: Said Schedule B is on file in the Town's offices.

- (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 any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.
- B. Stormwater management practice inspections. The Stormwater Management Officer is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit as-built plans for any stormwater management practices 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; inspection 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 stormwater management practices.

- D. Submission of reports. The Stormwater Management Officer may require monitoring and reporting from entities subject to this part as are necessary to determine compliance with this part.
- E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of Kingsbury the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection C.

§ 65-31. Performance guarantee.

- A. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Kingsbury in its approval of the stormwater pollution prevention plan, the Town of Kingsbury may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Kingsbury as the beneficiary. The security shall be in an amount to be determined by the Stormwater Management Officer 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 Town of Kingsbury, provided that such period shall not be less than one 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 one-year inspection has been conducted and the facilities have been found to be acceptable to the Town of Kingsbury. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

- B. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Kingsbury with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Kingsbury may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- C. Recordkeeping. The landowner or operator of the property shall maintain records showing compliance with this part and the stormwater pollution prevention plan for a period of seven years, measured from the first year applicable to such plan or other document, including any annual compliance reports required to show continued compliance with any SWPPP.

§ 65-32. Enforcement and penalties for offenses.

- A. Notice of violation.
 - (1) When the SMO determines that a land development activity is not being carried out in accordance with the requirements of this part, it may issue a written

notice of violation to the landowner. The notice may include a provision requiring the persons receiving such notice of violation to halt all land development activities, except those activities that address the violations leading to the notice of violation. The notice of violation shall contain:

- (a) The name and address of the landowner, developer or applicant;
 - (b) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
 - (c) A statement specifying the nature of the violation;
 - (d) A description of the remedial measures necessary to bring the land development activity into compliance with this part and a time schedule for the completion of such remedial action;
 - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 - (f) That the landowner, developer or applicant has 48 hours to remedy the violation contained therein; and
 - (g) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- (2) The notice of violation shall be in effect until the SMO confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation within the time frame set forth therein may result in civil, criminal, or monetary penalties

in accordance with the enforcement measures authorized in this part.

- B. Appeal of notice of violation or stop-work order. Any person receiving a notice of violation may appeal the determination of the SMO to the Town Board of the Town of Kingsbury within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal and, within five days of making its decision, file its decision in the office of the Municipal Clerk and mail a copy of its decision by certified mail to the discharger.
- C. Corrective measures after appeal.
- (1) 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 five business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.
 - (2) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.
- D. Injunctive relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this part. If a person has violated or continues to violate the provisions of this part, the SMO may petition for a 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.

E. Alternative remedies.

- (1) Where a person has violated a provision of this part, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Code Enforcement Officer, where:
 - (a) The violation was unintentional;
 - (b) The violator has no history of previous violations of this part;
 - (c) Environmental damage was minimal;
 - (d) Violator acted quickly to remedy violation; and
 - (e) Violator cooperated in investigation and resolution.
- (2) Alternative remedies may consist of one or more of the following:
 - (a) Attendance at compliance workshops.
 - (b) Storm drain stenciling or storm drain marking.
 - (c) River, stream or creek cleanup activities.

F. Violations deemed a public nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this part 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.

G. Remedies not exclusive. The remedies listed in this part 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.

- H. Penalties, for offenses. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this part shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this part shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- I. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this part, the Stormwater Management Officer may prevent the occupancy of said building or land.
- J. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Kingsbury may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

§ 65-33. Fees for services.

The Town of Kingsbury may require any person undertaking land development activities regulated by this part to pay reasonable costs at prevailing rates for review of SWPPPs,

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inspections, or SMP maintenance performed by the Town of Kingsbury or performed by a third party for the Town of Kingsbury.

STREETS AND SIDEWALKS

Chapter 66

STREETS AND SIDEWALKS

ARTICLE I

Notification of Defects and Obstructions

- § 66-1. Written notice required prior to civil actions.
- § 66-2. Transmittal to Town Clerk and Town Board.
- § 66-3. Indexed record required; retention.

ARTICLE II

Street Dedication Requirements

- § 66-4. Purpose.
- § 66-5. Definitions; word usage.
- § 66-6. Application for acceptance.
- § 66-7. Street specifications and construction standards.

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

ARTICLE I
Notification of Defects and Obstructions
[Adopted 3-8-1999 by L.L. No. 2-1999¹]

§ 66-1. Written notice required prior to civil actions.

No civil action shall be maintained against the Town of Kingsbury for damages or injuries to person or property sustained by reason of any highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed, unless written notice of such defective, unsafe, dangerous or obstructed condition was actually given to the Clerk of the Town of Kingsbury or to the Highway Superintendent 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 or, in the absence of such notice, unless such defective, unsafe, dangerous or obstructed condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence; but no such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge or culvert, unless written notice thereof, specifying the particular place, was actually given to the Clerk of the Town of Kingsbury or to the Highway Superintendent and there was a 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 receipt of such notice.

§ 66-2. Transmittal to Town Clerk and Town Board.

The Kingsbury Town Highway Superintendent shall transmit in writing to the Clerk of the Town of Kingsbury and the Kingsbury Town Board, within 10 days after the receipt thereof, all written notices received by him pursuant to this article.

¹ Editor's Note: This local law supersedes former Art. I, Notification of Defects and Obstructions, adopted 5-22-1978 by L.L. No. 2-1978.

§ 66-3. Indexed record required; retention.

The Clerk of the Town of Kingsbury shall keep an indexed record, in a separate book, of all written notices which he shall receive, pursuant to this article, of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice or snow upon any town highway, bridge or culvert, which record shall state the data of receipt of the notice, the nature and location of the condition stated to exist and the name and address of the person from whom the notice is received. The record of each notice shall be preserved for a period of five years after the data is received.

ARTICLE II**Street Dedication Requirements
[Adopted 6-5-1963 by resolution]****§ 66-4. Purpose.**

The purpose of this article is to regulate the laying out of streets and highways in the Town of Kingsbury, New York.

(Cont'd on page 6603)

§ 66-5. Definitions; word usage.

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

CULVERT — Any structure, whether of single- or multiple-span construction, with an interior width of twenty (20) feet or less.

HIGHWAY — The whole strip of land bounded by the right-of-way lines.

PERSON — Includes an individual, firm, partnership, club, society, association of persons and corporation; and the singular shall include the plural.

ROADWAY — The portion of the highway included between the outside edges of the shoulders.

TOWN — The Town of Kingsbury, Washington County, New York.

B. Word usage.

- (1) The word "shall" is mandatory and not directory; words used in the present tense include the future.
- (2) The words "Supervisor," "Town Clerk," "Superintendent of Highways" and "Town Board" shall mean the respective duly elected or appointed officials of the Town of Kingsbury, Washington County, New York.
- (3) Wherever the term "Town Superintendent of Highways" is used, there may be substituted "Town Engineer" in the event that there is a Town Engineer in the town who is entrusted with the duty of approving layout of highways, either individually or coequally with the Town Superintendent of Highways.
- (4) Wherever the term "street" is used, it shall have the same definition as "highway."

§ 66-6. Application for acceptance.

- A. The location of a proposed highway shall be first tentatively accepted by the Town Board.

- B. All applications shall be in writing and be accompanied by three (3) copies of the highway plan and profile showing the existing and proposed grade. [Amended 6-27-88]
- C. [Amended 6-27-88] No highway hereafter shall be considered acceptable as a town highway until such person shall have filed with the Town Clerk:
 - (1) The plans and profiles, as above.
 - (2) Specifications conforming to the regulations hereinafter set forth.¹
 - (3) The deed to the highway right-of-way with an up-to-date search.
- D. No highway hereafter shall be accepted as a town highway until construction pursuant to the regulations herein has been fully completed. [Amended 6-27-88]
- E. The Town Board may employ a licensed professional engineer to aid and assist the Town Superintendent of Highways in all matters requiring expert advice, consultation or opinion concerned with the inspection of the plans, profiles and specifications so offered and with the conformance by the person to all the regulations hereinafter set forth. [Amended 6-27-88]

§ 66-7. Street specifications and construction standards.
[Amended 6-27-88]

- A. All streets or highways laid out or dedicated for public use in the town shall have a right-of-way width of not less than fifty (50) feet. Additional right-of-way may be required at the discretion of the Town Highway Superintendent because of physical features.
- B. Unless otherwise modified by the Town Board, all streets or highways offered for the continuation of existing streets adjoining, or their proper projection when the adjoining property is not subdivided, shall be of a width at least equal to such existing streets but in no case less than fifty (50) feet.

¹ Editor's Note: The specifications are on file in the office of the Town Clerk.

- C. There shall be no reservation of strips of land controlling access to any highway in any adjoining subdivision or to adjoining lands not subdivided where said street terminates at the boundary lines of such person, except where control of such strips is definitely placed in the town under offer to dedicate.
- D. All highways offered for acceptance by the town shall be cleared of all obstructions, and all necessary grading and filling shall be completed to the full width of such highway, so that the same shall comply with the established grades.
- E. All plan layouts shall provide the following:
 - (1) A design layout consisting of plan, profile and typical cross sections for tangent and curved highway sections is required.
 - (2) A highway designed to have one (1) end permanently closed (cul-de-sac) may be accepted for dedication at the discretion of the Town Board, provided that said highway shall come to the boundary limits of such person's property and that there is no other highway to which the proposed highway may be connected, either on the lands of such person or on the lands of an adjoining owner, in which case a minimum of a sixty-foot radius turnaround shall be provided; however, the Town Board may, at the time of application, request such applicant to modify or change said plans which would relocate the highway in order that such turnaround may be avoided.
 - (3) Highway corners shall be rounded and property lines set back sufficiently to allow a radius on the corner of not less than fifty (50) feet.
 - (4) The highway shall have a roadway at least thirty (30) feet wide, which consists of twenty (20) feet of traveled way and five-foot wide shoulders on each side. The roadway shall be stripped of stumps, roots, muck and spongy and organic material to provide a suitable foundation for placement of gravel. The gravel shall be run-of-bank gravel, approved by the Town Superintendent of High-

ways, placed to a compacted depth of twelve (12) inches, New York State Item 4 gravel properly graded and crowned. In any case where, in the opinion of the Town Superintendent of Highways, the nature of the soil over which a highway is to be laid out is such that it will not support the roadway, the Town Superintendent of Highways may designate that portion of the roadway which shall be built with run-of-bank gravel to a greater depth and extent than twelve (12) inches, as above set forth. GEO textile fabric may be required under ground for clay-type soil conditions. The twenty (20) feet of traveled way shall be surfaced with asphalt concrete from a New York State approved batch plant and placed in accordance with Section 403 of the New York State Department of Transportation Standard Specifications for Construction and Materials¹ and shall consist of a minimum of one and one-half (1½) inches (compacted) of Type 3 binder (403.13) and a minimum one-inch (compacted) Type 6 top (403.16).

- (5) Proper drainage facilities shall be installed where required. Reinforced concrete culvert pipe or corrugated metal pipe shall be used throughout for all culverts and storm drains. The highway plans shall show the grade and profile of all drainage facilities, together with the final disposition of the flow.
- (6) The applicant shall obtain all necessary, permanent easements and rights-of-way to take care of any surface water, discharge of culverts or storm drains caused by the layout of this highway. No highway will be accepted by the town before such necessary easements and rights-of-way have been obtained; and prior to the acceptance of the highway, all such easements and rights-of-way shall be assigned to the town.
- (7) The construction of a driveway or ramp over a street or highway ditch shall not be allowed unless a corrugated metal pipe with locking collar or reinforced concrete pipe with sealed joints, having a minimum inside diameter of

¹ Editor's Note: The specifications are on file in the office of the Town Clerk.

twelve (12) inches, is installed in said ditch prior to such construction.

- (8) Written approval shall be obtained by such person from the New York State Department of Transportation regarding drainage where the proposed highway intersects the state road and its permission to connect said highway with the state road. In like manner, written approval shall be obtained from the Washington County Superintendent of Highways regarding drainage and connection with a county road.
- (9) Right-of-way monuments shall be set at all highway property corners and at all angles in the property line. All monuments shall be concrete, four (4) inches in diameter, four (4) feet in length and set six (6) inches above the finished grade of the surrounding ground.

Chapter 69

SUBDIVISION ENFORCEMENT

§ 69-1. Compliance with regulations.

§ 69-2. Issuance of building permits.

§ 69-3. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 10-26-81 as L.L. No. 2-1981. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 80.

Subdivision regulations — See Ch. A84.

§ 69-1. Compliance with regulations.

No land in the Town of Kingsbury shall be subdivided except in conformance with the Town of Kingsbury Subdivision Regulations, duly adopted by the Planning Board of the Town of Kingsbury, November 19, 1980, and approved by the Town Board of the Town of Kingsbury, December 8, 1980, and any amendments thereto.¹

§ 69-2. Issuance of building permits.

No building permit shall be issued to any person, firm or corporation for the construction of any building on property which has been subdivided after the effective date of this chapter without subdivision approval by the Planning Board of the Town of Kingsbury. For the purpose of this chapter, the term "subdivided" shall mean the subdivision of lands as defined in the Town of Kingsbury Subdivision Regulations.²

¹ Editor's Note: See Ch. A84, Subdivision Regulations.

² Editor's Note: See Ch. A84, Subdivision Regulations.

§ 69-3. Penalties for offenses.

