

**CODE OF THE
TOWN OF MARLBOROUGH,
NEW YORK, v25
*Updated 02-15-2006***

**OFFICIALS
OF THE
TOWN OF MARLBOROUGH**

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2004

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PREFACE

The Town of Marlborough was originally inhabited by branches of the Delaware Indians. Henry Hudson sailed past the area in 1609. In 1640 David de Vries, a Dutch

sailor, observed from his sloop the frenzied dances of the Indians at "De Duyfel's Dans Kammer," or "Devil's Dance Chamber," a small plateau of several acres at the southern boundary of the town which served as a meeting place and sacred ground for religious ceremonies. In 1663 Dutch Lieutenant Couwenhoven visited the Dans Kammer to arrange for the release of prisoners taken by the Indians during the Second Esopus War.

The first white settler in the Town of Marlborough was Dennis Relje (now spelled Relyea), about 1695. Between that time and 1714 several royal patents of land were awarded in the area, and the patentees gradually sold off parcels to actual settlers.

In 1743 the Precinct of New Marlborough, as the Town of Marlborough was originally called, was established by the Provincial Assembly of New York. The town was named after the famous British general John Churchill, First Duke of Marlborough. As originally established, the town included what are now the Towns of Marlborough, Plattekill, Newburgh and New Windsor. An Act of Assembly in 1762 split away what are now Newburgh and New Windsor to form a separate precinct. The Town of Plattekill was formed from Marlborough in 1800.

The first meeting of the Precinct of New Marlborough was held at the home of Henry Deyo in Lattingtown in 1772. Subsequent meetings were held through the Revolutionary period, during which some two hundred fifty men signed the pledge of fealty to the Continental Congress. In 1778 the precinct became a town.

Although a number of manufacturing industries have operated in the Town of Marlborough over the years, the growing, storage and processing of fruit have long been the chief economic activities in the Town of Marlborough. The town lies in the heart of the Hudson Valley fruit-growing area, and both grapes and apples are important. The town main centers of population in the town are Milton, in the northeast, and Marlborough, in the southeast. Marlborough, frequently spelled "Marlboro," was an incorporated village between 1906 and 1922. Milton was never incorporated.

The Town of Marlborough has, over the years, passed through a process of legislative change common to many American communities. While only a few simple laws were necessary at the time of the establishment of the town, subsequent growth of the community, together with the complexity of modern life, has created the need for new and more 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.

The Code of the Town of Marlborough replaces the former Code of the town which was published in 1976. The following paragraphs will further explain the organization and contents of the Code of the Town of Marlborough.

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 Marlborough, 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 town 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 town legislation of a regulatory nature. Items of legislation in this part generally impose penalties for violation of their provisions, whereas those in Part I do not.

Grouping of Legislation and Arrangement of Chapters

The various items of legislation are organized into chapters, their 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. Thus, for example, all legislation pertaining to the regulation of streets and sidewalks may be found in Part II, in the chapter entitled "Streets and Sidewalks." In such chapters, use of Article or Part designations has preserved the identity of the individual items of legislation.

Table of Contents

The Table of Contents details the alphabetical 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 or Parts are listed beneath the chapter title in order to facilitate location of the individual item of legislation.

Reserved 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 numerals "01." Thus, Chapter 6 begins on page 601, Chapter 53 on page 5301, 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 legislation is located and the location of the section within that

chapter. Thus, the first section of Chapter 6 is § 6-1, while the fourth section of Chapter 53 is § 53-4. New sections can then be added between existing sections using a decimal system. Thus, for example, if two sections were to be added between §§ 53-4 and 53-5, they would be numbered as §§ 53-4.1 and 53-4.2.

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 enactment number (e.g., ordinance number, local law number, bylaw number, resolution number, etc.), if pertinent, and the date of adoption. In the case of chapters containing Parts or Articles derived from more than one item of legislation, the source of each Part or Article is indicated in the History. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

Codification Amendments and Revisions

New chapters adopted during the process of codification are specifically enumerated in chapter Histories with reference to "Ch. 1, General Provisions," where the legislation adopting this Code and making such revisions will appear after final enactment. Sections amended or revised are indicated in the text by means of Editor's Notes referring to the chapter cited above.

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.

Disposition List

The Disposition List is a chronological listing of legislation adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. The Disposition List will be updated with each supplement to the Code to include the legislation reviewed with said supplement.

Index

The Index is a guide to information. Since it is likely that this Code will be used by persons without formal legal training, 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.

Instructions for Amending the Code

All changes to the Code, whether they are amendments, deletions or complete new additions, should be adopted as amending the Code. In doing so, existing material that is not being substantively altered should not be renumbered. Where new sections are to be added to a chapter, they can be added at the end of the existing material (continuing the numbering sequence) or inserted between existing sections as decimal numbers (e.g., a new section between §§ 45-5 and 45-6 should be designated § 45-5.1). New chapters should be added in the proper alphabetical sequence in the appropriate division or part (e.g., Part I, Administrative Legislation, or Part II, General Legislation), utilizing the reserved chapter numbers. New chapter titles should begin with the key word for the alphabetical listing (e.g., new legislation on abandoned vehicles should be titled "Vehicles, Abandoned" under "V" in the table of contents, and a new enactment on coin-operated amusement devices should be "Amusement Devices" or "Amusement Devices, Coin-Operated" under "A" in the table of contents). Where a reserved number is not available, an "A" chapter should be used (e.g., a new chapter to be included between Chapters 45 and 46 should be designated Chapter 45A). New Articles may be inserted between existing Articles in a chapter (e.g., adding a new district to the Zoning Regulations) by the use of "A" Articles (e.g., a new Article to be included between Articles XVI and XVII should be designated Article XVIIA). The section numbers would be as indicated above (e.g., if the new Article XVIIA contains six sections and existing Article XVI ends with § 45-30 and Article XVII begins with § 45-31, Article XVIIA should contain §§ 45-30.1 through 45-30.6).

Supplementation

Supplementation of the Code will follow the adoption of new legislation. New legislation or amendments to existing legislation will be included and repeals will be indicated as soon as possible after passage. Supplemental pages should be inserted as soon as they are received and old pages removed, in accordance with the Instruction Page which accompanies each supplement.

Acknowledgment

The assistance of Kevin Casey, Town Supervisor, for coordinating the project, and of Evelyn Baumgartner, Town Clerk, for providing necessary records and information, is gratefully acknowledged by the editor. The codification of the legislation of the Town of Marlborough 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."

PART I ADMINISTRATIVE LEGISLATION

Chapter 1, GENERAL PROVISIONS

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, 8-22-1994 as L.L. No. 2-1994. Amendments noted where applicable.]

ARTICLE I, Adoption of Code [Adopted 8-22-1994 as L.L. No. 2-1994]

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Town of Marlborough, as codified by General Code Publishers Corp., and consisting of Chapters 1 through 155, together with an Appendix, shall be known collectively as the "Code of the Town of Marlborough," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Town of Marlborough" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, Article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

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

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

All local laws and ordinances of a general and permanent nature of the Town of Marlborough in force on the date of the adoption of this local law and not contained in

such Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this local law. The 1976 Code of the Town of Marlborough is specifically repealed.

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

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

- A. Any right or liability established, accrued or incurred under any legislative provision of the Town of Marlborough prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.
- B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of Marlborough or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law brought pursuant to any legislative provision of the Town of Marlborough.
- D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Marlborough.
- E. Any local law or ordinance of the Town of Marlborough 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 of Marlborough or any portion thereof.
- F. Any local law or ordinance of the Town of Marlborough appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of Marlborough or other instruments or evidence of the town's indebtedness.
- G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The annexation or dedication of property.
- J. Any legislation relating to salaries.
- K. Any local law or ordinance amending the Zoning Map.
- L. Any legislation pertaining to the subdivision of land, specifically including Ch. 93 of the 1976 Code of the Town of Marlborough, and all amendments thereto.
- M. Any legislation adopted subsequent to 2-28-1994.

§ 1-5. Severability.

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

have been rendered.

§ 1-6. Copy of Code on file.

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

§ 1-7. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Town of Marlborough" 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 shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Town Board deems desirable.

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

It shall be the duty of the Town Clerk to keep up-to-date the certified copy of the book containing the Code of the Town of Marlborough required to be filed in the office of the Town Clerk for use by 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 Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws, ordinances or resolutions until such changes, 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 may be purchased from the Town Clerk of the Town of Marlborough upon the payment of a fee to be set by resolution of the Town Board, which Board may

also arrange by resolution for procedures for the periodic supplementation thereof.

§ 1-10. Penalties for tampering with Code.

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 Marlborough or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Town of Marlborough to be misrepresented thereby or who violates any other provision of this local law shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than two hundred fifty dollars (\$250.) or imprisonment for a term of not more than fifteen (15) days, or both.

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

- A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Town of Marlborough, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection B hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one (1) or more of said pieces of legislation. It is the intention of the Town Board that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.
- B. In addition, the following amendments and/or additions are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)^{1EN}

§ 1-12. Incorporation of provisions into Code.

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

§ 1-13. When effective.

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

Chapter 4, ASSESSOR

[HISTORY: Adopted by the Town Board of the Town of Marlborough 6-10-1996 by L.L. No. 6-1996. Amendments noted where applicable.]

§ 4-1. Title.

This chapter shall be known as the "Law to Change the Position of Elective Assessors to a Single Appointed Position."

§ 4-2. Assessor to be appointed.

Effective as of July 26, 1996, a single Assessor shall be appointed by the Town Board, as provided in § 310 of the Real Property Tax Law of the State of New York, for a term of office not to exceed six years.

§ 4-3. Legislative authority.

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

§ 4-4. Permissive referendum.

This chapter shall be subject to a permissive referendum and shall take effect 45 days after adoption by the Town Board, unless a petition shall be filed with the Town Clerk, in a manner prescribed in § 23 or 24 of the Municipal Home Rule Law, as the case may be, to protest against this chapter prior to the expiration of the forty-five-day period, and, in the event that such position in due form is filed, this chapter shall not be effective until approved by the voters at a general or a special election.