Any person, firm or corporation who shall subdivide land in the Town of Kingsbury without complying with the Town of Kingsbury Subdivision Regulations and obtaining the approval of the Planning Board of the Town of Kingsbury shall be guilty of a violation against such regulations, punishable by a fine of not more than one hundred dollars (\$100.). In addition, when a violation of these regulations or any of the provisions thereof is continuous, each week thereafter shall constitute a separate and distinct violation.

Chapter 71

SWIMMING POOLS

- § 71-1. Definitions.
- § 71-2. Outdoor swimming pool requirements.
- § 71-3. Approval and building permit required prior to construction.
- § 71-4. Certification by installer.
- § 71-5. Use and maintenance standards.
- § 71-6. Fencing required for existing pools.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 3-26-84 as L.L. No. 3-1984. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 80.
Subdivision regulations — See Ch. A84.

§ 71-1. Definitions.

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

PERMANENTLY INSTALLED POOL — A “permanently installed pool” is one which is affixed into the ground or which rests on top of the ground and which has a wall height or maximum water depth exceeding eighteen (18) inches and a surface area exceeding one hundred twenty (120) square feet.

PRIVATE SWIMMING POOL — An artificial facility for swimming which is an accessory use to a residential building. Such pool shall be for the exclusive use of the occupants of the principal residential building and their guests.

SWIMMING POOL — A body of water, artificial or semiartificial receptacle located outdoors and having a wall height or maximum water depth, whichever is greater, exceeding eighteen (18) inches and with the surface area exceeding one hundred twenty (120) square feet.

§ 71-2. Outdoor swimming pool requirements.

No swimming pool shall be installed or maintained out of doors unless:

- A. Owners of all proposed permanently installed pools shall submit to the Building Inspector a proposed site plan for the installation of such pool prior to construction.
- B. Such pool shall be completely surrounded by a substantial nonclimbable fence constructed of natural or artificial materials. Such fence shall not be less than four (4) feet in height and shall be supported with posts firmly embedded at intervals of not more than eight (8) feet. If of wire-mesh construction, this fence shall not have openings, holes or gaps larger than two (2) inches in diameter and shall be of a gauge not more than twelve (12). A dwelling house or accessory building or structure may be used as part of such enclosure. The owners of aboveground pools whose solid walls prevent entrance to the pool except by entrance ladder shall be deemed to comply with the fencing requirements of this chapter.
- C. No pool wall or related structure shall be located within eight (8) feet of an adjoining lot line.
- D. Private pools shall not be located within a front yard in any district.
- E. No pool wall or related structure shall be constructed within ten (10) feet from a sewage disposal system.
- F. All gates or doors opening through enclosures around the swimming pool shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when the owner or occupant of the

premises is not present at the swimming pool, except that a door of any dwelling which forms a part of the enclosure need not be so equipped. Such self-latching device shall be placed as high as possible on the gate and out of the reach of small children.

- G. An open and unobstructed maintenance area at least three (3) feet in width shall be maintained between the fencing and the side walls of the pool.

§ 71-3. Approval and building permit required prior to construction.

No work shall be commenced on the construction or installation of any swimming pool, including any excavation or removal of sand, gravel, topsoil or other materials, until the plans and specifications therefor have been approved by the Building Inspector and a building permit has been issued by the Town of Kingsbury.

§ 71-4. Certification by installer.

The plans and specifications shall contain a certification by the installer that if the water for a swimming pool is supplied from a private well, there is no cross-connection with the public water system; that if the water for such pool is supplied from the public water supply, the inlet shall be above the overflow level of the pool; that the drain of such swimming pool is adequate and within the subject premises and will not interfere with the public or private water supply system, with existing sanitary facilities or with the public highway; and that the construction meets the minimum requirements of the New York State Building Code.

§ 71-5. Use and maintenance standards.

Each swimming pool shall be used and maintained in accordance with the provisions of the New York State Sanitary Code.

§ 71-6. Fencing required for existing pools.

The fencing requirements shall apply to all existing pools within the Town of Kingsbury, and the owners of said pools shall have ninety (90) days from the effective date of this chapter to comply with this requirement.

Chapter 72

TAXATION

ARTICLE I

Senior Citizens Tax Exemption

- § 72-1. Legislative intent.
- § 72-2. Partial exemption granted.
 - § 72-2.1. Exemption conditions.
 - § 72-2.2. Application for exemption.
 - § 72-2.3. Notice requirements.
 - § 72-2.4. Property held in trust.
 - § 72-2.5. Property purchased after levy of taxes or after taxable status date.
 - § 72-2.6. Penalties for offenses.
 - § 72-2.7. Applicability; effective date.

ARTICLE II

Tax Exemption for Property Improvements Relating to Physically Disabled or Blind Persons

- § 72-3. Extent of and conditions for granting exemption.
- § 72-4. Statement or certificate required.
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ARTICLE III

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- § 72-6. Purpose.
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ARTICLE IV

Tax Exemption for Qualified Solar and Wind Energy
Structures

§ 72-8. Extent of exemption.

ARTICLE V

Exemption for Persons With Disabilities

§ 72-9. Purpose.

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§ 72-11. Definitions.

§ 72-12. Conditions determining disability.

§ 72-13. Proof of disability.

§ 72-14. Computation.

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§ 72-16. Tenant-stockholders of cooperative apartment
corporations.

§ 72-17. Assessment of property and grant of exemption
to tenant-stockholders.

§ 72-18. Application and filing requirements.

§ 72-19. Real property held in trust.

§ 72-20. When effective.

ARTICLE VI

Exemption for Qualified Infrastructure

§ 72-21. Exemption granted.

§ 72-22. Exemption calculation; duration.

§ 72-23. Applicability.

§ 72-24. Application; filing.

TAXATION

ARTICLE VII
Cold War Veterans Exemption

- § 72-25. Legislative intent.
- § 72-26. Definitions.
- § 72-27. Exemption granted.
- § 72-28. Application; filing.
- § 72-29. Penalties for offenses.

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

ARTICLE I

Senior Citizens Tax Exemption

[Adopted 5-21-2007 by L.L. No. 1-2007¹]

§ 72-1. Legislative intent.

The Board hereby finds and determines that it is in the best interests of the Town to offer to its residents 65 years of age or older a real property tax exemption. Therefore, the purpose of this article is to provide the maximum benefit permissible to the residents of the Town 65 years of age or older.

§ 72-2. Partial exemption granted.

- A. Pursuant to Real Property Tax Law § 467(1)(b)(1), the Town shall provide a partial exemption from real property taxes for owners of real property situated within the bounds of the Town of Kingsbury, County of Washington, State of New York, which is owned by one or more persons, each of whom is 65 years of age or over, or which is owned by husband and wife, one of whom is 65 years of age or over, or real property owned by one or more persons, some of whom qualify under this article and § 459-c of the Real Property Tax Law. Such exemption shall be based upon the assessed valuation of the exempt real property and shall be computed after all other partial exemptions allowed by law, excluding the school tax relief (STAR) exemption authorized by Real Property Tax Law § 425, have been subtracted from the total amount assessed. The partial real property tax exemption shall be calculated in accordance with the following schedule: **[Amended 4-13-2009 by L.L. No. 5-2009]**

1. Editor's Note: This local law superseded former Art. I, Senior Citizens Tax Exemption, adopted 10-25-1972, as amended.

Annual Income	Percentage of Assessed Valuation Exempt from Taxation
\$0 to \$18,000.00	50%
\$18,000.01 to \$18,999.99	45%
\$19,000.00 to \$19,999.99	40%
\$20,000.00 to \$20,999.99	35%
\$21,000.00 to \$21,899.99	30%
\$21,900.00 to \$22,799.99	25%
\$22,800.00 to \$23,699.99	20%
\$23,700.00 to \$24,599.99	15%
\$24,600.00 to \$25,499.99	10%
\$25,500.00 to \$26,399.99	5%

- B. Annual income shall include the income of the owner or the combined income of the owners of the property for the income year immediately preceding the date of making an application for exemption. "Income tax year" shall mean the twelve-month period for which the owner or owners filed a federal personal income tax return or, if no such return was filed, the calendar year. Where the title is vested in either the husband or the wife, their combined income may not exceed such sum, except that, where the husband or wife or ex-husband or ex-wife is absent from the property because of divorce, legal separation or abandonment, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. Such income shall include social

security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include a return of capital, gifts, inheritances, payments made to individuals because of their status as victims of the Nazi persecution, or monies earned through employment in the federal foster grandparent program; any such income shall be offset by all medical and prescription drug expenses actually paid which were not reimbursed or paid for by insurance. In addition, such income shall not include veterans disability compensation, as defined in Title 38 of the United States Code. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion or wear and tear of real or personal property held for the production of income.

§ 72-2.1. Exemption conditions.

A. No exemption shall be granted:

- (1) Unless the owner shall have held an exemption under Real Property Tax Law § 467 for his previous residence or unless the title of the property shall have been vested in the owner or one of the owners of the property for at least 24 consecutive months prior to the date of making the application for exemption; provided, however, that in the event of the death of either 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 24

consecutive months. 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 purposes of computing such period of 24 consecutive months. 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 the involuntary proceeding, except a tax sale, 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 article. Where a residence is sold and replaced with another within one year and both residences are within the state, the period of ownership of both properties shall be deemed consecutive for purposes of the exemption from taxation. Where the owner or owners transfer title to property which as of the date of transfer was exempt from taxation under the provisions of this article, the reacquisition of title by such owner or owners within nine months of the date of transfer shall be deemed to satisfy the requirement of this subsection that the title of the property shall have been vested in the owner or one of the owners for such period of 24 consecutive months. Where, upon or subsequent to the death of an owner or owners, title to property which as of the date of such death was exempt from taxation under such provisions becomes vested, by virtue of devise or descent from the deceased owner or owners or by transfer by any other means within nine months after such death, solely in a person or persons who, at the time of such death, maintained such property as a primary residence, the requirement of this subsection that the title of the property shall have been vested in the

owner or one of the owners for such period of 24 consecutive months shall be deemed satisfied;

- (2) Unless the property is used exclusively for residential purposes; however, in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this article;
- (3) 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, except where:
 - (a) An owner is absent from the residence while receiving health-related care as an inpatient of a residential health-care facility, as defined in § 2801 of the Public Health Care Law, provided that any income accruing to that person shall be income only to the extent that it exceeds the amount paid by such owner, spouse, or co-owner for care in the facility, and provided further that during such confinement such property is not occupied by other than the spouse or co-owner of such owner; or
 - (b) The real property is owned by a husband and/or wife or an ex-husband and/or an ex-wife and either is absent from the residence due to divorce, legal separation or abandonment and an exemption was previously granted when both resided on the property, provided the person remaining on the real property is 62 years of age or over and all other provisions of this section are met.

- B. The real property tax exemption of real property owned by husband and wife, one of whom is 65 years of age or over, once granted, shall not be rescinded solely because of the

death of the older spouse so long as the surviving spouse is at least 62 years of age.

§ 72-2.2. Application for exemption.

- A. Application for such exemption must be made by the owner or all of the owners of the property on forms prescribed by the State Board to be furnished by the Town Assessor's office. Such applications shall furnish the information and be executed in the manner required or prescribed in such forms and shall be filed in the Assessor's office on or before the taxable status date. Any person otherwise qualifying under this article shall not be denied the exemption under this article if he becomes 65 years of age after the appropriate taxable status date and on or before December 31 of the same year.
- B. At least 60 days prior to the appropriate taxable status date, the Town Assessor shall mail to each person who was granted exemption pursuant to this article on the latest completed assessment roll an application form and a notice that such application must be filed on or before the taxable status date and be approved in order for the exemption to be granted. The Town Assessor shall, within three days of the completion and filing of the tentative assessment roll, notify by mail any applicant who has included with his application at least one self-addressed, prepaid envelope of the approval or denial of the application; provided, however, that the Town Assessor shall, upon the receipt and filing of the application, send by mail notification of receipt to any applicant who has included two such envelopes with the application. Where an applicant is entitled to a notice of denial pursuant to this article, such notice shall be on a form prescribed by the State Board and shall state the reasons for such denial and shall further state that the applicant may have such determination reviewed in the manner provided by law. Failure to mail any such application form or notices or the failure of such person to receive any of the same shall not

prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

- C. An application for such exemption may be filed with the Town Assessor after the appropriate taxable status date, but not later than the last date on which a petition with respect to complaints of an assessment may be filed, where failure to file a timely application resulted from a death of the applicant's spouse, child, parent, brother or sister or an illness of the applicant or of the applicant's spouse, child, parent, brother or sister which actually prevents the applicant from filing on a timely basis, as certified by a licensed physician. The Town Assessor shall approve or deny such application as if it had been filed on or before the taxable status date.
- D. Any person who has been granted exemption pursuant to this article on five consecutive completed assessment rolls, including any years when the exemption was granted to a property owned by a husband and/or wife while both resided at such property, shall not be subject to the requirements set forth in § 72-2.2B of this article. Said person shall be mailed an application form and a notice informing him of his rights. Such exemption shall be automatically granted on each subsequent assessment roll; provided, however, that when tax payment is made by such person a sworn affidavit must be included with such payment which shall state that such person continues to be eligible for such exemption. Such affidavit shall be on a form prescribed by the State Board. If such affidavit is not included with the tax payment, the Tax Collector shall proceed pursuant to Real Property Tax Law § 551-a.
- E. The Town Assessor shall be authorized to accept applications for renewal of exemptions pursuant to this article after the taxable status date. In the event the owner or all of the owners of property which has received an exemption pursuant to Real Property Tax Law § 467 and this article on the preceding assessment roll fail to file the application required pursuant to this article on or

before the taxable status date, such owner or owners may file the application, executed as if such application had been filed on or before the taxable status date, with the Town Assessor on or before the date for the hearing of complaints.

§ 72-2.3. Notice requirements.

The Town shall notify or cause to be notified each person owning residential real property in the Town of the provisions of this article. Notice may be given by either a notice or legend sent on or with each tax bill to such persons reading, "You may be eligible for senior citizen tax exemptions. Senior citizens have until ____ (month) ____ (day), ____ (year), to apply for such exemptions. For information please call or write to ____," followed by the name, telephone number and/or address of a person or department selected by the Town to explain the provisions of this article. Failure to notify or cause to be notified any person who is in fact eligible to receive the exemption provided by this article 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.

§ 72-2.4. Property held in trust.

Notwithstanding any other provision of law to the contrary, the provisions of this article shall apply to real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption pursuant to this article were such person or persons the owner or owners of such real property.

§ 72-2.5. Property purchased after levy of taxes or after taxable status date.

A. Property purchased after levy of taxes.

- (1) Where a person who meets the requirements for an exemption pursuant to this article purchases property after the levy of taxes, such person may file an application for exemption to the Town Assessor within 30 days of the transfer of title to such person. The Town Assessor shall make a determination of whether the parcel would have qualified for exempt status on the tax roll on which the taxes were levied had title to the parcel been in the name of the applicant on the taxable status date applicable to the tax roll. The application shall be on a form prescribed by the State Board. The Assessor, no later than 30 days after receipt of such application, shall notify both the applicant and the Board of Assessment Review, by first-class mail, of the exempt amount, if any, and the right of the owner to a review of the exempt amount upon the filing of a written complaint. Such complaint shall be on a form prescribed by the State Board and shall be filed with the Board of Assessment Review within 20 days of the mailing of this notice. If no complaint is received, the Board of Assessment Review shall so notify the Town Assessor and the exempt amount determined by the Assessor shall be final. If the applicant files a complaint, the Board of Assessment Review shall schedule a time and place for a hearing with respect thereto no later than 30 days after the mailing of the notice by the Town Assessor. The Board of Assessment Review shall meet and determine the exempt amount and shall immediately notify the Town Assessor and the applicant, by first-class mail, of its determination. The amount of exemption determined pursuant to this subsection shall be subject to review as provided in Article 7 of the Real Property Tax Law. Such a proceeding shall be commenced within 30 days of the mailing of the notice of the Board of Assessment Review to the new owner as provided in this subsection.

- (2) Upon receipt of a determination of the exempt amount as provided in Subsection A(1) of this section, the Town Assessor shall determine the pro rata exemption to be credited toward such property by multiplying the tax rate or tax rates for the Town on the appropriate tax roll used for the fiscal year or years during which the transfer occurred times the exempt amount, as determined in Subsection A(1) of this section, times the fraction of each fiscal year or years remaining subsequent to the transfer of title. The Town Assessor shall immediately transmit a statement of the pro rata exemption credit due to the Town on the tax roll used for the fiscal year or years during which the transfer occurred and to the applicant.
- (3) If the Town receives notice of pro rata exemption credits pursuant to Subsection A(2), it shall include an appropriation in its budget for the next fiscal year equal to the aggregate amount of such credits to be applied in that fiscal year. Where a parcel, the owner of which is entitled to a pro rata exemption credit, is subject to taxation in said next fiscal year, the receiver or collector shall apply the credit to reduce the amount of taxes owed for the parcel in such fiscal year. Pro rata exemption credits in excess of the amount of taxes, if any, owed for the parcel shall be paid by the appropriate officer of the Town which levies such taxes for or on behalf of the Town to all owners of property entitled to such credits within 30 days of the expiration of the warrant to collect taxes in said next fiscal year.

B. Property purchased after taxable status date.

- (1) Where a person who meets the requirements for an exemption pursuant to this article purchases property after the taxable status date but prior to the levy of taxes, such person may file an application for an exemption to the Town Assessor within 30

days of the transfer of title to such person. The Town Assessor shall make a determination within 30 days after receipt of such application of whether the applicant would qualify for an exemption pursuant to this article on the assessment roll if title had been in the name of the applicant on the taxable status date applicable to such assessment roll. The application shall be made on a form prescribed by the State Board.

- (2) If the Town Assessor's determination is made prior to the filing of the tentative assessment roll, the Town Assessor shall enter the exempt amount, if any, on the tentative assessment roll and, within 10 days after filing such roll, notify the applicant of the approval or denial of such exemption, the exempt amount, if any, and the applicant's right to review by the Board of Assessment Review.
- (3) If the Town Assessor's determination is made after the filing of the tentative assessment roll, the Town Assessor shall petition the Board of Assessment Review to correct the tentative or final assessment roll in the manner provided in Article 5 of the Real Property Tax Law, with respect to unlawful entries in the case of wholly exempt parcels and with respect to clerical errors in the case of partially exempt parcels, if the Town Assessor determines that an exemption should be granted and, within 10 days of petitioning the Board of Assessment Review, notify the applicant of the approval or denial of such exemption, the amount of such exemption, if any, and the applicant's right to administrative or judicial review of such determination pursuant to Article 5 or 7 of the Real Property Tax Law, respectively.

- C. If, for any reason, a determination to exempt property from taxation as provided in Subsection B of this section is not entered on the final assessment roll, the Town

Assessor shall petition the Board of Assessment Review to correct the final assessment roll.

- D. If, for any reason, the pro rata tax credit as provided in Subsection A of this section is not extended against the tax roll immediately succeeding the fiscal year during which the transfer occurred, the Town Assessor shall immediately notify the Town of the amount of pro rata exemption credits for the year in which such transfer occurred. Such municipal corporation shall proceed as provided in Subsection A(3) of this section.
- E. If, for any reason, a determination to exempt property from taxation as provided in Subsection B of this section is not entered on the tax roll for the year immediately succeeding the fiscal year during which the transfer occurred, the Town Assessor shall determine the pro rata tax exemption credit for such tax roll by multiplying the tax rate or tax rates for the Town times the exempt amount and shall immediately notify the Town of the pro rata exemption credits for such tax roll. The Town shall add such pro rata exemption credits for such property to any outstanding pro rata exemption amounts and proceed as provided in Subsection A(3) of this section.

§ 72-2.6. Penalties for offenses.

The making of any willfully false statement in the application for an exemption under this article shall be a violation thereof, and a conviction for any such violation 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 five years.

§ 72-2.7. Applicability; effective date.

This article shall apply to assessment rolls on the basis of taxable status dates occurring on or after January 1, 2008 and each year thereafter.

ARTICLE II

**Tax Exemption for Property Improvements Relating to
Physically Disabled or Blind Persons**
[Adopted 2-13-1984 by L.L. No. 1-1984]

§ 72-3. Extent of and conditions for granting exemption.

Improvements to any real property used solely as a one-, two- or three-family residence shall be exempt from taxation to the extent of any increase in value attributable to said improvements. The improvements must be used for the purpose of facilitating and accommodating the use and accessibility of the property by a physically disabled resident owner or a member of a resident owner's household who is physically disabled and resides in the property.

§ 72-4. Statement or certificate required.

A physically disabled individual shall submit to the Assessor a certified statement from a physician which states that the individual has a permanent physical impairment which substantially limits one or more of his major life activities. If the individual is legally blind, he or she may submit a certificate from the State Commission for the Blind and Visually Handicapped in lieu of the physician's statement. The owner of the property shall file this certificate, together with an application form, with the Assessor by taxable status date.

§ 72-5. Commencement and duration of exemption.

This exemption is first available in connection with assessment rolls prepared on the basis of taxable status dates occurring on or after January 2, 1984. Once granted, this exemption shall continue until the improvement ceases to be necessary to facilitate and accommodate the use and accessibility of the property by the physically disabled resident.

ARTICLE III
Alternative Veterans Exemption
[Adopted 1-26-1998 by L.L. No. 1-1998²]

§ 72-6. Purpose.

The purpose of this article is to provide for the maximum veterans exemption allowable pursuant to § 458-a of the Real Property Tax Law of the State of New York.

§ 72-7. Extent of exemption. [Amended 10-16-2006 by L.L. No. 3-2006]

Pursuant to the provisions of Subdivision 2(d) of § 458-a of the Real Property Tax Law of the State of New York, the maximum veteran's exemption from real property taxes allowable pursuant to § 458-a of the Real Property Tax Law is established as follows:

- A. Qualified residential real property shall be exempt from taxation to the extent of 15% of the assessed value of such property; provided, however, that such exemption shall not exceed the lesser of \$36,000 or the product of \$36,000 multiplied by the latest state equalization rate for each town in Washington County.
- B. In addition to the exemption provided by Subsection A of this section, where the veteran served in a combat theater or combat zone of operations, as documented by the award of a United States campaign ribbon or service medal, qualifying residential real property shall be exempt from taxation to the extent of 10% of the assessed value of such property; provided, however, that such exemption shall not exceed the lesser of \$24,000 or the product of \$24,000 multiplied by the latest state equalization rate for each town in Washington County.

2. Editor's Note: This local law superseded former Art. III, Veterans Exemption, adopted 1-28-1985 by L.L. No. 1-1985.

- C. In addition to the exemptions provided by Subsections A and B of this section, where the veteran received a compensation rating from the United States Veterans Administration because of a service-connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property multiplied by 50% of the veteran's disability rating; provided, however, that such exemption shall not exceed the lesser of \$120,000 or the product of \$120,000 multiplied by the latest state equalization rate for each town in Washington County.

ARTICLE IV

Tax Exemption for Qualified Solar and Wind Energy Structures

[Adopted 1-14-1991 by L.L. No. 2-1991³]

§ 72-8. Extent of exemption.

The Town of Kingsbury will not grant any real property tax exemptions for qualified solar and wind structures constructed between January 1, 1991, and January 1, 1996, pursuant to § 487 of the Real Property Tax Law of the State of New York.

ARTICLE V

Exemption for Persons With Disabilities

[Adopted 1-26-1998 by L.L. No. 2-1998]

§ 72-9. Purpose.

The purpose of this article is to provide for the exemption from real property taxes of property owned by one or more persons with disabilities as provided for in § 459-c of the Real Property Tax Law of the State of New York as enacted by Chapter 315 of the Laws of 1997.

3. Editor's Note: This article also provided that it will become effective on February 1, 1991.

§ 72-10. Extent of exemption. [Amended 2-14-2000 by L.L. No. 1-2000; 4-14-2008 by L.L. No. 4-2008; 4-13-2009 by L.L. No. 4-2009]

Pursuant to the provisions of § 459-c of the Real Property Tax Law, real property located in the Town of Kingsbury, County of Washington, State of New York, which is owned by one or more persons with disabilities, or real property owned by a husband, wife or both, or by siblings, at least one of whom has a disability, and whose income, as hereafter defined, is limited by reason of such disability, shall be exempt from taxation by the Town to the extent provided in the following schedule:

Annual Income	Percentage of Assessed Valuation Exempt from Taxation
\$0 to \$18,000.00	50%
\$18,000.01 to \$18,999.99	45%
\$19,000.00 to \$19,999.99	40%
\$20,000.00 to \$20,999.99	35%
\$21,000.00 to \$21,899.99	30%
\$21,900.00 to \$22,799.99	25%
\$22,800.00 to \$23,699.99	20%
\$23,700.00 to \$24,599.99	15%
\$24,600.00 to \$25,499.99	10%
\$25,500.00 to \$26,399.99	5%

§ 72-11. Definitions.

For the purposes of this article, the following terms shall have the meanings indicated:

SIBLING — A brother or a sister, whether related through half blood, whole blood or adoption.

§ 72-12. Conditions determining disability.

A person with a disability is one who has a physical or mental impairment, not due to current use of alcohol or illegal drug use, which substantially limits such person's ability to engage in one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, and who:

- A. Is certified to receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits under the federal Social Security Act; or
- B. Is certified to receive Railroad Retirement Disability Benefits under the Federal Railroad Retirement Act; or
- C. Has received a certificate from the State Commission for the Blind and Visually Handicapped stating that such person is legally blind.

§ 72-13. Proof of disability.

An award letter from the Social Security Administration or the Railroad Retirement Board or a certificate from the State Commission of the Blind and Visually Handicapped shall be submitted as proof of disability.

§ 72-14. Computation.

Any exemption provided by this article shall be computed after all other partial exemptions allowed by law have been subtracted from the total amount assessed; provided, however, that no parcel may receive an exemption for the same municipal tax purpose pursuant to both this article and § 467 of the Real Property Tax Law of the State of New York.

§ 72-15. Conditions for exemption.

No exemption shall be granted:

- A. If the income of the owner or the combined income of the owners of the real property for the income year immediately preceding the date of making application for exemption exceeds the sums as provided for in this article. "Income tax year" shall mean the twelve-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 such sum, except that where the husband or wife, or ex-husband or ex-wife, is absent from the property due to divorce, legal separation or abandonment, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. Such incomes shall include social security and retirement benefits, interest dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include a return of capital, gifts, inheritances or monies earned through employment in the federal foster grandparent program. In computing net rental income and net income from self employment, no depreciation deduction shall be allowed for the exhaustion or wear and tear of real or personal property held for the production of income.
- B. Unless the real property is used exclusively for residential purposes; provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided for in this article.
- C. Unless the real property is the legal residence of and is occupied in whole or in part by the disabled person; except where the disabled person is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in § 2801 of the Public Health Law of the State of New York, provided that

any income accruing to that person shall be considered income for purposes of this article only to the extent that it exceeds the amount paid by such person or spouse or sibling of such person for care in the facility.