§ 4-5. Commencement of office; termination of existing offices.

The office of appointed Assessor shall commence on July 26, 1996, at which time the terms of office of all elective Assessors shall terminate, thereby repealing L.L. No. 3-1977 as Chapter 4 of the 1976 Code of the Town of Marlborough.^{2EN}

§ 4-6. When effective.

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

Chapter 7, COMMUNICATIONS POLICY

[HISTORY: Adopted by the Town Board of the Town of Marlborough 8-14-2000.
Amendments noted where applicable.]

GENERAL REFERENCES

Code of Ethics -- See Ch. 13.
Personnel policies -- See Ch. 29.
Records -- See Ch. 41.

§ 7-1. Purpose.

It is the purpose of this Communications Policy to set forth the rules and regulations for utilization of the town's computers and computer system.

§ 7-2. Prohibitions.

Employees and officers shall not view, send, read, download, access via the Internet or store fraudulent, harassing, embarrassing, sexually explicit, profane, obscene, intimidating, defamatory or other unlawful or inappropriate material. Such activities are prohibited insofar as they occur on town premises, occur on or via the town's computers or communication resources, occur during work time or involve communications or displays to, from or in the presence of coworkers, the public or agents of the town.

§ 7-3. Electronic communications.

Employees and officials shall not send or receive by town e-mail (or any other electronic communication involving town time or town resources) personal messages, jokes, chain mail messages, games, novelty and/or joke executables or obscene or offensive material. (Please note that some chain messages are disguised as warnings about viruses.) If a town employee or officer receives non-town-related, jokes or files from someone else, they are to refer that person to the town's policies, as set forth herein, and, if the activities continue, contact the Town Board.

§ 7-4. Time loss.

Employees and officials shall not use or waste town time and/or computer resources playing games, visiting chat rooms, etc.

§ 7-5. Advertisements and solicitations.

Employees and official shall not, without prior written permission, use town computer and communication resources for the transmission or storage of commercial or personal advertisements, solicitations, promotions or political material.

§ 7-6. Destructive programs.

Employees and officials shall not use, transmit or store destructive programs (viruses and/or self-replicating code) on any town computers or equipment, including their own individual town computer or the town network.

§ 7-7. Installation of software.

Employees and officials shall not install software onto any town computers or equipment, including their individual computers or the town network. All software installations, even free software from the Internet, will be installed by the town technician servicing the location unless expressly approved otherwise by the Town Supervisor. Any unlicensed software or personal software may be deleted by the town without notice to the employee or officer.

§ 7-8. Unlicensed software.

Employees and officials shall not use, copy or provide copies of unlicensed software.

§ 7-9. Internet browsing.

Internet browsing using town resources and/ or on town time is to be limited to that which primarily supports a town function. Any personal use of the Internet should be limited to personal time with the permission of the Town Board.

§ 7-10. Confidential information.

Employees and officials shall not send, transmit or otherwise disseminate nonpublic personal data, police materials or other confidential information of the town to an unauthorized person or in an unauthorized manner. Unauthorized dissemination of this information may result in substantial civil liability as well as severe criminal penalties under the Economic Espionage Act of 1996, as well as town discipline, including dismissal, pursuant to law.

§ 7-11. Freedom of information requests.

Employees and officials shall comply with the procedures under the Freedom of Information Law of the State of New York^{3EN} in a manner which does not compromise the integrity of the town's computer equipment or systems. Any foil request which may compromise the town's equipment or systems shall be reviewed and approved by the Town Board before transmittal of the information to the person who has made such request. All foil requests requiring information stored on town computers shall be retrieved by town officials and employees and delivered by diskette or hard paper copy only to the requesting party for a reasonable fee under the Freedom of Information Law, state and local regulations.

Chapter 9, DEFENSE AND INDEMNIFICATION

[HISTORY: Adopted by the Town Board of the Town of Marlborough 10-21-1985 as L.L. No. 4-1985. Amendments noted where applicable.]

GENERAL REFERENCES

Code of Ethics -- See Ch. 13.
Officers and employees -- See Ch. 26.
Personnel policies -- See Ch. 29.

§ 9-1. Conferral of benefits.

The Town Board hereby adopts § 18 of the Public Officers Law and confers the benefits thereof upon all town officers and employees.

§ 9-2. Civil actions.

The town shall provide for the defense of any town officer or employee in any civil action or proceeding arising out of any alleged act or omission in which it is alleged that the officer or employee has violated the civil rights of the claimant, petitioner or plaintiff under Sections 1981 and 1983 of the United States Civil Rights Act. The town shall indemnify and save harmless such officer or employee in the amount of any judgment or settlement of claim obtained against such officer or employee. Such legal defense and indemnification shall be provided where the officer or employee, at the time of such alleged act or omission, was acting in good faith and within the scope of his public employment, powers or duties. The provisions of this section shall be in addition to any other statute, local law or enactment providing legal defense and indemnification in civil actions brought against such officer or employee.

Chapter 13, ETHICS, CODE OF

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 by L.L. No. 3-1977 as Ch. 10 of the 1976 Code of the Town of Marlborough. Amendments noted where applicable.]

GENERAL REFERENCES

Defense and indemnification -- See Ch. 9.

Officers and employees -- See Ch. 26.

Personnel policies -- See Ch. 29.

§ 13-1. Legislative findings; purpose; other regulations not affected.

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

§ 13-2. Definitions.

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

INTEREST -- A pecuniary or material benefit accruing to a municipal officer or employee or his spouse, or his brothers, sisters, children, parents or grandchildren or the spouses of any of them.

MUNICIPAL OFFICER OR EMPLOYEE -- An officer or employee of the Town of Marlborough, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a "municipal officer or employee" solely by reason of being a volunteer fireman or civil defense

volunteer, except a Fire Chief or Assistant Fire Chief. ^{4EN}

§ 13-3. Standards of conduct.

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

- A. Gifts. He shall not, directly or indirectly, solicit any gift or accept or receive any gift having a value of seventy-five dollars (\$75.) or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him in the performance of his official duties or was intended as a reward for any official action on his part. ^{5EN}
- B. Confidential information. He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.
- C. Representation before one's own agency. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or before any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.
- D. Representation before any agency for a contingent fee. He shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of this municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
- E. Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Town Board and any officer or employee of the Town of Marlborough, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any matter before the Town Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.
- F. Investments in conflict with official duties. He shall not invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his official duties.
- G. Private employment. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for a private interest when such employment or service creates a conflict with or impairs the proper discharge of his official duties.
- H. Future employment. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Town of Marlborough in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

§ 13-4. Filing of personal claims.

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

§ 13-5. Distribution. ^{6EN}

The Supervisor of the Town of Marlborough shall cause a copy of this chapter to be posted upon the bulletin board maintained by the Town Clerk of the town, and the Town Clerk shall cause a copy of this chapter to be distributed to every officer and employee of the Town of Marlborough within ten (10) days after the effective date. Each officer and employee elected or appointed thereafter shall be furnished a copy upon his entering upon the duties of his office or employment. Failure to distribute any such copy or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code nor the enforcement of provisions thereof.

§ 13-6. Penalties for offenses.

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

Chapter 18, INVESTMENT POLICY

[HISTORY: Adopted by the Town Board of the Town of Marlborough 2-28-1994.
Amendments noted where applicable.]

GENERAL REFERENCES

Purchasing -- See Ch. 38.

§ 18-1. Applicability.

This investment policy applies to all moneys and other financial resources available for investment on its own behalf or by any other entity or individual.

§ 18-2. Objectives of investment.

The primary objectives of local governments' investment activities are, in priority order, to:

- A. Conform to all applicable federal, state and other legal requirements.
- B. Safeguard principal adequately.
- C. Provide sufficient liquidity to meet all operating requirements.
- D. Obtain a reasonable rate of return.

§ 18-3. Administration.

The Town Board's responsibility for administration of the investment process is delegated to the Town Supervisor, as Treasurer, who shall establish written procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include a data base incorporating description and amounts of information and to regulate the activities of subordinate employees.

§ 18-4. Use of judgment and care.

Investments shall be made with judgment and care, not for speculation, but for investments, considering the safety of the principal as well as the probable income to be derived.

§ 18-5. Diversification.

It is the policy of the Town Board to diversify its deposits and investments by financial institutions, by investment instrument and by maturity scheduling.

§ 18-6. Internal controls.

- A. It is the policy of the Town Board for all moneys collected by any officer or employee of the government to transfer those funds to the Treasurer within three (3) days of deposit or within the time period specified in law, whichever is shorter.
- B. The Treasurer is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization and recorded properly in compliance with applicable laws and regulations.

§ 18-7. Designation of depositories.

The bank and trust companies authorized for deposit of moneys up to the following amounts are:

- A. Key Bank of South East New York: maximum amount one million five hundred thousand dollars (\$1,500,000.).
- B. M & T Bank: maximum amount one million five hundred thousand dollars (\$1,500,000.).
- C. First National Bank of Rhinebeck: maximum amount one million five hundred thousand dollars (\$1,500,000.).

§ 18-8. Collateralizing of deposits.

- A. In accordance with the provisions of General Municipal Law § 10, all deposits of the Town of Marlborough, including certificates of deposit and special time deposits, in excess of the amounts insured under the provisions of the Federal Deposit Insurance Act shall be secured by a pledge of eligible securities with an aggregate market value

equal to the aggregate amount of deposits.

- B. Eligible securities used for collateralizing deposits shall be held by the depository and/or a third-party bank or trust company subject to security and custodial agreements.
- C. The security agreement shall provide that eligible securities are being pledged to secure local government deposits, together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which will enable the local government to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the local government, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Town of Marlborough or its custodial bank.
- D. The custodial agreement shall provide that securities held by the bank or trust company or agent of and custodian for the local government will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the local government a perfected interest in the securities.

§ 18-9. Permitted investments.