§ 72-16. Tenant-stockholders of cooperative apartment corporations.

Title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides and which is represented by his share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation,, shall be deemed to be vested in such tenant-stockholder.

§ 72-17. Assessment of property and grant of exemption to tenant-stockholders.

That proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant stockholder to such entire parcel and the buildings thereon owned by such cooperative apartment corporation in which such taxation pursuant to this article and any exemption so granted shall be credited by the appropriate taxing authority against the property taxes realized thereby and shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder.

§ 72-18. Application and filing requirements.

Application for this exemption must be made annually by the owner, or all of the owners of the property, on forms prescribed by the state board and shall be filed in the appropriate assessor's office on or before the appropriate taxable status date; provided, however, that proof of a permanent disability

need be submitted only in the year exemption pursuant to this article is first sought or the disability is first determined to be permanent.

§ 72-19. Real property held in trust.

Notwithstanding any other provision of law to the contrary, the provisions of this article shall apply to real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption, pursuant to this article, were such person or persons the owner or owners of such real property.

§ 72-20. When effective.

This article shall take effect upon its filing with the Secretary of State of the State of New York.

ARTICLE VI
Exemption for Qualified Infrastructure
[Adopted 2-22-1999 by L.L. No. 1-1999]

§ 72-21. Exemption granted.

Residential building lots which are part of a subdivision plat for residential development which includes infrastructure intended to be dedicated to a municipal corporation or a special district within the Town of Kingsbury in accordance with the provisions of Real Property Tax Law § 485-g shall be exempt from taxation to the extent of the increased assessed value of such lots resulting from the addition of such infrastructure for a period until the issuance of a certificate of occupancy, but in no event longer than three years from granting of the exemption herein, which certifies that a residence is constructed on a building lot in such subdivision.

§ 72-22. Exemption calculation; duration.

- A. Such exemption shall be the value of the infrastructure proportionately applied to each of the lots in the subdivision.
- B. Upon issuance of the certificate of occupancy, but in no event longer than three years from granting of the exemption herein, the exemption provided shall lapse.

§ 72-23. Applicability.

For purposes of this article, infrastructure shall be comprised of the following public facilities which are intended to be dedicated to a municipal corporation or a special district thereof:

- A. Streets.
- B. Storm and sanitary sewers.
- C. Drainage facilities.
- D. Any other facilities required by a municipality to be installed in such residential subdivision as noted on the filed plat plan for such residential subdivision.

§ 72-24. Application; filing.

Such exemption shall be granted only upon application by the owner of the real property on a form prescribed and made available by the New York State Office of Real Property Services. The applicant shall file the information as required by the New York State Office of Real Property Services. The application shall be filed on or before the appropriate taxable status date of such assessing unit and not later than one year from the date of completion of such construction, installation or improvement. On approved subdivision lots in which such infrastructure has been completed as of the effective date of this article, provided that the exemption under this section

shall be applicable, and for which a certificate of occupancy has not been issued, application shall be made within one year from the effective date of this article.

ARTICLE VII
Cold War Veterans Exemption
[Adopted 4-14-2008 by L.L. No. 3-2008⁴]

§ 72-25. Legislative intent.

This Board hereby finds and determines that it has been the Town's longstanding policy to offer to its veterans the broadest property tax exemption permitted by the laws of New York State. Therefore, the purpose of this article is to provide the maximum benefit permissible to the Town's Cold War veterans.

§ 72-26. Definitions.

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

ACTIVE DUTY — The meaning set forth in Real Property Tax Law § 458-b(1)(c).

ARMED FORCES — The meaning set forth in Real Property Tax Law § 458-b(1)(b).

COLD WAR VETERAN — The meaning set forth in Real Property Tax Law § 458-b(1)(a).

LATEST CLASS RATIO — The meaning set forth in Real Property Tax Law § 458-b(1)(h).

LATEST STATE EQUALIZATION RATE — The latest final equalization rate established by the state board pursuant to Article 12 of the Real Property Tax Law.

4. Editor's Note: This local law provided that it shall apply to assessment rolls on the basis of taxable status dates occurring on or after March 1, 2009 and each year thereafter.

QUALIFIED OWNER — The meaning set forth in Real Property Tax Law § 458-b(1)(e).

QUALIFIED RESIDENTIAL REAL PROPERTY — The meaning set forth in Real Property Tax Law § 458-b(1)(f).

SERVICE CONNECTED — The meaning set forth in Real Property Tax Law § 458-b(1)(d).

§ 72-27. Exemption granted.

Pursuant to Subdivision (2)(a) of § 458-b of the Real Property Tax Law, an exemption from real property taxes shall be available to qualified owners of qualified residential real property in the Town. Said Cold War veterans' exemption shall be computed as follows:

- A. Qualifying residential real property shall be exempt from taxation to the extent of 10% of the assessed value of such property; provided, however, that such exemption shall not exceed \$8,000 or the product of \$8,000 multiplied by the latest state equalization rate of the assessing unit, or, in the case of a special assessing unit, the latest class ratio, whichever is less.
- B. In addition to the exemption provided by Subsection A, where the Cold War veteran received a compensation rating from the United States Veterans Affairs or from the United States Department of Defense because of a service-connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property, multiplied by 50% of the Cold War veteran disability rating; provided, however, that such exemption shall not exceed \$40,000, or the product of \$40,000 multiplied by the latest state equalization rate for the assessing unit, or, in the case of a special assessing unit, the latest class ratio, whichever is less.

- C. Limitations. The exemption from taxation provided by this subdivision shall be limited as set forth in Real Property Tax Law § 458-b.

§ 72-28. Application; filing.

Application for exemption shall be made by the owner, or all of the owners, of the property on a form prescribed by the state board. The owner or owners shall file the completed form in the assessor's office on or before the first appropriate taxable status date. Any applicant convicted of willfully making any false statement in the application for such exemption shall be subject to the penalties prescribed in the Penal Law.

§ 72-29. Penalties for offenses.

The making of any written willful false statement in the application for an exemption under this article shall be a Class A misdemeanor pursuant to Penal Law § 210.45 and punishable by a fine in an amount not to exceed \$1,000 in accordance with Penal Law § 80.05. Such a violation of this article shall also disqualify the applicant from further exemption for a period of one year.

Chapter 75**VEHICLES AND TRAFFIC****ARTICLE I****Vehicle and Truck Exclusions**

- § 75-1. **Definitions.**
- § 75-2. **Vehicles and trucks over eight tons excluded from certain highways.**
- § 75-3. **Penalties for offenses.**
- § 75-3.1. **Delivery or pickup.**
- § 75-4. **Parking restricted during certain months.**
- § 75-5. **Exceptions.**
- § 75-6. **Penalties for offenses.**

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

ARTICLE I**Vehicle and Truck Exclusions**

[Adopted 10-5-1960]

§ 75-1. Definitions.

For the purposes of this article, the words "commercial vehicles," "tractors," "semitrailers," "tractor-trailer combinations" and "trucks" shall have the meanings as defined in the Vehicle and Traffic Law of the State of New York.

§ 75-2. Vehicles and trucks over eight tons excluded from certain highways. [Amended 8-21-2006 by L.L. No. 2-2006]

All trucks, commercial vehicles, tractors, tractor-trailer combinations and semitrailers in excess of eight tons, laden or unladen weight, shall be and are hereby excluded from the following highways:

- A. Casey Road extending easterly and westerly between County Line Road on the west and Dean Road on the east.
- B. Tracey Road extending easterly and westerly between Vaughn Road on the east and Dean Road on the west.
- C. Kingsbury Road.

§ 75-3. Penalties for offenses. [Amended 8-21-2006 by L.L. No. 2-2006]

Any person violating any of the provisions of this article shall be guilty of a traffic infraction punishable as follows:

- A. First offense: a fine not less than \$75 nor more than \$250 or imprisonment for not less than 15 days, or both.
- B. Second offense occurring within 18 months: a fine not less than \$150 nor more than \$375 or imprisonment for not less than 45 days or both.
- C. Third offense occurring within 18 months of first offense: a fine not less than \$375 nor more than \$675 imprisonment for not less than 90 days or both.

§ 75-3.1.¹ Delivery or pickup. [Added 8-21-2006 by L.L. No. 2-2006]

Such exclusion shall not be construed to prevent the delivery or pickup of merchandise or other property along the highway from which such vehicles are otherwise excluded.

ARTICLE II

**Overnight Parking Certain Months
[Adopted 10-23-1978 by L.L. No. 4-1978]**

§ 75-4. Parking restricted during certain months.

It shall be unlawful for the owner or operator of any type vehicle to cause or permit any said vehicle to stand upon any portion of any public highway within the Township of Kingsbury during the hours of 12:00 midnight to 6:00 a.m., commencing on November 15 of each and every year and continuing through the months of December, January, February and March, except at such locations where signs permitting such parking have been erected by the Highway Department by order of the Town Board of the Town of Kingsbury.

§ 75-5. Exceptions.

The provisions of this article shall not apply to:

- A. Vehicles of the Township of Kingsbury, fire apparatus, ambulances or vehicles engaged in the work of a public utility.
- B. Vehicles actually engaged in the course of construction or repair of streets or while actually engaged in making deliveries or rendering services in or upon any property adjacent to the highway where said vehicle is parked.

¹ Editor's Note: This section was originally adopted as § 75-4, but was renumbered as § 75-3.1 as the Code already contained a § 75-4.

- C. Disabled motor vehicles, subject to the provisions of New York State Vehicle and Traffic Laws.

§ 75-6. Penalties for offenses.

Any person violating any of the provisions of this article shall, upon conviction thereof, be sentenced to pay a fine of not more than \$25, together with costs of prosecution.

Chapter 80

ZONING

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- § 80-27. Visibility at corners and curves in roads.**
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- § 80-28.12. Transfer of license.**
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- § 80-28.14. Exhibition of sexually explicit films, videos or live entertainment in viewing rooms.**
- § 80-28.15. Escort agencies.**
- § 80-28.16. Public nudity.**
- § 80-28.17. Prohibition against children in sexually oriented businesses.**
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ARTICLE VIII
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- § 80-29. Purpose.
- § 80-30. Applicability of article.
- § 80-31. Authorization to approve or disapprove site plan.
- § 80-32. Application for review.
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- § 80-34. Procedure.
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ARTICLE IX
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- § 80-37. Penalties for offenses.

ARTICLE X
Amendments

- § 80-38. Amendment procedure.

ARTICLE XI
Interpretation

- § 80-39. Provisions held to be minimum requirements.

ARTICLE XII
Fees

- § 80-40. Schedule of fees.

[HISTORY: Adopted by the Town Board of the Town of Kingsbury 5-29-1985 by L.L. No. 2-1985.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board — See Ch. 20.
Environmental quality review — See Ch. 43.
Flood hazard areas — See Ch. 48.
Mobile homes — See Ch. 58.
Subdivision enforcement — See Ch. 69.
Subdivision regulations — See Ch. A84.
Election districts — See Ch. A85.
Zoning district boundaries — See Ch. A86.

ARTICLE I Introductory Provisions

§ 80-1. Short title.

This chapter shall be known and be cited as the "Zoning Local Law of the Town of Kingsbury, New York."

§ 80-2. Statutory authorization.

Enactment of this chapter by the Town of Kingsbury is pursuant to Article 16 of the Town Law of the State of New York and Article 27 of the Executive Law of the State of New York.

§ 80-3. General intent.

The intent of this chapter is to establish a precise and detailed plan for the use of land in the Town of Kingsbury, to promote and to protect the health, safety, comfort, convenience and general welfare of the community and to protect the property values and aesthetics of the community. This shall be accomplished by channeling and directing growth and by regulating and restricting the height, number of stories and

1. Editor's Note: This local law superseded former Ch. 80, Zoning, adopted 8-6-1958, as amended.

size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, manufacturing, residence and other purposes. This chapter shall establish districts and the boundaries thereof for said purposes and provide for the administration and enforcement of this chapter in accordance with the Consolidated Laws of the State of New York.

§ 80-4. Purpose.

This chapter is hereby adopted to provide the Town of Kingsbury with all the protection authorized by the Consolidated Laws of the State of New York, and amendments thereof and is designed to:

- A. Promote the health, safety and general welfare of the community.
- B. Lessen congestion in streets, roads and highways.
- C. Provide adequate light and air.
- D. Secure safety from fire, flood, panic and other dangers.
- E. Prevent the overcrowding of land.
- F. Avoid undue concentration of population.
- G. Facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.
- H. Conserve the value of property and encourage the most appropriate use of land in the Town with reasonable consideration for the character of each district and its peculiar suitability for particular uses.

§ 80-5. Applicability.

No land use or development shall be undertaken or maintained except in conformity with all provisions contained in this chapter relating to the zoning district in which the land, water, site, structure or use is located or is proposed to be located. Where this chapter is more restrictive than covenants or agreements between parties or other plans or other rules or regulations or ordinances, the provisions of this chapter shall control.

§ 80-6. Word usage.

Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this chapter. Words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular; the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased," or "intended to be used"; the word "shall" is always mandatory; the word "abut" shall include the words "directly across from"; and words of the masculine gender shall include the feminine. Unless otherwise specified, all distances and areas shall be measured in accordance with accepted surveying practices.

§ 80-7. Definitions.

The following terms, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

ACCESSORY STRUCTURE — A structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. Swimming pools on or in the ground shall be considered accessory use structures. [Amended 3-21-2005 by L.L. No. 1-2005]

ACCESSORY USE — Any use of a structure, lot or portion thereof, that is customarily incidental and subordinate to and

does not change the character of a principal land use or development.

ADDITION — Extension or increase in area, height or equipment of a building.

ADMINISTRATIVE AGENCY — Any person, board or commission charged with the responsibility of executing or enforcing the provisions of this chapter.

AGENT OF OWNER — Any person who can show written proof that he is acting for the property owner.

ALTERATION — As applied to a building or structure, means a change or rearrangement of the structural parts, or an enlargement or relocation.²

AUTOMOBILE SALES AREA AND SERVICES — An open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.

AUTOMOBILE SERVICE STATION OR FILLING STATION — A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where minor and major repairs are rendered.

BUILDING — Any structure permanently affixed to the land, having a roof supported by columns or walls, used or intended to be used for the shelter, housing or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate "building," except as regards minimum side yard requirements.

BUILDING AREA — The maximum area of a building at ground level, not including terraces or uncovered porches and accessory buildings or structures located on any lot.

2. Editor's Note: The definition of "auto court," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

BUILDING HEIGHT — The vertical distance measured from the average level of the highest and lowest portion of the building site covered by the building, to the uppermost portion of the structure, but not including chimneys, spires, towers, tanks and similar projections.

BUILDING LINE — The line which extends the width of the lot parallel to the front line and which is the minimum distance back from a specified base point or line. The minimum distance is known as the "setback." This line determines the point nearest the front lot line upon which buildings and/or other specified objects or uses may be placed.

CAMP — Any land, including any permanent buildings thereon used for seasonal group accommodations and/or recreational purposes. The use of the land may be, but need not be, for a profit. It may be used by children and/or adults as individuals, families or groups. This definition does not include private hunting. **[Added 3-21-2005 by L.L. No. 1-2005]**

CLUSTER DEVELOPMENT — A planned development in which lots are plotted with less than the minimum lot size and dimension requirements, but which have access to common open space which is part of the overall development plan approved by the Planning Board as per § 281 of the Town Law.

COMMERCIAL SAND AND GRAVEL EXTRACTION — Any extraction from the land of sand, gravel or topsoil for the purpose of sale or use by persons other than the owner of the land or for the purpose of use by any municipality.

COMMERCIAL USE — Any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale.

CONDOMINIUM — A multifamily project of one-family dwelling units which may consist of one, a part or more than one building, including one building per dwelling unit, where the real property title and ownership are vested in an owner who has an undivided interest with others in the common usage areas and facilities which serve the development. A

"condominium" which effects a division of land into sites (i.e., involves more than one building) shall be reviewed as a subdivision.³

DENSITY (MINIMUM AREA PER FAMILY OR DWELLING UNIT) — This area is the total usable area of any parcel of land, lot or plot to be developed or subdivided which is devoted to residential use or residentially related uses, such as parks, playgrounds, open spaces or residential streets. The Planning Board shall have the responsibility of determining what is usable land for purposes of this computation.

DEVELOPMENT — The introduction of a new use or primary structure (excepting one- and two-family dwellings) to a premises. Expansion of an existing facility for the existing use shall not be considered development for site plan review purposes unless such expansion increases the existing area of the structure or facility in excess of 25%. **[Added 2-9-1998 by L.L. No. 3-1998]**

DWELLING, MOBILE HOME — A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, with or without a foundation. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers.

DWELLING, MULTIFAMILY — A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

3. Editor's Note: The definition of "day camp," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005. See now the definition of "camp."

DWELLING, MULTIPLE —

- A. A building containing living, sanitary and sleeping facilities occupied by one or two families and more than four lodgers residing with either one of such families.
- B. A building with one or more sleeping rooms, other than a one- or two-family dwelling, used or occupied by permanent or transient paying guests or tenants.
- C. A building with sleeping accommodations for more than five persons used or occupied as a club, dormitory, fraternity or sorority house, or for similar uses.
- D. A building used or occupied as an old-age home.
- E. A community residence.

DWELLING, SINGLE-FAMILY — A detached building designated for or occupied exclusively by one family and containing not more than one dwelling unit.

DWELLING, TWO-FAMILY — A detached or semidetached building where not more than two individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.

DWELLING UNIT — One or more rooms with provisions for living, cooking, sanitary and sleeping facilities arranged for the use of one family.

ESSENTIAL SERVICES — The construction, alteration or maintenance by public utilities or governmental agencies of underground or overhead gas, electrical, steam, communication, or water transmission or distribution systems, including poles, wires, police call boxes, traffic signals, hydrants, street signs and similar equipment and accessories in connection therewith, but not including buildings unless granted by special permit and reasonably necessary for the furnishing of adequate service by public utilities or governmental agencies. **[Amended 3-21-2005 by L.L. No. 1-2005]**

ESTABLISHED GRADE — The elevation of the center line of a road as established by the Town authorities. In the absence of an "established grade," the elevation of the center line of the road concerned shall be taken in lieu thereof.⁴

FARM, ALL CLASSES — Land of not less than 10 acres being used for customary farming purpose, including, but not limited to, the raising and production of crops, livestock, horses, poultry, dairy products, trees, maple syrup products, and horticultural operations as a principal source of income, including any structure, building or residence which is incidental or accessory to the permitted use. The selling of farm products on the premises shall be considered agricultural operations. The term "farm" shall not include hog farms or fur farms. **[Amended 3-21-2005 by L.L. No. 1-2005]**

FENCE — A barrier utilized for screening, confinement, protection, separation or aesthetics composed of materials designed specifically for fencing or of braced wooden boards of uniform size and color. Retaining walls, building walls, structural walls or cultivated or natural growth of shrubs and trees are not intended as fences. **[Added 3-21-2005 by L.L. No. 1-2005]**

FENCE, SOLID — A fence with openings not to exceed one inch. **[Added 3-21-2005 by L.L. No. 1-2005]**

FLEA MARKET — A sale of items of tangible personal property, wherein, on one location, there are multiple vendors who have paid a fee for the privilege of occupying the space allotted to each such vendor for the purpose of displaying and selling, buying or exchanging, generally, used goods of any sort. **[Added 3-21-2005 by L.L. No. 1-2005]**

4. Editor's Note: The definition of "family" which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

FLOOR AREA — The gross floor area of a building or structure.

- A. RESIDENTIAL — The area in square feet within the exterior walls of a dwelling unit, not including attached garages, porches, decks, etc.
- B. PROFESSIONAL COMMERCIAL, INDUSTRIAL — The total area in square feet within the exterior walls of a building or structure and, when applicable, the sum total of all floor areas of the principal and accessory buildings or structures under a single ownership or business.

FORESTRY — Any management, including logging, of a forest or woodland, including the construction, alteration or maintenance of accessory structures, wood roads, skidways, landing fences and forest drainage systems. Forestry uses shall include tree farming and processing of timber into usable products. **[Added 3-21-2005 by L.L. No. 1-2005]**

HOBBY FARM — Land of no less than five acres used for the raising of agricultural products or keeping of horses or other large mammals, poultry or fowl for personal use or pleasure and being incidental to residential use. **[Added 3-21-2005 by L.L. No. 1-2005]**

HOME INDUSTRY — Any undertaking conducted as an accessory use for gain entirely within a dwelling or accessory building by resident members of the family assisted by a maximum of two employees. It may include but need not be limited to such enterprises as the refinishing of antiques, repair of furniture, ceramic manufacturing and decoration, repair of household articles or motor vehicles, rug weaving, manufacture of various articles, and home baking. All storage of materials and equipment shall be indoors. Maintenance of an inventory of goods, other than goods produced on the premises primarily for retail sale on the premises, and the public display of goods for sale are to be a minimum of 10 feet back from the edge of the highway right-of-way.

HOME OCCUPATION — Any use of a service nature customarily conducted entirely within a dwelling or accessory building by resident members of the family assisted by a maximum of two employees, such use being incidental to the use of the building as a dwelling and not changing the character thereof.⁵

JUNK — Junk motor vehicles and junk appliances as defined in this chapter, as well as scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc, ferrous or nonferrous scrap, and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, boxes or crates, used pipe or used pipe fittings, used tires, other discarded materials and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled or recycled. [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

JUNK MOTOR VEHICLE — Any motor vehicle or used parts or waste materials from motor vehicles which, taken together, equals in bulk one or more such vehicle, which is unlicensed or unregistered; or abandoned, wrecked, stored, discarded, dismantled, or partly dismantled; or not in a condition for legal use upon the public highways. The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in a condition for legal use upon the highways. [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

JUNKYARD — [Amended 3-21-2005 by L.L. No. 1-2005; 9-22-2008 by L.L. No. 5-2008]

A. Any place of storage or deposit, whether in connection with another business or not, where two or more junk motor vehicles are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some

5. Editor's Note: The definition of "Homeowners' Association," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose or any place of storage or deposit, for any such purposes, of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles.

- B. Any place of storage or deposit for recycling or reclamation of any household appliance, including, but not limited to, a stove, washing machine, dryer, dishwasher, freezer, refrigerator, air conditioner, water heater, computer, or television, which is stored outside of any residence or enclosed structure.
- C. An establishment having facilities for processing iron, steel, or ferrous or nonferrous scrap and whose principal product is scrap iron, steel, or ferrous or nonferrous scrap for remelting purposes.
- D. Any business required to be licensed as a junkyard pursuant to § 136 of the General Municipal Law.
- E. Any business required to be licensed as a junk dealer pursuant to Article 6 of the General Business Law.
- F. Any business required to be licensed as a scrap processor pursuant to Article 6-C of the General Business Law.
- G. The following shall not be considered a junkyard and shall not be regulated under this law:⁶
 - (1) Storage and/or warehousing of used motor vehicle parts in a fully enclosed building(s) associated with a business engaged in selling the same for use in motor vehicles and temporary storage of five or fewer inoperative motor vehicles only in conjunction with the same.
 - (2) Unregistered, old or secondhand motor vehicles. The outdoor storage or deposit of one unregistered, old or

6. Editor's Note: The term "this law" refers to L.L. No. 5-2008.

secondhand motor vehicle, except as part of a legally licensed junkyard or legally licensed car sales business.

KENNEL — An establishment providing a service for the breeding, boarding and/or care of dogs, but not necessarily a veterinary or animal hospital.

LANDSCAPING — The act of changing or enhancing the natural features of a plot, buffer zone, public open space or other area or a portion of a lot so as to make said area more attractive and/or to add visual screening. This shall include adding lawns, trees, shrubs, etc., and/or through the sculpturing of the terrain, i.e., earth berms, ponds, walkways, retaining walls, rock outcrops, etc.⁷

LIGHT MANUFACTURING — A facility where a process is used to alter the nature, size or shape of articles or raw materials, or to assemble articles or raw materials, in order to create new goods. The process and the storage of materials used in the process occur totally within the confines of enclosed structures. [Added 2-9-1998 by L.L. No. 3-1998]

LOT — A parcel of land having a distinct and defined boundary as described by a legal land survey or, in the absence of a legal land survey, the tax maps of Washington County or the Town of Kingsbury. [Amended 3-21-2005 by L.L. No. 1-2005]

- A. **LOT, AREA** — The computed area contained within the lot lines.
- B. **LOT, BUILDING** — A lot occupied or capable of being occupied by a dwelling unit and its accessory buildings or by a multiple dwelling and its accessory buildings, having not less than the minimum area and lot width required by this chapter for a lot in the district in which such land is

7. Editor's Note: The definition of "large-scale business and industrial development," which immediately followed this definition, was repealed 3-21-2005 by L.L. No. 1-2005.

situated and having its principal frontage on an approved street or road.

- C. LOT, CORNER — A lot abutting on two or more streets, roads or highways at their intersection or on two parts of the same street, road or highway, such streets, roads or highways or parts of the same street, road or highways forming an interior angle of less than 135°. The point of intersection of street lot lines is the corner. A lot located at a curve in any road shall be considered a corner lot if the tangents to the curve at the point of the smallest angle intersect at an interior angle of less than 135°. Corner lots shall consist of two front yards and two side yards for setback purposes.
- D. LOT, DEPTH — The mean horizontal distance between the front and rear lot lines.
- E. LOT LINE — The established division line between different parcels of property.
- (1) LOT LINE, FRONT — The lot line which abuts upon a street or highway.
- (2) LOT LINE, REAR — The lot line opposite and most distant from the front lot line.
- (3) LOT LINE, SIDE — Any lot line other than a front or rear lot line.
- F. LOT OF RECORD — Any lot which has been recorded by registration of a deed or recorded on a plat approved by the Town Planning Board or for which an administrative agency has approved a valid construction or use permit.
- G. LOT WIDTH — The total distance between the side lot lines of the lot measured at the front lot line on an approved road. [Amended 3-21-2005 by L.L. No. 1-2005]

MANUFACTURING — The mechanical or chemical transformation of materials or substances into new products including the assembling of component parts. Said products are

consumed or used at another location. **[Added 2-9-1998 by L.L. No. 3-1998]**

MINERAL EXTRACTION — Any extraction other than specimens or samples from the land of stone, coal, salt, ore, talc, granite, petroleum products or other minerals, except for commercial sand, gravel or topsoil extractions, including the construction, alteration or maintenance of mine roads, mine tailing pipes or dumps and mine drainage.