- A. As authorized by General Municipal Law § 11, the Town of Marlborough authorizes the Treasurer to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:
 - (1) Special time deposit accounts.
 - (2) Certificates of deposit.
 - (3) Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America.
 - (4) Obligations of the State of New York.
- B. All investment obligations shall be payable or redeemable at the option of the Town of Marlborough within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Town of Marlborough within two (2) years of the date of purchase.

Chapter 22, MEETINGS

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 by L.L. No. 3-1977 as Ch. 19 of the 1976 Code of the Town of Marlborough; amended at

time of adoption of Code; see Ch. 1, General Provisions, Art. I. Subsequent amendments noted where applicable.]

§ 22-1. Preparation of agenda.

The Town Clerk shall prepare the agenda for all regular meetings of the Town Board. All members of the Town Board having business to be included on the agenda for a meeting must submit such items to the desk of the Supervisor at least fifty-four (54) hours before the meeting. The Town Clerk shall have the agenda prepared and ready for distribution to members of the Town Board twenty-four (24) hours before the meeting, from the desk of the Supervisor at that time or at their convenience thereafter.

§ 22-2. Preparation of resolutions.

All resolutions to be presented before the Board shall be typed in triplicate and shall be presented to the Supervisor at least fifty-four (54) hours before the meeting.

Chapter 26, OFFICERS AND EMPLOYEES

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, 3-28-1977 by L.L. No. 3-1977 as Ch. 23, Art. I, of the 1976 Code of the Town of Marlborough; Art. II, 3-28-1977 by L.L. No. 3-1977 as Ch. 23, Art. II, of the 1976 Code of the Town of Marlborough. Amendments noted where applicable.]

GENERAL REFERENCES

Defense and indemnification -- See Ch. 9.

Code of Ethics -- See Ch. 13.

Personnel policies -- See Ch. 29.

Smoking -- See Ch. 123.

ARTICLE I, Collector of Taxes [Adopted 3-28-1977 by L.L. No. 3-1977 as Ch. 23, Art. I, of the 1976 Code of the Town of Marlborough]

§ 26-1. Abolition of office of Tax Collector and/or Receiver of Taxes; assumption of duties by Clerk.

The office of Tax Collector and/or Receiver of Taxes in the Town of Marlborough, Ulster County, New York, shall be abolished following expiration of the present term of office in November 1967, and thereafter the duties of the Tax Collector and/or Receiver of Taxes shall be assumed by the office of the Town Clerk in accordance with and as required by § 36, Subdivision 1, of the Town Law of the State of New York.

ARTICLE II, Deputy Supervisor [Adopted 3-28-1977 by L.L. No. 3-1977 as Ch. 23, Art. II, of the 1976 Code of the Town of Marlborough]

§ 26-2. Office established.

Pursuant to Article 3, § 42, of the Town Law of the State of New York, the office of Deputy Supervisor is hereby established.

Chapter 29, PERSONNEL POLICIES

[HISTORY: Adopted by the Town Board of the Town of Marlborough 5-11-1992. Amendments noted where applicable.]

GENERAL REFERENCES

**Defense and indemnification -- See Ch. 9.
Code of Ethics -- See Ch. 13.
Officers and employees -- See Ch. 26.
Smoking -- See Ch. 123.**

ARTICLE I, General Provisions

§ 29-1. Applicability.

When adopted by the Town Board of the Town of Marlborough, this personnel policy shall apply to all employees of the Town of Marlborough with the exceptions of elected officials and employees covered under a collective bargaining unit.

§ 29-2. Duration; revision.

This personnel policy shall remain in effect indefinitely and can be revised only by a resolution of the Town Board of the Town of Marlborough.

ARTICLE II, Hiring and Work Policies

§ 29-3. Affirmative action statement.

Every employee shall be selected under fair employment procedures which provide equal employment opportunities to all people, regardless of race, physical handicap, color, religion, sex or national origin.

§ 29-4. Job descriptions; salary ranges.

- A. There shall be a description for each job covering work to be done, supervision and qualifications required. These job responsibilities shall be reviewed annually.
- B. Salary ranges are established for each job at the town's annual reorganization meeting.

§ 29-5. Hiring procedures.

- A. Department heads shall notify the Town Board of personnel needs. The Town Board shall assess the requests and advertise for the position(s) deemed necessary and in accordance with the year's budget.
- B. Applicants are to submit resumes to the appropriate department.
- C. Applicants for clerk/secretarial positions may be required to take a test to show evidence of typing, clerical and spelling skills. Interviews will be conducted by the Town Board or an appointed committee, and the recommended candidate will be voted on at a Town Board meeting before appointment.
- D. Ordinarily, the employee shall start at the lowest step in the classification, but consideration will be given for special education and experience. This hiring procedure applies to all positions except the Supervisor's confidential secretary, the bookkeeper and the Deputy Clerk.

§ 29-6. Probationary period; work review; termination of employment.

- A. Ordinarily, the initial six (6) months of employment shall be considered a probationary period. Separation may be initiated at any time during this period by either employee or employer.
- B. At the end of the probation period, the employee's work record will be reviewed by the department head and the Town Board Committee and a recommendation regarding permanent employment made to the Town Board for its action.
- C. Subsequent to the probationary period, ending of employment ordinarily shall require two (2) weeks' notice by either the Town Supervisor or the employee.

§ 29-7. Work hours; overtime pay.

- A. A full workweek denotes thirty (30) hours or over. Up to one (1) hour is allowed (unpaid) for lunch and is not included in computing the full workweek. Employees are entitled to two (2) ten-minute breaks per day, one (1) in the morning and one (1) in the afternoon. [Amended 6-12-1995 by L.L. No. 3-1995]
- B. Overtime pay at one and one-half (1 1/2) times the regular hourly rate shall start after an employee has completed forty (40) hours of work in a single week.
- C. Office hours open to the public. The minimum office hours for the Assessor's office, Building Department, Town Clerk's office and Town Supervisor's office are set as follows: Monday through Friday from 8:00 a.m. until 4:00 p.m., with the single exception being that the Assessor's office will be open Monday through Thursday 8:00 a.m. through 4:00 p.m., Friday from 8:00 a.m. through 12:00 noon and Monday evenings from 7:00 p.m. through 10:00 p.m. [Added 6-12-1995 by L.L. No. 3-1995]

§ 29-8. Categories of employees.

- A. The categories of employees are as follows:
 - (1) Regular, full-time: an individual who works the full basic workweek [thirty (30) hours or more]. Such employees are eligible for fringe benefits listed in Article III.
 - (2) Regular, part-time: an individual who works a stated portion of the basic workweek, but less than the full workweek, and is not eligible for fringe benefits.
 - (3) Temporary employee: an individual who works for a specified, limited period of time not to extend one (1) year, either on a full- or part-time basis.
- B. If a former full-time employee is hired on a temporary basis in a position comparable to his/her former position, the employee's pay shall be determined at the reorganization meeting.

§ 29-9. Sexual harassment policy. [Added 10-12-1992]

- A. Reference. Title VII of the 1964 Civil Rights Act prohibits employment discrimination on the basis of race, color, sex, age or national origin.
- B. Policy statement.
 - (1) The town expects that each employee will enjoy a work environment free from all forms of discrimination, including sexual harassment.
 - (2) Sexual harassment is a form of misconduct which undermines the integrity of the employment relationship. No employees, either male or female, should be subjected to sexual overtures or conduct.
 - (3) Sexual harassment can be exhibited in many fashions and each is as offensive as the next and will not be tolerated. It can range from physical advances to a snide comment or innuendo to the posting of distasteful and inappropriate material (e.g., calendars or pictures). Pornographic materials/magazines can by themselves represent sexual harassment in the workplace and therefore will not be tolerated.
 - (4) Any employee who feels he or she has incurred any form of sexual harassment is encouraged to immediately notify the Town Supervisor, who will expeditiously and confidentially investigate the complaint and take any necessary appropriate corrective action.
- C. Definition.
 - (1) No employee, either male or female, shall be subjected to unsolicited and unwelcome sexual overtures or conduct, either verbal or physical. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute harassment when:
 - (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
 - (b) Submission to or rejection of such conduct is used as a basis for employment decisions affecting the employee; or
 - (c) Such conduct has the purpose or effect of substantially interfering with work performance or creating an intimidating, hostile or offensive work environment, regardless of whether committed by supervisory or nonsupervisory personnel.

- (2) Sexual harassment includes, but is not limited to, repeated offensive or unwelcome sexual flirtations, physical threats, grabbing or touching intimate parts of the body, advances, propositions, continual or repeated verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual and the display in the workplace of sexually suggestive objects or pictures.

D. Sexual harassment complaint procedure.

- (1) Any employee who feels he or she has incurred any form of sexual harassment is encouraged to immediately notify the Town Supervisor, who will expeditiously and confidentially investigate the complaint and take any necessary appropriate corrective action.
- (2) In no event will information concerning a complaint be released by the town to third parties or to anyone within the town who is not involved with the investigation. Nor will anyone involved be permitted to discuss the subject outside the investigation. The purpose of this provision is to protect the confidentiality of the employee who files a complaint, to encourage the reporting of any incidents of sexual harassment and to protect the reputation of any employee wrongfully charged with sexual harassment.
- (3) Investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. Employees shall be guaranteed an impartial and fair hearing. All employees shall be protected from coercion, intimidation, retaliation, interference or discrimination for filing a complaint or assisting in an investigation.
- (4) If the investigation reveals that the complaint is valid, prompt attention and disciplinary action designed to stop the harassment immediately and to prevent its recurrence will be taken.
- (5) All employees will be expected to comply with this policy and take appropriate measures to ensure that they do not engage in such conduct. In addition, all management employees shall take appropriate measures to ensure such conduct does not occur under their area of responsibility.
- (6) Appropriate disciplinary action will be taken against any employee who violates this sexual harassment policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension or termination.
- (7) The town encourages any employee to contact the Town Supervisor with questions he or she may have regarding sexual harassment or discrimination.