MINERAL EXTRACTION STRUCTURE — Any mine hoist, ore reduction, concentrating, sintering or similar facilities and equipment, administrative buildings, garages or other main buildings or structures.

MOBILE HOME — A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, with or without a foundation. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, as well as two or more separately towable components designed to be used exclusively for residential purposes, excluding travel trailers. A doublewide mobile home consisting of two sections of equal length, with a 3/12 minimum truss roof, and placed on a foundation consisting of poured concrete footing below the frost line and blocks at least one block above grade, shall not be considered a "mobile home" for purposes of these regulations. **[Amended 9-12-1988 by L.L. No. 5-1988]**

MOBILE HOME PARK — Any parcel of land whereon two or more mobile homes are parked or located or which is planned and improved for the placement of two or more mobile homes and which is held open to the public for the parking or placement of mobile homes.

MODULAR — A factory built component building similar in construction to an on-site wood frame building and meeting the same New York State Construction Codes and Energy Code. Additionally, a "modular" is transported to a building site and permanently attached to a foundation.

NONCONFORMING LOT — Any lot lawfully on record on the effective date of this chapter which does not meet the minimum lot area and/or width or depth requirements of this chapter for the zoning district in which such lot is situated.

NONCONFORMING STRUCTURE — A legally existing building in existence on the effective date of this chapter which does not comply with the requirements established for the district in which it is located.

NONCONFORMING USE — A use of land, lawfully in existence on the effective date of this chapter, which does not conform to the zoning regulations of the district in which it is located.

NURSING HOME or CONVALESCENT HOME — Any dwelling used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished.

OPEN SPACE — Land not covered by buildings, pavement, open storage, mining operations, or any other use that visually obscures the natural or improved landscape, except for recreation facilities.

PARKING SPACE, OFF-STREET — A space adequate for parking an automobile, with room for opening doors on both sides, together with properly related access to a public street or alley, and necessary maneuvering room, approximately 300 square feet.

PERMITTED USE — Any use requiring no special action by the Board of Appeals or site plan review by the Planning Board before a building permit is granted by the Code Enforcement Officer, subject to all other applicable provisions of this chapter. [Amended 3-21-2005 by L.L. No. 1-2005]

PERSON — Any individual, corporation, partnership, association, trustee, the state and All political subdivisions of the state or any agency or instrumentality thereof.

PLANNING BOARD — The Planning Board of the Town of Kingsbury.

PLAT — A map, plan or layout of an area indicating the location and boundaries of individual properties.

PRINCIPAL USE — The primary use for which land and/or buildings are occupied or designed to be occupied.

PRIVATE SAND, GRAVEL OR TOPSOIL EXTRACTION — Any extraction from the land of sand, gravel or topsoil for the purpose of use, but not sale, by the owner of the land or any extraction for the purpose of sale of less than 50 cubic yards in any two-year period.

PROFESSIONAL OCCUPATION — One who is engaged in a licensed or professional service, including but not limited to: medical, legal, architectural, engineering, surveying, cosmetology or barbering, real estate brokerage, consulting or accounting. **[Amended 3-21-2005 by L.L. No. 1-2005]**

PUBLIC OR SEMIPUBLIC BUILDING — Any component building of a college, school, hospital, animal hospital, library, place of worship, museum, research center, rehabilitation center or similar facility or a municipal building.

PUBLIC RIGHT-OF-WAY — Any right-of-way open to the public for vehicular or pedestrian access.

RECREATION —

- A. RECREATION, COMMERCIAL — Recreation facilities operated for profit and available to the general public for a fee, including, but not limited to: golf courses, golf driving ranges, ice-skating rinks, swimming pools, picnic groves, amusement parks and fairgrounds. **[Amended 3-21-2005 by L.L. No. 1-2005]**
- B. RECREATION, PRIVATE, NONCOMMERCIAL — Clubs or recreation facilities, operated by a nonprofit organization and open only to bona fide members of such nonprofit organization.

- C. RECREATION, PUBLIC — Recreation facilities operated as a nonprofit enterprise by the Town of Kingsbury and any other governmental entity or any nonprofit organization and open to the general public.

RESIDENTIAL STREET, ROAD OR HIGHWAY — A street, road or highway between two street, road or highway intersections where 50% or more of the abutting street, road or highway frontage is residential in use.

SCREENING — Solid fence, evergreen foliage, mounds, trees, shrubs or landscaped natural materials and evergreen plants which conceal the visual character and suppress the noise of any given building or use of land. Required screening shall have a minimum height of six feet and a maximum height of eight feet, exclusive of growing trees and shrubs. **[Amended 3-21-2005 by L.L. No. 1-2005]**

SECONDARY USE — Any use performed on a lot in addition to the principal or primary use.

SETBACK — The distance of a building or use from a prescribed point or line.

SIGN — Any device designed to inform or attract the attention of persons not on the premises where the sign is located.

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

STREET, ROAD OR HIGHWAY — A public thoroughfare which affords the principal means of access to the abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare except an alley.

STRUCTURE — Anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including stationary and portable carports.

SUBDIVISION — The division of any parcel of land into two or more lots, blocks or sites, with or without streets or highways, and includes resubdivision. **[Amended 3-13-2000 by L.L. No. 4-2000]**

- A. This shall not apply to the sale of a small amount of land to correct the boundary of a lot, if such sale or exchange does not create an additional lot according to the zoning regulations.
- B. A division of lands into parcels of three acres or more, each having a lot width of 300 feet or more at the setback line along a town, county or state road, with utilities, or the division of any parcel fronting on a residential district into two lots, each conforming in every respect to the dimensional requirements of the zoning district in which it is located, shall not be a subdivision under these regulations.
- C. In or to be exempt under Subsection B of this definition, the applicant shall provide to the Code Enforcement Officer a mylar plot plan demonstrating compliance with this section. Thereafter, said mylar plot plan shall be filed with the County Clerk in the County of Washington.

TRAVEL TRAILER — Any portable vehicle, including a tent camper or motor home, which is designed to be transported on its own wheels, which is designed and intended to be used for temporary living quarters for travel, recreational or vacation purposes and which may or may not include one or all of the accommodations and facilities customarily included in a mobile home.

TRAVEL TRAILER PARK — A parcel of land under single ownership which is designed and improved for use by two or more travel trailers.

USABLE OPEN SPACE — Required open space which shall be entirely undeveloped, except for planting, landscaping and recreational equipment and shall be available for the sole enjoyment of the occupants of the zone lot of which it shall be a

part, and shall not include any side yards, driveways and accessways.

VARIANCE — The Board's authorized departure from the terms of this chapter in direct regard to a hardship peculiar to an individual lot in accordance with the procedures established in this chapter.

WASTE DISPOSAL AREA — Any area for the disposal of garbage, refuse and other wastes, including sanitary landfills and dumps, other than on-site disposal area directly associated with an industrial use.

WETLANDS — Any land which is annually subject to periodic or continual inundation by water and commonly referred to as a "bog," "swamp" or "marsh" which are either one acre or more in size or located adjacent to a body of water, including a permanent stream, with which there is free interchange of water at the surface, in which case there is no size limitation.

YARD — An area, as may be required by this chapter of uniform width or depth on the same lot with a building or a group of buildings, which area lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as herein permitted. Covered porches, whether or not enclosed, shall be considered as part of the main building and shall not project into a required "yard."

- A. **YARD, FRONT** — An area extending the full width of the lot between a building and the street or highway right-of-way line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.
- B. **YARD, REAR** — An area extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.

- C. **YARD, SIDE** — An area extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in this chapter.

ZERO LOT LINE — The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line.⁸ [Added 10-13-1992 by L.L. No. 4-1992]

ZONING BOARD — The Zoning Board of Appeals in the Town of Kingsbury.

ARTICLE II Administrative Agencies

§ 80-8. Planning Board.

- A. Pursuant to § 271 of the Town Law, the Town of Kingsbury has created a Planning Board. Said Board consists of seven members appointed by the Town Board in such manner and for such terms as provided in the town laws. The Planning Board shall have all the powers and perform all the duties prescribed by statute and by this chapter. The Planning Board shall have original jurisdiction for all matters pertaining to this Zoning Chapter pursuant to § 274-a of the Town Law, Site Plan Review.
- B. The Planning Board shall study the application of this chapter and shall from time to time recommend to the Town Board such changes in this chapter and in the boundaries of the various districts as it shall deem advisable to further promote the health, safety and general welfare of the community.
- C. The Code Enforcement Officer shall serve in an advisory capacity to the Planning Board. [Amended 3-13-2000 by L.L. No. 4-2000]

8. Editor's Note: The definition of "Zoning Administrator," which immediately followed this definition, was repealed 3-13-2000 by L.L. No. 4-2000.

§ 80-8.1. Alternate members of Planning Board. [Added 12-13-1999 by L.L. No. 6-1999]

- A. Applicability. This section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board in the Town of Kingsbury.
- B. Declaration of policy. It is sometimes difficult to maintain a quorum on the Planning Board because members are ill, on extended vacation or find that they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required time lines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.

- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board when a regular member is unable to participate on an application or matter before the Town Planning Board.

MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board pursuant to the provisions of the local law or ordinance which first established such Planning Board.

PLANNING BOARD — The Planning Board of the Town of Kingsbury as established by the Town Board by local law or ordinance, pursuant to the provisions of § 271 of the Town Law.

- D. Authorization; term of office; designation.

- (1) The Town Board of the Town of Kingsbury hereby enacts this section to provide a process for appointing alternate members to its Planning Board. These individuals would serve when members are

absent or unable to participate on an application or matter before the Board.

- (2) Alternate members of the Planning Board shall be appointed by the Town Board or other duly authorized appointing authority for a term as set forth in § 271 of the Town Law.
- (3) The Chairperson of the Planning Board may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.
- (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, term, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

- E. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law and § 10 of the Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the Municipal Home Rule Law, to supersede the provisions of § 271 of the Town Law relating to the appointment of members to town planning boards.

§ 80-9. Code Enforcement Officer. [Amended 3-13-2000 by L.L. No. 4-2000]

- A. The Code Enforcement Officer shall have the power and duty to:

- (1) Enforce the provisions of this chapter.
 - (2) Exercise general surveillance over the town as to compliance.
 - (3) Issue construction permits and certificates of occupancy within 30 days of receipt of application wherever there is compliance with the provisions of this chapter.
 - (4) Investigate all complaints submitted in compliance with the provisions of this chapter.
- B. The Code Enforcement Officer shall be appointed and may be removed by the Town Board.
- C. An appeal from an action, omission, decision or rule by him regarding a requirement of this chapter may be made only to the Zoning Board of Appeals.

§ 80-10. Zoning Board of Appeals.

Pursuant to § 267 of the Town Law, the Town of Kingsbury has created a Zoning Board of Appeals consisting of seven members appointed by the Town Board in such manner and for such term as provided in town laws. The Zoning Board of Appeals shall perform the duties and have the powers granted by and be controlled by the provisions of the Town Law and amendments thereto, and by this chapter. The Zoning Board of Appeals shall have appellate jurisdiction for all matters pertaining to this Zoning Chapter.

§ 80-10.1. Alternate members of Zoning Board of Appeals. [Added 12-13-1999 by L.L. No. 7-1999]

- A. Applicability. This section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Zoning Board of Appeals in the Town of Kingsbury.

- B. Declaration of policy. It is sometimes difficult to maintain a quorum on the Zoning Board of Appeals because members are ill, on extended vacation or find that they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required time lines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the Zoning Board of Appeals, as provided herein.

MEMBER — An individual appointed by the Town Board to serve on the Town Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such Zoning Board of Appeals.

ZONING BOARD OF APPEALS — The Zoning Board of Appeals of the Town of Kingsbury as established by the Town Board by local law or ordinance, pursuant to the provisions of § 267 of the Town Law.

- D. Authorization; term of office; designation.
- (1) The Town Board of the Town of Kingsbury hereby enacts this section to provide a process for appointing alternate members to its Zoning Board of Appeals. These individuals would serve when members are absent or unable to participate on an application or matter before the Board.
 - (2) Alternate members of the Zoning Board of Appeals shall be appointed by the Town Board or other duly

authorized appointing authority for a term of four years.

- (3) The Chairperson of the Zoning Board of Appeals may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.
 - (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.
- E. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the Municipal Home Rule Law and § 10 of the Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the Municipal Home Rule Law, to supersede the provisions of § 267 of the Town Law relating to the appointment of members to Town zoning boards of appeals.

ARTICLE III

Permits; Certificates of Occupancy; Appeals; and Variances

§ 80-11. Construction permits. [Amended 9-10-1990 by L.L. No. 5-1990; 3-13-2000 by L.L. No. 4-2000]

Building and construction permits shall be issued as set forth in Chapter 47, Fire Prevention, § 47-7 of this Code.

§ 80-12. Special permits or special use permits. ⁹ [Added 8-15-2005 by L.L. No. 3-2005]

- A. Applicability. This section shall apply to any uses that require special permits found in the district regulations in Article VI of the Town of Kingsbury Zoning Local Law. Special permits, as discussed in the Town of Kingsbury Zoning Local Law, shall also be known as "special use permits," as discussed in New York State Town Law § 274-b.
- B. Declaration of policy and intent. There are certain uses which, by their inherent nature, present certain problems or difficulties for neighborhoods in which they might be located. It is the intention of the Town that these uses should be reviewed, and that their overall impact on the neighborhood and community character in which they are proposed to be located should be studied prior to their location in such neighborhoods. The overall intention of this section is to mitigate such problems and to minimize, to the extent practicable, such impacts on the Town's neighborhoods.
- C. Delegation to the Zoning Board of Appeals. In accordance with New York State Town Law § 274-b, the Zoning Board of Appeals is hereby authorized to issue special use permits or special permits as required by the Town of Kingsbury Zoning Local Law. Applications for such permits shall be reviewed in accordance with this § 80-12.
- D. Application. Prior to the commencement of any construction activities or the use of any property requiring a special permit or special use permit, the owner, or if not the owner, then the authorized applicant, shall submit an application on such forms, and within such time frames, as may be designated by the Zoning Board of Appeals. The owner or applicant shall submit such information as required by the Zoning Board of Appeals. The Zoning

9. Editor's Note: Former § 80-12, Use permits, as amended, was repealed 3-13-2000 by L.L. No. 4-2000.

Board of Appeals may empower the Zoning Administrator to make preliminary determinations on what information should be submitted to the Zoning Board of Appeals prior to the application being placed on the Zoning Board of Appeals agenda. Such authorization shall not preclude the Zoning Board of Appeals from requesting any additional information it deems necessary for its review of the application. An application shall not be deemed complete until all information requested by the Zoning Board of Appeals has been submitted.

- E. Procedure. The Zoning Board of Appeals shall comply with the requirements of New York State Town Law § 274-b and the applicable provisions of the State Environmental Quality Review Act (SEQRA), 6 NYCRR Part 617, the General Municipal Law, and any other applicable laws. If, during the review of an application, the Zoning Board of Appeals finds that certain aspects of the proposed use require a review of the technical plans, and that such review may be better suited for the Town of Kingsbury Planning Board, the Zoning Board of Appeals may refer the application to the Planning Board for its comment and for any recommendations of that Board. To expedite the review, the Zoning Board of Appeals may limit the time frame within which the Planning Board has to return its recommendations.
- F. Review standards. Before granting approval on a special permit or special use permit, the Zoning Board of Appeals shall consider the following:
- (1) The use shall be of such location, size and character that it will conform to an appropriate and orderly development of the district and neighborhood in which it is to be located and will not be detrimental to the orderly development of neighboring districts and neighborhoods.
 - (2) The use will not create undue safety hazards in its own or adjacent districts or neighborhoods and will

not require increased public expenditure in excess of its value to the Town.

- (3) The use will not create undue traffic congestion, noise, vibrations, light, stormwater runoff, or air pollution or substantially devalue neighboring properties.
- (4) A special permit or special use permit shall be granted unless the Zoning Board of Appeals finds that substantial evidence has been presented which shows that the negative effects of the proposed use, as evaluated above, outweigh the benefits of the use to the Town.
- (5) The Zoning Board of Appeals may condition the approval of any special permit or special use permit on such reasonable conditions that it finds may mitigate against the potential negative effects on the neighborhood of the proposed use.

§ 80-13. Certificates of occupancy.

A. General requirements.

- (1) A certificate of occupancy is required prior to the use of any building for which a construction permit is required. Upon application within three months following the effective date of this chapter or any amendment date subsequent thereto, a certificate of occupancy shall be issued for continuation on a specified premises of any use existing on that premises on the aforesaid effective or amendment date.
- (2) Procedure. An application shall be submitted to the Code Enforcement Officer which shall show compliance with this chapter. It may be submitted as soon as sufficient progress has been made to show

compliance or at any time thereafter. **[Amended 3-13-2000 by L.L. No. 4-2000]**

B. Temporary certificates of occupancy.

- (1) Temporary certificates of occupancy shall be granted by the Code Enforcement Officer for a period of six months and renewable for three additional and successive six-month periods for the following purposes: **[Amended 3-13-2000 by L.L. No. 4-2000]**
 - (a) For occupancy of a dwelling space less than the minimum specified for the district pending the construction on the lot of a dwelling for which a valid construction permit has been approved. Renewal of a certificate issued under this provision is contingent upon proof of progress upon the permanent structure.
 - (b) For the use of property which does not conform to the specifications required by this chapter, but which will be brought into conformity prior to the expiration of the third successive renewal.
- (2) The Board of Appeals may extend the number of renewal periods, provided that it is shown that unforeseen events prevented the completion of the project as planned, that termination of the temporary certificate of occupancy would produce an undue hardship and that the project will be complete in a reasonable length of time.
- (3) Procedure. The applicant shall submit to the Code Enforcement Officer an application in the same manner as for a permanent certificate of occupancy. The application shall include information to justify the issuance of a temporary certificate of occupancy and show an expected date of termination. **[Amended 3-13-2000 by L.L. No. 4-2000]**

§ 80-14. Appeals.

Any person aggrieved over any order, requirement, decision or determination by an administrative agency pursuant to the provisions of this chapter may present an appeal for redress to the Board of Appeals in accordance with the provisions of § 267, Subdivision 2, of the Town Law.

§ 80-15. Variances.

The Board of Appeals shall have the power to vary or modify the application of the provisions of this chapter where a strict application produces practical difficulties or unnecessary hardships as authorized by the provisions of § 267, Subdivision 5, of the Town Law.

§ 80-16. (Reserved) ¹⁰

**ARTICLE IV
Districts and Map**

[Amended 5-12-1986 by L.L. No. 1-1986; 4-13-1987]

§ 80-17. Enumeration of districts. [Amended 9-25-1989 by L.L. No. 2-1989]

For the purpose of this chapter, the Town of Kingsbury is hereby divided into districts which are designated by type and identified by symbol as follows:

District Type	Symbol
Residential-Forestry	RF-5A
Residential-Agricultural	RA-1A
	RA-M-1A

10. Editor's Note: Former § 80-16, Duration of permits, was repealed 3-13-2000 by L.L. No. 4-2000.

District Type	Symbol
Low-Density Residential	LDR-25
	LDR-15
Commercial	Com-1A
Plaza Commercial	PC-1A
[Added 10-13-1992 by L.L. No. 4-1992]	
Industrial	Ind-75

§ 80-18. (Reserved) ¹¹

ARTICLE V

General Regulations

[Amended 5-12-1986 by L.L. No. 1-1986; 4-13-1987]

§ 80-19. Provisions applicable in all districts.

The following regulations are applicable to all or several districts as specified and are supplemented by or superseded where in conflict with the provisions applicable to each individual district.

- A. Authorized uses. The uses of land and/or buildings shall be permitted in the various districts as specified by the provisions of this chapter, but any use which produces, beyond the confines of its own premises, an unusual noise intensity, dust, noxious or toxic fumes, smoke, danger from fire or explosion, vibration, public health hazard, danger from dissemination of radioactive materials or damage resulting from pollution or reduction in the supply of surface or ground waters shall be excluded from all districts.

¹¹. Editor's Note: Former § 80-18, Zoning Map, was repealed 3-13-2000 by L.L. No. 4-2000.

- B. Appurtenances in front and side yards. The following features may extend into the minimum front and side yards to the distances specified:
- (1) Cornices, canopies, eaves and similar features: 30 inches.
 - (2) Open fire escapes: six feet.
 - (3) Terraces or uncovered porches with a floor level no higher than that of the entrance to the building: six feet in side yards and 20 feet in the front yard, limited at the ends by the minimum side yard requirements. A protective railing with a maximum height of three feet may be placed around the terrace or porch.
- C. Height. The maximum height of buildings in residential and commercial districts and of residential buildings or portions of buildings used for residential purposes in other districts shall be 35 feet. The maximum height of all other buildings shall be 50 feet. Chimneys, flagpoles, radio and television antennas, cupolas, church spires, siren towers, poles and masts to support public utility lines, cornices, monuments, water tanks, silos, elevator penthouses and the necessary structures to house machinery for vertical industrial operations are released from the height limitations of this subsection.
- (1) The minimum distance between the principal building and any accessory building and between individual accessory buildings shall be 10 feet or the height of the lower building, whichever is greater.
 - (2) The minimum distance between any accessory building and any adjoining property line shall be 10 feet.
- D. Signs. Signs may be erected and maintained only when in compliance with the provisions of this article and any and all other ordinances and regulations relating to the

erection, alteration or maintenance of signs and similar devices. Use permits shall be obtained from the Code Enforcement Officer except where the sign is part of an original site plan review that is subject to approval by the Planning Board. In that instance, the permit shall be obtained from the Planning Board as part of the site plan review. **[Amended 12-28-1987 by L.L. No. 5-1987; 9-10-1990 by L.L. No. 4-1990]**

- (1) All signs must be constructed of durable materials and shall be maintained in good condition and repair at all times.
- (2) In any district, a sign not exceeding two square feet in surface area is permitted which announces the name, address or professional or home occupation of the occupant of the premises on which said sign is located.
- (3) A bulletin board not exceeding 24 square feet is permitted in connection with any church, school or similar public structure. Said bulletin board shall use exterior lighting only.
- (4) A temporary real estate or construction sign, not exceeding 24 square feet is permitted on the property being sold, leased or developed. Such sign shall be removed promptly when it has fulfilled its function.
- (5) A business sign shall be permitted in connection with any legal business or industry located on the same premises and meeting the following requirements:
 - (a) Three signs are permitted with any legally established business, including those that are standing or attached to the building.

- (b) (Reserved)¹²
- (c) Signs on a building shall not extend above the roof or parapet of the building. The height of a freestanding sign shall not exceed 35 feet.
[Amended 10-13-1992 by L.L. No. 4-1992; 3-21-2005 by L.L. No. 1-2005]
- (d) Illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, confusion or hazard to the surrounding area or to vehicular traffic. Illumination shall be properly focused upon or from within the sign itself.
- (e) Signs which are animated, flashing or with intermittent illumination are prohibited.
- (f) Signs shall not project over public right-of-way or property lines.
- (g) Maximum square footage of any sign shall be 120 square feet or a total of 300 square feet for the three signs. [Amended 10-13-1992 by L.L. No. 4-1992; 3-21-2005 by L.L. No. 1-2005]
- (h) No portable signs, signs on rocks, trees and other parts of the natural landscape or signs attached to the rooftop of vehicles parked on a public street shall be allowed.
- (i) No projecting sign shall be erected or maintained from the front or face of a building a distance of more than 12 inches.¹³

12. Editor's Note: Former Subsection D(5)(b), regarding the text on business signs, was repealed 3-13-2000 by L.L. No. 4-2000.

13. Editor's Note: Former Subsection D(5)(j) added 10-13-1992 by L.L. No. 4-1992, regarding height of signs in a PC-1A District, which immediately followed this subsection, was repealed 3-21-2005 by L.L. No. 1-2005.

- (6) Signs and billboards in a commercial zone having a depth less than 400 feet, which contain more than two square feet of surface area, shall be set back a minimum of 10 feet from the right-of-way. Signs and billboards in a commercial zone having a depth of 400 feet or more, which contain more than two square feet of surface area, shall be set back a minimum of 25 feet from the right-of-way. All other signs shall be set back from the right-of-way a minimum of five feet.

E. Parking areas.

- (1) Off-street parking space shall be required for all buildings constructed, altered, extended and engaged in use after the effective date of this chapter. A minimum of 162 square feet shall be provided for each stall, with a minimum nine-foot width and eighteen-foot depth. Said area shall be clearly delineated on the ground using appropriate pavement demarcation. Access drives shall be a minimum of 20 feet clear in width. The overall dimension of both stalls and drive shall be a minimum of 40 feet for parking along one side and 60 feet for parking along both sides of the drive. In addition, space necessary for maneuvering, safe pedestrian walkways and drives shall be provided. Parking requirements are specified in § 80-19E(3).
[Amended 10-13-1992 by L.L. No. 4-1992]
- (2) For uses not specified in § 80-19E(3), the Planning Board may establish parking requirements consistent with those specified in § 80-19E(3).
 - (a) For any building having more than one use, parking space shall be required as provided for each use.
 - (b) Floor areas for the purposes of computing parking requirements shall be the sum of the horizontal area within exterior walls of the

several floors of a building, excluding basement, cellar and attic areas used primarily for storage or service.

- (c) Any parking lot or parking area that will contain more than 100 cars shall be effectively configured using stripping and islands, so as to ensure safety of vehicles moving within the entire parking area and to control speed.
[Amended 10-13-1992 by L.L. No. 4-1992]
 - (d) Access points (ingress and egress) from parking areas, for industrial and commercial uses shall have a physical barrier separating the ingress and egress area of the access points. A maximum of two lanes, a minimum width of 12 feet wide per lane, shall be permitted for each. Access points shall be separated from adjoining access points by at least 50 feet.
 - (e) All nonresidential parking shall be adequately lighted.
- (3) Off-street parking schedule.

Use	Minimum Spaces Required
Dwelling	2 for each dwelling unit
Rooming house, motel	1 for each guest room
Church or temple	1 for each 4 seating spaces in the main assembly room
School	3 for each classroom
Theater or other place of assembly	1 for each 4 seating spaces
Retail store or bank	1 for each 200 square feet of gross floor area

Use	Minimum Spaces Required
Eating and drinking establishments	1 for every 3 seats
Wholesale, storage, freight terminal or utility use	1 for each 1,000 square feet of gross floor area
Industrial use or manufacturing use	1 for each 1.5 employees on the maximum working shift, plus 1 for company vehicle
Home occupation and professional offices	1 for each 100 square feet of feet of floor area devoted to such use
Commercial or shopping center	5.5 per 1,000 square feet of gross leasable floor space
Commercial or shopping center in a PC-1A Zone [Added 10-13-1992 by L.L. No. 4-1992]	4.5 per 1,000 square feet of gross leasable floor area
Eating and drinking establishments in a PC-1A District [Added 10-13-1992 by L.L. No. 4-1992]	1 for every 5 seats

F. Off-street loading space.

- (1) At least one off-street loading space shall be provided for each commercial or industrial establishment hereafter erected or substantially altered to have a gross floor area in excess of 5,000 square feet, computed as described below. Space for off-street loading shall be in addition to space for off-street parking.