§ 29-10. Exposure control plan. [Added 11-23-1992]

- A. Scope. This policy applies to all personnel who have a potential for occupational exposure to blood or other infectious materials.
- B. Purpose. The purpose of this policy is to minimize or eliminate employee exposure to communicable diseases.
- C. Authority. The statutory authority for this policy is 29 CFR 1910 and OSHA Instruction CPL 2-2.44B.
- D. Policy statement.
 - (1) The Town of Marlborough has established a written Infection Control Manual

that has been given to all employees and is available at all work sites. The Town Supervisor shall designate a town-wide infection control coordinator for this program. Each department head shall designate an infection coordinator for his/her department. It shall be the department head's responsibility to develop the appropriate engineering, housekeeping and work practice controls for that department.

- (2) The Town of Marlborough is committed to full compliance with applicable laws and policies dealing with infection control. The town will develop plans leading to compliance for any deficient areas identified by this program.
 - (3) Each employee is responsible for following the policies and procedures outlined in the Infection Control Manual. The Infection Control Manual contains guidelines for the following areas:
 - (a) Precautions and prevention.
 - (b) Personal protective equipment.
 - (c) Scene management.
 - (d) Cleaning and disinfection.
 - (e) Infectious waste disposal.
 - (f) Immunizations.
 - (g) Exposure determination.
 - (h) Postexposure evaluation and follow-up.
 - (i) Medical surveillance.
 - (j) Recordkeeping.
 - (k) Training requirements.
 - (4) The infection control program will be reviewed and updated as necessary to reflect significant changes in tasks or procedures.
- E. Precautions and prevention. The Town of Marlborough requires:
- (1) That employees wash their hands, when possible, after removal of gloves or other personal protective equipment that have contacted blood or other potentially infectious materials.
 - (2) Removal of contaminated personal protective equipment, when possible, upon leaving the emergency scene and placement in an appropriately designated area or container for storage, washing, decontamination or disposal.
 - (3) That all members do procedures involving blood or other body fluids so that they minimize splashing, spraying or aerosols of these substances.
 - (4) That all used needles and other sharp objects are not sheared, bent, broken, recapped or resheathed with two (2) hands. Used needles will not be removed from disposable syringes. All used sharps will be placed directly into a sharps container when possible.
- F. Personal protective equipment. The Town of Marlborough:
- (1) Provides and assures that employees use appropriate personal protective equipment where biomedical hazards are possible.
 - (2) Assures that the appropriate personal protective equipment in the appropriate sizes is readily accessible at the work site or individually issued to the employee.
- G. Scene management. The Town of Marlborough:
- (1) Uses the Town of Marlborough Emergency Response Plan to manage the emergency scene effectively.

- (2) Assures that personnel follow infection control measures at all emergencies.
 - (3) Assures that personnel consistently and correctly answer infection control questions arising from contact with the public.
- H. Cleaning and disinfection. The Town of Marlborough:
- (1) Provides for the cleaning, laundering or disposal of required personal protective equipment.
 - (2) Repairs or replaces personal protective equipment as needed to maintain its effectiveness.
 - (3) Establishes a schedule for cleaning of medical equipment and method of disinfection, based on the location, type of surface to be cleaned, type of contamination present and tasks or procedures done.
- I. Infectious waste disposal. The Town of Marlborough:
- (1) Assures that personnel place all infectious waste needing disposal in a closeable, leakproof container or bag that is marked, color coded or labeled, as required by law.
 - (2) Equips all appropriate vehicles with puncture resistant containers for proper disposal of needles, disposable syringes and other sharp surface instruments.
 - (3) Assures that personnel dispose of infectious waste according to applicable federal, state and local regulations.
- J. Immunizations. The Town of Marlborough:
- (1) Makes available hepatitis B vaccinations to all employees who have a potential for occupational exposure.
 - (2) Will provide a booster dose(s) for hepatitis B at a future date, according to standard recommendations for medical practice.
 - (3) Recommends that employees obtain other vaccinations recommended for health care workers by the Center for Disease Control.
- K. Exposure determination. The Town of Marlborough:
- (1) Establishes a Level III exposure as one (1) of the following:
 - (a) Contaminated needlestick injury.
 - (b) Blood or body fluid contact with mucous membrane of eyes, nose or mouth.
 - (c) Blood or body fluid contact with open skin (non-intact skin).
 - (d) Cuts with sharp objects covered with blood or body fluid.
 - (e) Injury sustained while cleaning contaminated equipment.
 - (2) Provides employees with a method for the reporting of occupational exposures.
- L. Postexposure. The Town of Marlborough:
- (1) Provides postexposure and follow-up for all employees with occupational exposure per the Town of Marlborough procedures.
 - (2) Assures that a licensed physician does or supervises all medical evaluations and procedures.
 - (3) Assures that the employee is informed of the results of the medical evaluation and that the employee is told about any medical conditions resulting from exposure to blood or other potentially infectious materials that require further evaluation or treatment.
- M. Medical surveillance. The Town of Marlborough provides all evaluations, procedures, vaccinations and postexposure management to the employee at a reasonable time and place and according to standard recommendations for medical practice.

- N. Recordkeeping. The Town of Marlborough:
- (1) Maintains accurate medical records for each employee for at least the duration of employment, plus thirty (30) years.
 - (2) Keeps all employee medical records confidential and does not release them to any person within or outside the workplace or by written consent of the employee, except as required by law.
 - (3) Maintains all training records for five (5) years, in compliance with 29 CFR 1910.20.
- O. Training requirements. The Town of Marlborough:
- (1) Assures that all personnel who are at risk for potential occupational exposure participate in a training program.
 - (2) Provides training at the time of initial employment and at least annually after that.
 - (3) Assures that the training program contains those elements required by law.

§ 29-10.1. Anti-drug and alcohol misuse plan. [Added 12-28-1995]

- A. Purpose: to establish rules, regulations and programs to ensure that the Town of Marlborough, herein referred to as (municipality), is free from the detrimental effects of drugs and alcohol in compliance with applicable laws and the mandates contained in Title 49 CFR Parts 40 and 382.
- B. Background.
- (1) The catalyst for the Anti-Drug and Alcohol Misuse Plan is Title 49 CFR Part 382, which requires employers to test their employees who maintain a commercial driver's license ("CDL") in the performance of their duties for prohibited drugs and alcohol under the following work-related conditions:
 - (a) Preemployment/preassignment.
 - (b) Post-accident.
 - (c) Random.
 - (d) Reasonable cause/suspicion.
 - (e) Return-to-duty.
 - (f) Followup.
 - (2) Title 49 CFR Part 40 specifies procedures which must be followed by the municipality when conducting drug and/or alcohol testing pursuant to federal regulations.
- C. Prohibited drug and alcohol policy.
- (1) No employee shall use, sell, possess, distribute, or manufacture any alcoholic beverage or illegal drug or any other intoxicating substance at any time on a job site, or municipality property while on duty; or while operating a municipality vehicle, a vehicle leased for municipality business, or a privately owned vehicle being used for municipality business during the employees work hours.
 - (2) No employee shall report to work at the beginning of a shift or upon returning from any break, lunch or rest period under the influence of alcohol, illegal drugs or other intoxicating substance.
 - (3) No employee shall possess alcohol during working hours unless the alcohol is manifested and transported as part of a shipment, perform safety-sensitive functions within four hours after using alcohol, or use alcohol for eight hours

following an accident (as defined as part of this plan) or until he/she undergoes a post-accident alcohol test, whichever occurs first (provided the consumption does not occur during working hours.

D. Definitions. For purposes of this Anti-Drug and Alcohol Misuse Plan, the following definitions apply:

ACCIDENT

- (1) An occurrence involving a commercial motor vehicle operating on a public road which results in:
 - (a) A fatality;
 - (b) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident and the driver is issued a ticket for a moving violation associated with such accident; or
 - (c) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle and the driver is issued a ticket for a moving violation associated with such accident.
- (2) The term "accident" does not include:
 - (a) An occurrence involving only boarding and alighting from a stationary motor vehicle; or
 - (b) An occurrence involving only the loading or unloading of cargo; or
 - (c) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR 571.3) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR Section 177.823.

AIR BLANK -- A reading by an EBT of ambient air containing no alcohol.

ALCOHOL -- The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

ALCOHOL CONCENTRATION OR CONTENT -- The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

ALCOHOL USE -- The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

BLIND SAMPLE -- A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

BREATH ALCOHOL TECHNICIAN (BAT) -- An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

CHAIN OF CUSTODY -- Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that the DOT-approved drug testing custody form be used from time of collection to receipt by the laboratory.

COLLECTION SITE -- A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs or providing a sample of their breath to be analyzed for the

presence of alcohol.

COLLECTION SITE PERSON -- A person who instructs and assists applicants and employees through the specimen collection process.

COMMERCIAL MOTOR VEHICLE -- A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- (1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating or more than 10,000 pounds; or
- (2) Has a gross vehicle weight rating of 26,001 or more pounds; or
- (3) Is designed to transport 16 or more passengers, including the driver; or
- (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

CONFIRMATION TEST -- For alcohol testing, means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration for controlled substances; for drug testing, means a second analytical procedure to identify the presence of a specific drug or metabolite, which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

COVERED EMPLOYEE (EMPLOYEE) -- Every employee in the Department of Public Works or who operates a commercial motor vehicle in interstate or intrastate commerce and is subject to having a CDL. See Appendix B for a list of job classifications of covered employees, and of employees specifically excluded.^{7EN}

CUTOFF LEVELS -- The minimum value established for designating a test result as positive.

DRIVER -- Any person who operates a commercial motor vehicle. This includes, but is not limited to, full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For the purposes of preemployment/pre-duty testing only, the term "driver" includes a person applying to an employer to drive a commercial motor vehicle.

DRUGS (PROHIBITED) -- Marijuana, cocaine, amphetamines, phencyclidine and/or opiates.

EAP -- The Employee Assistance Program at the municipality which provides all employees with a means of obtaining confidential professional assistance in handling personal problems which may adversely affect job performance. The EAP shall also function as the Substance Abuse Person (SAP) for the purpose of this regulation.

EVIDENTIAL BREATH TESTING DEVICE (EBT) -- An EBT approved by the National Highway Traffic Safety Administration (NHTA) for the evidential testing of breath and placed on NHTA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

FAIL A DRUG TEST or TEST POSITIVE -- The confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in the employee's or

applicant's system.

MEDICAL REVIEW OFFICER (MRO) -- A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other biomedical information.

PASS A DRUG TEST or TEST NEGATIVE -- That initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in the employee's or applicant's system.

PERFORMING (A SAFETY-SENSITIVE FUNCTION) -- A driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

REFUSE TO SUBMIT TO AN ALCOHOL OR CONTROLLED SUBSTANCES TEST -- That a driver fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part, fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

SAMHSA -- The Substance Abuse and Mental Health Services Administration, formerly National Institute on Drug Abuse (NIDA), which was established by the Department of Health and Human Services (DHHS) in 1986 to regulate laboratories performing analytical tests (drug tests) on human body fluids for employment purposes in the public sector.

SCREENING TEST (ALSO KNOWN AS "INITIAL TEST") -- In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

SUBSTANCE ABUSE PROFESSIONAL (SAP) -- A licensed physician (medical doctor or doctor of osteopathy), or a licensed certified psychologist, social worker, employee assistance professional (EAP), or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled-substance-related disorders.

E. Responsibilities.

- (1) **Drug/Alcohol Program Manager (DAPM):** Appendix A contains the name, address, and phone number of the responsible individual(s).^{8EN} The DAPM shall be responsible for the preparation of alcohol testing and the Alcohol Misuse Plan which complies with requirements of the Department of Transportation regulations as set forth in Title 49 CFR Parts 382 and 40. The DAPM shall be responsible for providing oversight and evaluation of the plans; providing guidance and counseling; reviewing of all discipline applied under the plan for consistency and conformance to municipality (Human Resources) policies and procedures; scheduling random drug and alcohol testing and return-to-duty

testing; and maintaining a secure file system on overseeing the Employee Assistance Program (EAP). The municipality shall ensure that all covered employees are aware of the provisions' and coverage of this plan.

- (2) Supervisors: Supervisors are responsible for observing the performance and behavior of employees and documenting events suggestive of reasonable cause testing and requesting a second supervisor for substantiation and concurrence for reasonable cause testing; if applicable.
- (3) Employees:
 - (a) Each employee has the responsibility to be knowledgeable of the plan and to fully comply with the provisions of the plan.
 - (b) Employees must notify their supervisor of any criminal drug statute conviction within five days of such conviction. Upon receipt of such notification or other notice for a violation occurring within the workplace, the municipality will, as required by law, advise the appropriate governmental agency to which it has a contract of such conviction.
 - (c) An employee using drugs prescribed by a licensed physician or any other therapeutic drug use is required to notify his/her supervisor when such use may impact the employee's ability to perform his or her duties safely.
 - (d) An employee who has a positive drug test (confirmed by the MRO) and/or a positive alcohol test (0.040 or above) and is referred by the SAP/EAP for return-to-work and followup testing, will be responsible to reimburse the municipality for the cost of such testing.

F. Drug and alcohol testing requirements.

- (1) Applicability.
 - (a) Individuals subject to drug and alcohol testing. All employees in the Department of Public Works and any employee who has a CDL, for the performance of his/her duties under 49 CFR Part 382 would be subject to drug/alcohol testing under the plan. Refer to Appendix B for specific job titles subject to drug/alcohol testing under the plan.^{9EN}
 - (b) Procedure for notifying employees. All covered employees will be provided a complete copy of the policy and the plan.
 - (c) Substances for which testing must be conducted. The municipality shall test each covered employee listed in Appendix B for evidence of the following substances: marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and alcohol. The cutoff levels for detecting these drugs/alcohol are as follows:

Substance	Initial Test Cutoff Levels (ng/ml)
Marijuana metabolites	50

Cocaine metabolites	300
	1,000
Amphetamines	
Phencyclidine	25
Opiate metabolites	*300
Alcohol	0.020
Note: *25 ng/ml if immunoassay specific for free morphine	(gr/lt)
Substance	Confirmatory Test Cutoff Levels (ng/ml)
Marijuana metabolite	15
Cocaine metabolite	150
Opiates:	
	300
Morphine	
	300
Codeine	
Phencyclidine	25
Amphetamines:	

	500
Amphetamine	
	500
Methamphetamine	
Alcohol	0.020 (gr/lit)

- (2) Required drug/alcohol tests.
- (a) Preemployment/preassignment testing. A preemployment drug and alcohol test must be conducted before an individual is hired or contracted and when an individual is transferred/promoted from a noncovered to a covered position. This also applies to employees returning from a leave of absence (of 30 days or more) who have not been participating in the Anti-Drug and Alcohol Misuse Plan and subject to the random selection process. A negative test is required prior to performing covered functions.
 - (b) Post-accident testing. If the accident involves driving a commercial motor vehicle and falls within the definition of "accident" described in the definition section of the policy, the employee shall be drug tested as soon as possible but not later than 32 hours after the accident. Each employee shall also be alcohol tested within two hours of the accident if possible, but not later than eight hours after the accident. The municipality must take all reasonable steps to obtain a urine specimen and breath sample from an employee after an accident, as defined above, but any injury should be treated first. Employees should see Appendix E for instructions to employees regarding post-accident notification and testing.^{10EN}
 - (c) Random testing.
 - [1] The primary purposes of random testing are to deter prohibited drug and alcohol use and to ensure a drug-free and alcohol-free workforce. Regulations require that covered employees shall be subject to drug and alcohol testing on an unannounced and random basis. The municipality shall conduct a number of drug tests on all covered employees equal to at least 50% of the average number of covered employees each calendar year, spread reasonably over a twelve-month period. In addition, the municipality shall conduct a number of alcohol tests on covered employees equal to at least 25% of the number of such covered employees each calendar year, spread reasonably over a twelve-month period.
 - [2] The following is an outline of the key aspects of the random testing selection process.
 - [a] Employees remain in the random selection pool at all times,

- regardless of whether or not they have been previously selected for testing.
- [b] Employees shall be selected for testing by using a computer-based random number generator or equivalent random selection method that is matched with an employee's social security number.
 - [c] The process will be unannounced as well as random. Employees will be notified that they have been selected for testing after they have reported for duty on the day of the collection.
 - [d] Employees will be selected for random testing based on the number of covered employees at the time and the necessary testing rate.
 - [e] Specimen collection will be conducted on different days of the week throughout the annual cycle.
- [3] Steps for random testing:
- [a] The DAPM (or designee), on a predetermined date, shall use the random selection procedures to compile a list of covered employees selected for random testing during that testing cycle.
 - [b] It is the intent of this plan to notify employees of their selection for random testing after they have reported for duty.
 - [i] The names of the employees to be tested will be provided to the appropriate division manager, department head or supervisor.
 - [ii] The list of employees selected will be retained by the DAPM (or designee) in a secure location.
 - [c] Employees shall report immediately to the collection site within 30 minutes, plus travel time, once notified by the appropriate official.
- [4] General.
- [a] An employee will be identified for a random drug and/or alcohol test through a random selection process. The employee will be notified by his/her supervisor to report immediately to the designated collection site.
 - [b] The employee will, upon such notification, immediately leave the work headquarters and report to the designated collection site.
 - [c] Upon arriving at the designated collection site, the employee will be required to identify himself/herself to the site personnel by presenting a picture identification (i.e., photo driver's license).
 - [d] The employee will provide his/her urine specimen and, if applicable, a breath sample in accordance with the procedures of the collection site. (See Appendix C, Specimen Collection Procedures.^{11EN})
- (d) Reasonable cause/suspicion testing. Reasonable cause/suspicion testing is designed to provide management with a tool (in conjunction with supervisor training on the signs and symptoms of drug and/or alcohol use) to identify drug/alcohol-affected employees who may pose a danger to themselves and others in their job performance. Employees may be at work in a condition that raises concern regarding their safety or productivity. Supervisors must then make a decision as to whether there is reasonable cause to believe an employee is using or has used a prohibited drug and/or alcohol.
- [1] The decision to test must be based on a reasonable and articulate belief

that the employee is using a prohibited drug and/or alcohol on the basis of specific, contemporaneous physical, behavioral or performance indicators of probably drug/alcohol use.

- [2] In making a determination of reasonable cause, the factors to be considered include, but are not limited to, the following:
 - [a] Adequately documented pattern of unsatisfactory work performance for which no apparent non-impairment-related reason exists or a change in an employee's prior pattern of work performance.
 - [b] Physical signs and symptoms consistent with substance abuse.
 - [c] Evidence of illegal drug or alcohol use, possession, sale or delivery while on duty.
 - [d] Occurrence of a serious or potentially serious accident that may have been caused by human error or flagrant violations of established safety, security or other operational procedures.
- (e) Return-to-duty testing. An employee who refuses to take or fails a drug or alcohol test may not return to duty (i.e., perform safety-sensitive functions) until the employee passes a drug test and alcohol test, if applicable, and the SAP has determined that the employee may return to duty (i.e., perform a safety-sensitive function).

- (3) Transporting the employee. Anytime an employee tests positive for alcohol (0.020 or above) a supervisor will arrange to transport the employee from the collection site to the employee's home.
- (4) Anytime an employee is drug tested under the reasonable cause or post-accident section of this plan, the employee shall not perform any safety-sensitive duties pending the receipt of the drug test results.