- (2) Each off-street loading space shall be subject to the following minimum requirements:
 - (a) Each berth shall be not less than 12 feet wide, 40 feet long and 14 feet in height when covered.
 - (b) Off-street loading space (or spaces) located within 50 feet of a residential property shall be shielded by wall, fencing or other suitable material which shall serve to screen noise and limit uncontrolled entrance. Do not inhibit sight distance.

G. Uses subject to special requirements. The following uses shall be subject to special requirements hereby established.

- (1) Commercial extraction and processing of natural products. Extraction and processing of natural products may be permitted in planned development districts, subject to the following conditions:
 - (a) The final slope of material in the excavation or pit shall not exceed the normal angle of repose of the material.
 - (b) There shall be adequate lateral support at all times for the soil of adjoining lots.
 - (c) The natural water supply of adjoining lots shall be unimpaired.
 - (d) The final contours shall be such as to prevent the accumulation of stagnant water.
 - (e) Within one year after the termination of operations, all area except that covered by buildings or intended to be covered by buildings for which valid construction permits have been issued, or covered by a permanent body of fresh water, or included in the sites for existing or planned roads, shall be covered with topsoil to

the depth of three inches or to the original depth, whichever is less, and shall be seeded. Whenever a construction permit becomes invalid or if a planned road does not become an existing road within three years after the termination of operations, any area from which natural products have been extracted or been involved in extraction operations shall be covered with topsoil to the depth of three inches or the original depth, whichever is less, and shall be seeded. A performance bond or other evidence of good faith shall be given the Town at the time of the issuance of the use permit to guarantee fulfillment of the conditions under which the permit is issued.

- (f) Adequate measures shall be taken to ensure public safety at the site.
- (2) Gasoline retail sales. The use of land and structures for gasoline retail sales shall be subject to the following conditions:
- (a) The minimum road frontage shall be 150 feet, except on corner lots where it shall be 150 feet along the shorter side.
 - (b) Pump islands shall be so placed as to provide easy access from and to the public highway without producing interference with the flow of traffic.
 - (c) Service shelters or booths may be placed adjacent to pump islands. If only one lane is to be used, the service shelter shall be placed on the side of the lane away from the public highway.
 - (d) Any building containing stalls in which minor repair and servicing may be performed shall be

located in back of the minimum setback line prescribed in § 80-23 of this chapter.

- (e) All major repair work shall be performed indoors.
- (f) All liquid fuel shall be stored in underground tanks located at least 35 feet distant from the public right-of-way and the lot lines.
- (3) Manure heaps. Manure heaps shall be a minimum of 100 feet distant from adjacent lot lines.
- (4) Outdoor storage of equipment and vehicles. In districts where such storage is permitted, it shall be limited to the area behind the minimum setback line and shall be screened from view from residential and commercial districts and from public roads, except when such storage is part of customary farming operations.
- (5) Public garages. All repair work and all storage of vehicles shall be performed indoors or within a screened enclosure situated behind the setback line.
- (6) Public utility unit substations. Public utility unit substations shall be screened and constructed in such a manner as to preserve and protect the character of the district where located.
- (7) (Reserved)¹⁴
- (8) (Reserved)
- (9) Mobile homes. Mobile homes, either as separate units or as component parts of a building, shall be located in the Town only in accordance with the Mobile Home Ordinance.¹⁵

14. Editor's Note: Former Subsections G(7), pertaining to junkyards and salvage reclamation operations, as amended, and G(8), pertaining to storage of used material and equipment, were repealed 9-22-2008 by L.L. No. 5-2008.

15. Editor's Note: See Ch. 58, Mobile Homes.

- (10) Mobile home parks. Mobile homes in a mobile home park shall be situated 40 feet distant from the side park lot line, with setback lines the same as for residences. **[Amended 9-25-1989 by L.L. No. 2-1989]**
 - (11) (Reserved)¹⁶
 - (12) Storage and display of merchandise. All merchandise on display for sale or rent shall be set back a minimum of 10 feet from the right-of-way. This standard shall not apply to the seasonal sale of agricultural products or to occasional sales, including but not limited to garage sales or lawn sales, lasting no more than three days in any thirty-day period. **[Added 9-12-1988 by L.L. No. 6-1988]**
- H. Landfills. Notwithstanding anything to the contrary stated within this Code, a sanitary landfill (nonhazardous) may be constructed anywhere within the Town of Kingsbury upon application to and approval of the Town Board, subject to site plan review by the Planning Board, and provided that all state and federal laws, rules and regulations must be met as a condition of approval.

ARTICLE VI District Regulations

§ 80-20. RF-5A Residential-Forestry District. [Amended 4-13-1987]

- A. Description. These areas contain soils, slopes and forms that, on the whole, are not desirable for continued agricultural use, that have already discontinued agricultural production or that never were in agricultural use. In addition, these areas usually contain less desirable

16. Editor's Note: Former Subsection G(11), pertaining to unregistered, old or secondhand motor vehicles, as amended, was repealed 9-22-2008 by L.L. No. 5-2008.

soils for urban development than the residential-agricultural and low-density residential zones.

- B. Purpose. The purpose of the RF-5A District is to prevent destructive development of the land, to retain areas for nonintensive uses, to prevent intensive development where it would be a burden to the Town and to retain open spaces.
- C. Density. Primary uses are as forest land where forestry management practices are carried out, agricultural production where practical, single-family home sites at a density not less than five acres per house, outdoor recreation activities and other very-low-density and -intensity uses desirable for rural areas.
- D. Permitted uses. The following uses shall be permitted in the RF-5A District:
- (1) Forestry.
 - (2) Farms, all classes. **[Amended 3-21-2005 by L.L. No. 1-2005; 8-15-2005 by L.L. No. 3-2005]**
 - (3) Single-family dwellings.
 - (4) Nurseries and greenhouses.
 - (5) Accessory uses.
 - (6) Essential services.
- E. Special permit. The following uses will be permitted in the RF-5A District upon a special permit's being obtained from the Board of Appeals:
- (1) Two-family dwellings.
 - (2) Temporary sawmills.
 - (3) Cemeteries.

- (4) Water recreation and water storage other than for fire protection or agricultural purposes.
- (5) Removal of fill, gravel, stone or loam.
- (6) Public and nonprofit outdoor recreational facilities.
- (7) Home industries.
- (8) Home occupations.
- (9) Essential service buildings.

F. Site plan review. The following uses will be permitted in the RF-5A District upon site plan review and approval by the Planning Board:

- (1) Travel trailer parks.
- (2) Summer camps and retreats.
- (3) Churches.
- (4) Public and nonprofit recreational buildings.
- (5) Dog kennels.
- (6) Timber harvesting involving the clear cutting of an area greater than five acres.

G. Minimum requirements:

- (1) Minimum lot size. Minimum lot size shall be as follows: **[Amended 11-28-1988; 8-15-2005 by L.L. No. 3-2005]**

Area
(acres)

5

Width
(feet)

400

- (2) Minimum yard dimensions.

Front (feet)	1 Side Yard (feet)	Yards (feet)	2 Side Rear (feet)
50	50	150	100

§ 80-21. RA-1A and RA-M-1A Residential-Agricultural Districts. [Amended 4-13-1987]

- A. Description: a district that generally contains soils and slopes suitable for agriculture and for development. For reasons of access, topography and possible community facilities and utilities, such land should not be built on at a high density.
- B. Purpose. The purpose of the RA-1A and RA-M-1A Districts is to accommodate houses at a low density for people wanting to live in a rural atmosphere but without interfering with prime agricultural areas. The continuation of forestry and agriculture is strongly encouraged. Other low-intensity uses are also permitted.
- C. Density. A one-acre density is established to retain a rural atmosphere. This density may be increased if public water or sewers are provided.
- D. Permitted uses. The following uses shall be permitted in the RA-1A and RA-M-1A Districts:
 - (1) Single-family dwellings.
 - (2) Mobile homes (NOTE: RA-M-1A Districts only).
 - (3) Forestry.
 - (4) Accessory uses.
 - (5) Farms, all classes, and nurseries, including the display and sale of products raised in connection with a nursery. **[Amended 3-21-2005 by L.L. No. 1-2005; 8-15-2005 by L.L. No. 3-2005]**

- (6) Home occupations.
 - (7) Essential services.
- E. Special permit. The following uses will be permitted in the RA-1A and RA-M-1A Districts upon a special permit's being obtained from the Board of Appeals:
- (1) Two-family residential.
 - (2) Water recreation and storage.
 - (3) Essential service buildings.
 - (4) Farms engaged in the raising and sale of hogs, pigs and fur-bearing animals as a major source of income.
 - (5) Home industry.
 - (6) Kennels.¹⁷
- F. Site plan review. The following uses will be permitted in the RA-1A and RA-M-1A Districts upon site plan review and approval by the Planning Board:
- (1) Noncommercial public and private recreational use.
 - (2) Multifamily dwellings.
 - (3) Churches.
 - (4) Public and semipublic uses compatible with rural residential use.
 - (5) Professional offices.
 - (6) Riding stables and equine recreational uses.
[Added 3-21-2005 by L.L. No. 1-2005]
- G. Minimum requirements:

17. Editor's Note: Former Subsection E(7), Riding stables, which immediately followed, was repealed 3-21-2005 by L.L. No. 1-2005. See now § 80-21F(6).

- (1) Minimum lot size. Minimum lot size shall be as follows: [Amended 11-28-1988; 8-15-2005 by L.L. No. 3-2005]

Area (acres)	Width (feet)
1*	200

* NOTE: One and one-half lot size for duplex; 10,000 square feet for clustering.

- (2) Minimum yard dimensions.

Front* (feet)	1 Side Yard (feet)	2 Side Yards (feet)	Rear (feet)
50	50	100	50

* NOTE: Properties fronting on a state highway shall provide for an additional 30 feet of setback.

§ 80-22. LDR-25 and LDR-15 Low-Density Residential Districts. [Amended 4-13-1987]

- A. Description: areas that generally have suitable soils and slopes for urban development, are accessible to other population centers, are feasible to serve with public water and sewer and are generally outside the prime agricultural areas.
- B. Purpose. The purpose of the LDR-25 and LDR-15 Districts is to accommodate a high percentage of the population growth where it can be provided with adequate facilities

and utilities at densities attractive to development, leaving prime agricultural areas free of scattered development which would destroy agricultural pursuits.

- C. Density. There are two different densities associated with LDR Zones. An LDR-25 District allows one dwelling unit for every 25,000 square feet, and an LDR-15 District allows one dwelling unit for every 15,000 square feet.
- D. Permitted uses. The following uses shall be permitted in the LDR-25 and LDR-15 Districts:
 - (1) Single-family dwellings.
 - (2) Accessory uses.
 - (3) Public recreational facilities.
 - (4) Essential facilities.
- E. Special permit. The following uses will be permitted in the LDR-25 and LDR-15 Districts upon a special permit's being obtained from the Board of Appeals:
 - (1) Two-family residential.
 - (2) Essential service buildings.
 - (3) Nursery schools.
 - (4) Day care centers.
 - (5) Professional offices incidental to home use.
 - (6) Home industry.
 - (7) Home occupations.
- F. Site plan review. The following uses will be permitted in the LDR-25 and LDR-15 Districts upon site plan review and approval by the Planning Board:

- (1) Multifamily dwelling projects.
- (2) Multidwelling projects, conversion.
- (3) Professional offices.
- (4) Hobby farms and nurseries, including the display and sale of products raised in connection with a nursery. **[Amended 8-15-2005 by L.L. No. 3-2005]**
- (5) Planned unit developments.
- (6) Churches.

G. Minimum requirements:

- (1) Minimum lot size.

District	Area (square feet)	Width (feet)
LDR-25	25,000*	150
LDR-15	15,000*	100

*NOTE: One and one-half lot size for duplex; 10,000 square feet for clustering.

- (2) Minimum yard dimensions.

District	Front* (feet)	1 Side Yard (feet)	2 Side Yards (feet)	Rear (feet)
LDR-25	40	25	75	50
LDR-15	40	20	40	35

*NOTE: Properties fronting on a state highway shall provide for an additional 30 feet of setback.

§ 80-23. Com-1A Commercial District. [Amended 5-12-1986 by L.L. No. 1-1986]

- A. Description. These areas are intended for commercial development. They are located along main highways with heavyduty roadbeds intended to facilitate ease of transportation for supplies as well as general traffic for commercial developments.
- B. Purpose. These areas are intended to promote the development of stores, production of commercial goods and other types of commercial services, to give balance to the development of the Town of Kingsbury, to promote development on existing arteries and to discourage scattered development on secondary roads.
- C. Density. A one-acre minimum is established. However, developments in excess of this will be largely encouraged and favored. These areas should be relatively large to provide for a selection of stores and/or adequate parking. One principal building of up to 16,000 square feet of gross floor area will be allowed for every one acre within this zone.
- D. Permitted uses. Businesses may include the following, but are not limited to:
 - (1) Retail and/or wholesale businesses.
 - (2) Tourist accommodations.
 - (3) Personal and professional services.
 - (4) Banks.
 - (5) Theaters.