G. Use of employee who fails or refuses a drug/alcohol test.

- (1) Compliance with this Anti-Drug and Alcohol Misuse Plan is a condition of employment. Refusal to take a required test or failure of a drug and/or alcohol test shall result in removal from performing covered functions. Additional disciplinary action, up to and including termination, may result.
- (2) The municipality shall not use in a covered function any employee who:
 - (a) Fails a drug test as verified by the MRO, or fails an alcohol test as verified by the BAT; or
 - (b) Refuses to take a drug and/or alcohol test required by this plan.
- (3) Conditions of return to duty.
 - (a) Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this plan, the employee shall undergo a return-to-duty drug and/or alcohol test with a result indicating an alcohol concentration of less than 0.020 if the conduct involved alcohol; or an illegal drug test with a verified negative result if the conduct involved illegal drugs.
 - (b) In addition, each employee identified as needing assistance in resolving problems associated with alcohol misuse or illegal drug use shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed by the substance abuse professional, and shall be subject to unannounced follow-up alcohol

and illegal drug tests administered by the municipality following the employee's return to duty. The number and frequency of such followup testing shall be as directed by the substance abuse professional and consist of at least six tests in the first 12 months following the employee's return to duty. The substance abuse professional may terminate the requirement for followup testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

- (4) Positive alcohol test.
 - (a) No employee shall report for duty or remain on duty while having an alcohol concentration of 0.020 or greater.
 - (b) No employee shall possess alcohol during working hours unless the alcohol is manifested and transported as part of a shipment.
 - (c) No employee shall use alcohol during working hours.
 - (d) No employee shall use alcohol within four hours prior to performing a safety-sensitive function or, for drivers, within eight hours of reporting for work.
 - (e) No employee required to take a post-accident alcohol test shall use alcohol following an accident for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.
 - (f) An employee who is found to have an alcohol concentration of 0.020 but less than 0.040 shall not be allowed to perform safety-sensitive functions until the start of his/her next shift, but not less than 24 hours (measured from the time of the test).
 - (g) An employee who is found to have an alcohol concentration of 0.040 or greater shall not be allowed to perform safety-sensitive functions and shall be evaluated by a substance abuse professional, who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and/or illegal drug use.

H. Specimen collection requirements.

- (1) Scope.
 - (a) The procedures contained herein and in Appendix C shall be complied with by the designated collection sites.^{12EN}
 - (b) These procedures address the requirements contained in Section 40.25.^{13EN}
- (2) General.
 - (a) The collection site shall have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory designated by the municipality. An independent medical facility may also be utilized as a collection site, provided the other applicable requirements of Appendix C are met.
 - (b) A designated collection site shall be any suitable location where a specimen can be collected under conditions set forth in Appendix C, including a properly equipped mobile facility. A designated collection site shall have an enclosure within which private urination can occur, a toilet for completion of urination, and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practical, should be external to

the enclosure where urination occurs.

- (c) Alcohol tests shall be conducted by a Breath Alcohol Technician (BAT) trained to proficiency in the operation of the evidentiary breath testing device (EBT). Alcohol tests shall be conducted in a location that affords visual and aural privacy to the individual being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
- (d) Detailed specimen collection procedures are outlined in Appendix C.^{14EN}
- I. Drug testing laboratory.
 - (1) SAMHSA (formerly NIDA) Laboratory.
 - (a) The municipality shall use a drug testing laboratory certified under DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; 53 FR 11970, April 11, 1988, and subsequent amendments.
 - (b) The laboratory shall provide services in accordance with Part 40 and Part 382. The name and address of each SAMHSA laboratory used by the municipality is contained in Appendix A.^{15EN}
 - (c) The laboratory shall permit inspections by the municipality, the FHWA Administrator, or, if the municipality is subject to the jurisdiction of a state agency, a representative of the state agency.
 - (2) Laboratory procedures. These procedures are addressed in Appendix F.^{16EN}
- J. Blind performance test procedures.
 - (1) The municipality shall use blind testing quality control procedures as provided in this section.
 - (2) The municipality shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter.
 - (3) Approximately 80% of the blind performance test samples shall be blank (i.e., containing no drugs or otherwise as approved by DOT), and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included. in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the municipality is testing.
- K. Review of drug testing results.
 - (1) General.
 - (a) The municipality shall have on staff or contract for the services of an MRO. The MRO shall be a licensed physician with knowledge of drug abuse disorders. The MRO shall review all negative and positive drug test results and interview individuals tested positive to verify the laboratory report before the municipality is notified. The review of negative tests may be an administrative process to ensure the chain-of-custody procedures were intact.
 - (b) The MRO has contracted with the municipality to provide the services of MRO for this drug testing policy in accordance with the requirements of Title 49 CFR 40.33. A listing of the municipality MRO(s) which includes their name(s) and address(es) is contained in Appendix A.^{17EN}
 - (2) Reporting and review of results.
 - (a) The MRO shall review confirmed positive results. An essential part of the drug testing program is the final review of confirmed positive results from

the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of the results. This review shall be performed by the MRO prior to the transmission of results to the DAPM. The MRO review shall include review of the chain-of-custody to ensure that it is complete on its face.

- (b) The duties of the MRO with respect to negative results are purely administrative.
- (3) Qualifications and responsibilities.
 - (a) The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of the municipality or a private physician retained for this purpose. The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest including assuring that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory.
 - (b) The role of the MRO is to review and interpret confirmed positive test results obtained through the "municipality's" testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action could include conduction of a medical interview with the individual and review of the individual's medical history, or review of any other biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with DOT regulations.
 - (c) The MRO may require that the original specimen be reanalyzed to determine the accuracy of the test result. The MRO may verify that the laboratory report and assessment are correct.
- (4) Positive test results.
 - (a) Prior to making a final decision to verify a positive test result, the MRO shall give the individual an opportunity to discuss the test result with him/her.
 - (b) The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in Subsection K(4)(e) of this section, the MRO shall talk directly with the employee before verifying a test as positive.
 - (c) If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact the DAPM who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the DAPM, the DAPM shall employ procedures that ensure, to the maximum extent practicable, that the requirement of the employee to contact the MRO is held in confidence.

- (d) If, after making all reasonable efforts, the designated management official is unable to contact the employee, the municipality may place the employee on temporary medically unqualified status or medical leave.
 - (e) The MRO may verify a test as positive without having communicated directly with the employee about the test in two circumstances:
 - [1] The employee expressly declines the opportunity to discuss the test;
 - [2] The designated municipality representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see Subsection K(4)(c) and (d) of this section), and more than five days have passed since the date the employee was successfully contacted by the designated municipality representative.
 - (f) If a test is verified positive under the circumstances specified in Subsection K(4)(e) of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidable prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.
 - (g) Following verification of a positive test result, the MRO shall, as provided in the "Municipality's" policy, refer the case to the DAPM (or designee) for action.
- (5) Verification for opiates; review for prescription medication.
 - (a) Before the MRO verifies a confirmed positive result for opiates, the MRO shall determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine).
 - (b) This requirement does not apply if the "Municipality's" GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.
 - (6) Reconfirmation analysis. The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct in writing, the laboratory to provide the split specimen to another DHHS certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) found in the primary specimen or is unavailable or is inadequate for testing, or untestable, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the employer, and the employee.
 - (7) Results consistent with legal drug use. If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the municipality as negative.
 - (8) Results scientifically insufficient.
 - (a) The MRO, based on review of inspection report, quality control data, multiple sample, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen

negative. In this situation, the MRO may request reanalysis of the original sample before making this decision. The MRO may request that reanalysis be performed by the same laboratory or, as provided in Subsection K(6) above, that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the DHHS guidelines.

- (b) The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the municipality. The municipality shall include in any required annual report to FHWA a summary of any negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.
- (9) Disclosure of information.
- (a) Except as provided in this Subsection K(9), the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.
 - (b) The MRO may disclose such information to the municipality, DOT or other federal safety agency, or a physician responsible for determining the medical qualification of the employee under the appropriate DOT regulation, as applicable, only if:
 - [1] An applicable DOT regulation permits or requires such disclosure;
 - [2] In the MRO's reasonable medical judgement, the information could result in the employee being determined to be medically unqualified under any applicable DOT rule; or
 - [3] In the MRO's reasonable medical judgment, in a situation in which there is no DOT rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her covered function could pose a significant safety risk.
 - (c) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this Subsection K(9) and the identity of any parties to whom information may be disclosed.
- L. Retention of samples.
- (1) General. Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days.
 - (2) Retention period.
 - (a) Within this three-hundred-sixty-five-day period, the employee or designated representative, FHWA or other state agencies with jurisdiction, or the municipality may request in writing that the sample be retained for an additional period.
 - (b) If the laboratory does not receive the request to retain the sample within the three-hundred-sixty-five-day period, the sample may be discarded.
- M. Retesting of samples.

- (1) General. An employee/applicant may request, in writing, to the MRO a retest of the sample, provided such request is made within 72 hours of the employee having been informed of a verified positive test from the MRO.
 - (2) Retest provisions. If a retest is requested as provided in Subsection M(1) above, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS certified laboratory for analysis. The employee will be required to pay in advance for the cost of the shipment and reanalysis of the sample. The employee will be reimbursed for the costs incurred in the reanalysis if the retest of the specimen is negative.
 - (3) Detection levels. Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test.
- N. Employee Assistance Program (EAP).
- (1) The municipality provides an EAP for its employees. The EAP provides confidential counseling for many different areas of concern to employees including drug and/or alcohol problems. The name and number of the EAP is listed in Appendix A.^{18EN}
- O. Supervisor training. Supervisory personnel responsible for those employees covered under this plan will receive training under this Anti-drug and Alcohol Misuse Plan. The training shall include at least one 60-minute period of training on the specific, contemporaneous physical, behavioral and performance indicators of probable drug use and an additional 60-minute period of training on the specific, contemporaneous physical, behavioral and performance indicators of probable alcohol use. This training shall be for supervisors who may determine whether an employee must be drug/alcohol tested for reasonable cause.
- P. Recordkeeping procedures.
- (1) General.
 - (a) The DAPM (or designee) shall maintain a locked file system which will contain drug/alcohol test results. This file shall be maintained as confidential. employee files shall be handled on strict "need-to-know" basis.
 - (b) Drug/alcohol test results shall not be included in personnel files. Information regarding an individual's drug/alcohol testing results or rehabilitation may be released only upon written consent of the affected employee, except that:
 - [1] Such information must be released, regardless of consent, to DOT or other government agency as part of an accident investigation; or
 - [2] Such information may be disclosed, regardless of consent, in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee and arising from a verified positive Drug or Alcohol test.
 - (2) Statistical data. Statistical data related to drug/alcohol testing and rehabilitation that is non-name-specified and training records may be released to DOT or other governmental agencies upon request.
 - (3) Record retention. The municipality shall maintain records of this plan as provided below. The records shall be maintained in a secure location with

controlled access.

- (a) Period of retention. The municipality shall maintain the records in accordance with the following schedules:
 - [1] Five years. The following records shall be maintained for a minimum of five years:
 - [a] Records of employee alcohol test results with results indicating an alcohol concentration of 0.020 or greater;
 - [b] Documentation of refusals to take required alcohol tests;
 - [c] EBT calibration documentation;
 - [d] Employee evaluation and referrals;
 - [e] MIS annual report data;
 - [f] Records of employees verified positive drug test results;
 - [g] Job classification and functions of employees;
 - [h] Prohibited drug(s) used; and
 - [i] Disposition of employee (i.e., rehab, suspension, terminations, etc.).
 - [j] Documentation of refusals to take required alcohol and/or drug test;
 - [k] A copy of each annual calendar year summary required by 49 CFR 382.403.
 - [2] Three years. Records that demonstrate the collection process conforms to 49 CFR 40.25 shall be retained for a three-year period.
 - [3] Two years. Records related to the alcohol and drug collections process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of two years.
 - [4] One year. Records of negative and cancelled illegal drug test results (as defined in 49 CFR Part 40) and alcohol test results with a concentration of less than 0.020 shall be maintained for a minimum of one year.
- (b) Types of records. The following specific records shall be maintained:
 - [1] Records related to the collection process:
 - [a] Collection logbooks, if used;
 - [b] Documents relating to the random selection process;
 - [c] Calibration documentation for evidential breath testing devices;
 - [d] Documentation of Breath Alcohol Technician training;
 - [e] Documents generated in connection with decisions to administer reasonable cause/suspicion alcohol or drug tests;
 - [f] Documents generated in connection with decisions on post-accident tests;
 - [g] Documents verifying existence of a medical explanation of the inability of an employee to provide adequate breath or to provide a urine specimen for testing; and
 - [h] Consolidated annual calendar-year summaries as required by 49 CFR 382.403.
 - [2] Records related to employee's test results:
 - [a] The municipality's copy of the alcohol test form, including the results of the test;
 - [b] The municipality's copy of the Drug Test Chain of Custody and Control form;

- [c] Documents sent by the Medical Review Officer to the municipality, including those required by 49 CFR 382.407(a);
 - [d] Documents related to the refusal of any employee to submit to an alcohol or drug test required by this plan; and,
 - [e] Documents presented by an employee to dispute the result of an alcohol or drug test administered under this plan.
- [3] Records related to other violations of this plan.
 - [4] Records related to evaluations:
 - [a] Records pertaining to a determination by a substance abuse professional concerning an employee's need for assistance; and
 - [b] Records concerning an employee's compliance with recommendations of the substance abuse professional.
 - [5] Records related to the municipality's management information system testing data.
 - [6] Records related to education and training.
 - [a] Materials on alcohol misuse and illegal drug use awareness, including a copy of the policy and this plan;
 - [b] Documentation of compliance with the requirements of 49 CFR 382.601, including the employee's signed receipt of education materials;
 - [7] Records related to drug/alcohol testing:
 - [a] Agreements with collection site facilities, laboratories, Medical Review Officers and consortia;
 - [b] Names and positions of officials and their role in the municipality's alcohol and drug testing program(s);
 - [c] Monthly laboratory statistical summaries of urinalysis required by 49 CFR 40.29(g)(6); and
 - [d] The municipality's drug/alcohol testing policy and procedures.
- (4) Employee access. An employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or drugs, including any records pertaining to his/her alcohol or drug tests.
 - (5) Location of records. All records required by 49 CFR shall be maintained and shall be made available for inspection at the municipality's place of business within two business days after a request has been made by an authorized representative of the FHWA.

ARTICLE III, Benefits [Amended 10-12-1992; 1-10-1994]

§ 29-11. Health insurance premiums.

- A. Health insurance will be provided to all town employees and their families as follows:
 - (1) One hundred percent (100%) of all HMO policy premiums will be paid by the town.
 - (2) All employees who retain the Ulster County Health Plan will be responsible for

the cost difference between the costliest HMO and the Ulster County policy, which can be paid through payroll deduction.

- B. In the case of family plans, the town will pay the premium for the employee, the employee's spouse and the employee's children, as specified in the individual policies. In the event that the employee's spouse is employed and has health benefits available to him/her, the town will be only responsible for the employee and his/her dependents, excluding the spouse.

§ 29-12. Paid holidays. [Amended 11-2-1995]

- A. The following are paid holidays:

New
Year's
Day
Presid
ent's
Day
Good
Friday
Memo
rial
Day
Indepe
ndence
Day
Labor
Day
Colum
bus
Day
Electio
n Day
Vetera
ns Day
Thank
sgivin
g Day
Friday
followi
ng
Thank
sgivin
g Day
Christ
mas
Day

- B. In addition to the above days, full-time employees will receive one (1) floating holiday which can be used at any time, with a minimum of five (5) working days' notice to the respective department head, but cannot be used in conjunction with another paid holiday. Floating holidays cannot be accumulated, and if not used by the end of the calendar year, they are forfeited.

§ 29-13. Other paid days.

Employees are entitled to two (2) personal days per year to take care of personal business. Said personal days must be taken in a minimum of two-hour increments. These days are not cumulative and are not to be used adjacent to vacation time, paid holidays or the end of the year.

§ 29-14. Vacation time. [Amended 9-8-1997]

- A. Each full-time employee shall be entitled to vacation time as follows:

**Amount of
Service
Time
(working
days)**

After 6 months	5
After 1 year	10
After 6 years	15
After 12 years	20
After 17 years	25

- B. Full-time employees may accrue unused vacation days from the previous year up to a total of 10 days at the beginning of the new year. Any unused vacation days over 10 at the beginning of the new year will be forfeited.

- C. Resignation. At resignation, an employee may exchange approved accumulated vacation time into a cash sum based on the employees rate of pay in effect at that time [maximum of five (5) days].

§ 29-15. Sick days. [Amended 9-8-1997]

- A. Each regular employee shall be entitled to ten (10) sick days per year at his regular classification rate, said sick days to be credited to his record on the basis of one (1) sick day for each five (5) weeks of employment. Unused sick days may be credited to his record to a total of fifty (50) days. Upon the termination of the employee's services, any accumulated sick days up to fifty (50) shall be paid such employee on a regular payroll basis. Employees hired after January 1, 1992, will not be eligible for accumulated sick day payment.
- B. All full-time employees, regardless of their date of hire, may accrue an unlimited number of unused sick days to be used in the case of an extended illness documented by a physician.

§ 29-16. Bereavement days.

Employees shall receive up to five (5) bereavement days for immediate family. The "immediate family" is defined as spouse, child, parent, brother or sister. Two (2) days shall be granted for parental in-laws and grandparents. One (1) day shall be granted for nonparental in-laws.

§ 29-17. Retirement. [Amended 8-25-1997]

- A. Health insurance premiums.
 - (1) The town will continue to pay health insurance premiums for employees who have worked for the town at least ten (10) years immediately prior to retirement (under the New York State Retirement System) according to the sliding scale below.

	Town	
Length of Service (years)	(per cent)	Employment (per cent)
10	50	50
11	55	45
12	60	40
13	65	35

14	70	30
15	75	25
16	80	20
17	85	15
18	90	10
19	95	5
20	100	

- (2) Upon the death of a full-time employee of the Town of Marlborough who has served less than 20 years with the Town of Marlborough, the Town shall continue to pay the health insurance premium for three months after the date of death for the surviving spouse.
- (3) Upon the death of a full-time employee of the Town of Marlborough who has served more than 20 years with the Town of Marlborough, the Town shall continue to pay the health insurance premium until the age of 65 of the surviving spouse as provided in § 29-11.
- (4) In the event that the surviving spouse is entitled to paid health benefits from his or her employer other than employment with the Town of Marlborough, Town paid health benefits shall be denied.
- (5) In the event the surviving spouse remarries, Town paid health insurance shall expire 30 days thereafter.

B. Benefit eligibility.

- (1) Eligibility for retired employee:
 - (a) Ten years of service (or more) and employed by the Town for at least three months immediately prior to retirement.
 - (b) Full-time employee (30 hours per week minimum) or paid elected officials who meet eligibility requirements at the time of retirement.
 - (c) The employee is eligible to receive a retirement allowance from the retirement system administered by the State of New York, or one of its Civil Divisions, or, if not eligible to receive such retirement allowance, is at least 55 years of age.
- (2) All other definitions, rules, and requirements as described in the Ulster County Health Insurance Manual of Procedures.

C. Rates of contribution:

Lengt h of Servic e (years)	Town Emplo yee
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10	50%	50%
11	55%	45%
12	60%	40%
13	65%	35%
14	70%	30%
15	75%	25%
16	80%	20%
17	85%	15%
18	90%	10%
19	95%	5%
20	100%	0%

§ 29-18. Credit union.

Employees may join the Ulster Region Federal Credit Union by contacting the Supervisor's secretary or bookkeeper.

§ 29-19. Enrollment in state retirement plan.

All full-time employees must enroll with the New York State Retirement. This is mandated by law. A deduction of three percent (3%) will be made from their pay.

ARTICLE IV, Employee Responsibilities

§ 29-20. Requests for absences.

In requesting personal, sick or bereavement days, the employee should contact the central communications as early as possible. A daily list of absences will be provided to the Supervisor's office by the central communications dispatcher.

§ 29-21. Reviews.

Employees should expect annual reviews of their work performance by the appropriate department head.

§ 29-22. Conformance with work hours. [Amended 1-18-1995]

Employees are to conform to work hours set by the Town Board to insure that all Town offices are available to the public from 8:00 a.m. to 4:00 p.m., Monday through Friday.

ARTICLE V, Additional Benefits

§ 29-23. Jury duty.

- A. When an employee is called for jury duty or must act as a witness for the town, ordinarily time off with pay will be granted. Employees are expected to report for work if the jury duty does not require their full-time service.
- B. Payment received for jury duty is to be paid to the town.

§ 29-24. Leave without pay.

Regular full-time employees may request leave without pay for special circumstances and with the approval of their department head and the Town Supervisor. The purpose of such leave would include extended illness or extended vacation, not to exceed three (3) months.

§ 29-25. Maternity leave.

Maternity leave will be granted without pay, but with reinstatement in the job, if desired, within six (6) weeks after termination of pregnancy.

§ 29-26. Sick leave.

Sick leave is time off, with pay, for periods of illness or incapacity resulting from nonoccupational illness or injury, or medical treatment. Department heads or the Town Supervisor must have an affidavit signed by the attending physician. Any reimbursement will be given to the town.

§ 29-27. Military training.

Full-time employees will be granted ten (10) days, with pay, for annual military training. Pay for any military leave or training beyond ten (10) days can be made at the discretion of the Town Board.

§ 29-28. Employee expenses.

The town will ordinarily pay all necessary expenses incurred by town employees who attend conferences, seminars, etc., related to their employment. The employees should request permission from the Town Board prior to the event [preferably one (1) month]. Requests for prepayment of expenses can be made or vouchers submitted for repayment with receipts attached.

§ 29-29. Emergency closings.

Employees shall be notified by telephoning the police dispatcher when town offices are to be closed for inclement weather, etc.

§ 29-30. Grievances.

The Town Supervisor may be contacted for grievances, with the understanding that complete confidentiality will be respected. Recommendations will be made for a solution. If this informal meeting does not resolve the concern of the employee, the employee will send a written statement of the grievance to the Rules and Regulations Committee, which shall make recommendations to the Town Board. The Town Board's decision will be binding.

Chapter 33, PLANNING BOARD

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 by L.L. No. 3-1977 as Ch. 27, Art. I, of the 1976 Code of the Town of Marlborough; amended in its entirety 8-22-1994 by L.L. No. 2-1994. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

- Defense and indemnification -- See Ch. 9.**
- Code of Ethics -- See Ch. 13.**
- Environmental quality review -- See Ch. 89.**
- Subdivision of land -- See Ch. 134.**
- Zoning -- See Ch. 155.**

§ 33-1. Establishment; membership; purpose.

The Town Board of the Town of Marlborough, in accordance with § 271 of the Town Law of the State of New York, shall appoint a Planning Board of seven members, to recommend to said Town Board such actions it may deem necessary to further the orderly development of the Town of Marlborough and to suggest a plan or plans to best utilize the area within the Town, both now and in the foreseeable future, so that the rights, privileges, health and safety of its citizens may be protected and guaranteed and with the specific goal of a more attractive, desirable and progressive Town.

§ 33-2. Compensation.

The members of the Planning Board shall receive such compensation as provided by the Town Board.

§ 33-3. Training and attendance requirements. [Added 9-28-1998 by L.L. No. 3-1998^{19EN}]

A. Within one year after initial appointment, a Planning Board member shall attend a

- training program at an appropriate level relating to the duties of Planning Board members, approved in the manner herein provided.
- B. All other Planning Board members shall attend training programs within one year of the date of the effect of this section, approved in the manner herein provided.
 - C. All Planning Board members, after the first year of the enactment of this section or after a member's initial appointment, shall attend annual training programs related to the function of said Board.
 - D. After discussion and consultation with the Town Supervisor, the Planning Board Chairperson shall advise Planning Board members of approved programs to satisfy the requirements of Subsections A, B and C. Planning Board members shall be required to attend an annual minimum of three hours of training program(s) per year. The Planning Board Chairperson shall, from time to time as appropriate, consult with the Town Supervisor and advise Planning Board members of the availability of additional programs as they arise. [Amended 10-9-2001 by L.L. No. 3-2001]
 - E. The Planning Board Chairperson shall choose programs which relate to the duties of Planning Board members. These may include courses, workshops or training programs sponsored by groups such as the New York State Association of Towns, the New York State Department of State, certified training providers, the New York State Department of Environmental Conservation, the Ulster County Planning Department, the New York State Planning Federation or other appropriate entities as designated by the Planning Board Chairperson in consultation with the Town Supervisor. [Amended 10-9-2001 by L.L. No. 3-2001]
 - F. All training provided pursuant to this section shall be at Town expense.
 - G. The Planning Board Chairperson shall cause notice of Planning Board members' compliance with these requirements to be entered into the minutes of the Planning Board as the official record of the Planning Board. The Planning Board Chairperson may require proof of attendance. [Amended 10-9-2001 by L.L. No. 3-2001]
 - H. Each Planning Board member shall be required to attend 75% of any and all regularly scheduled Planning Board meetings and work sessions each year and 75% of any and all special meetings called by the Planning Board. Attendance at any training program does not count toward attendance at or for a Planning Board meeting, work session or special meeting.
 - I. Noncompliance with minimum requirements relating to training and/or attendance shall be deemed a proper cause for removal from office. A Planning Board member who fails to attend the programs as provided in this section or who fails to meet the minimum attendance requirement as provided in this section and specified pursuant to the resolutions promulgated thereunder shall be subject to removal following the procedures set forth in Town Law § 271.

Chapter 35, POLICE DEPARTMENT

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 by L.L. No. 3-1977 as Ch. 29 of the 1976 Code of the Town of Marlborough. Amendments noted where applicable.]

§ 35-1. Department established. ^{20EN}

Pursuant to Article 10, § 150, of the Town Law of the State of New York, the town hereby establishes a Police Department.^{21EN}

§ 35-2. Powers retained by Town Board.

The powers conferred upon the Town Board under § 151, Qualifications, § 152, Promotion, § 153, Transfers, § 154, Administration, § 154-a, Physical examinations, § 155, Discipline and charges, § 156, Effect of resignation, and § 157, Absentee leave, shall remain with the Town Board in lieu of the appointment of a Police Commission.

Chapter 38, PURCHASING

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, 5-11-1992; Art. II, 5-28-1992. Amendments noted where applicable.]

GENERAL REFERENCES

Investment policy -- See Ch. 18.

ARTICLE I, Procurement Policy [Adopted 5-11-1992]

§ 38-1. Establishment of policies and procedures.

Pursuant to § 104-b of the General Municipal Law, procurement policies and procedures are as follows.

§ 38-2. Procedures for determining whether procurements are subject to bidding.

The procedures for determining whether a procurement of goods and services is subject to competitive bidding and documenting the basis for any determination that competitive bidding is not required by law are as follows:

- A. Determine whether the procurement is a purchase contract or a contract for public works.
- B. Formal competitive bidding is required for all purchase contracts above ten thousand dollars (\$10,000.) and contracts for public works above twenty thousand dollars (\$20,000.). [Amended 6-13-2005 by L.L. No. 1-2005]
 - (1) The Town of Marlborough requires that certain public works contracts have an approved apprenticeship agreement pursuant to NYS Labor Law § 816-b. Apprenticeship agreements shall be required for contractors awarded bids over \$250,000 and for subcontractors awarded contracts over \$30,000.
 - (2) This provision shall not apply to contracts awarded under emergency conditions as defined under New York State law and § 38-4, Emergencies, of the Town of Marlborough Code.
- C. Purchasing and procurement practices for the Town of Marlborough at the following thresholds are:

- (1) Purchase contracts:
 - (a) Under one hundred dollars (\$100.): verbal.
 - (b) One hundred dollars (\$100.) to five hundred dollars (\$500.): verbal, three (3) quotes.
 - (c) Five hundred dollars (\$500.) to one thousand dollars (\$1,000.): verbal, three (3) quotes.
 - (d) One thousand dollars (\$1,000.) to five thousand dollars (\$5,000.): written, three (3) quotes.
 - (e) Five thousand dollars (\$5,000.) to nine thousand nine hundred ninety-nine dollars (\$9,999.): written, three (3) quotes.
 - (f) Emergencies: written, three (3) quotes, if circumstances permit.
 - (g) Insurance: written, three (3) quotes.
 - (h) Professional services: three (3) responses to request for proposals.
 - (i) True leases: exempt.
 - (j) Equipment from other governments: exempt.
 - (k) Sole sources: exempt.
 - (l) Procurement from Department of Corrections: exempt.
- (2) Contracts for public works:
 - (a) Under one thousand dollars (\$1,000.): verbal, three (3) quotes.
 - (b) One thousand dollars (\$1,000.) to five thousand dollars (\$5,000.): verbal, three (3) quotes.
 - (c) Five thousand dollars (\$5,000.) to ten thousand dollars (\$10,000.): written, three (3) quotes.
 - (d) Ten thousand dollars (\$10,000.) to nineteen thousand nine hundred ninety-nine dollars (\$19,999.): written, three (3) quotes.

§ 38-3. Procurements below bidding thresholds.

The following policies apply to all procurements below the competitive bidding thresholds. Town officials authorized to make purchases shall maintain documentary evidence that regulations established herein are maintained.

- A. One (1) verbal quote: telephone log listing the date, the time, the name of the vendor, the telephone number called, the item and the price quoted.
- B. Three (3) verbal quotes: telephone log listing the date, the time, the name of the vendor, the telephone number called, the item and the price quoted.
- C. Written quotes.
 - (1) The statement shall include the date, the name of vendor, the description of the purchase contract or contract for public works, the price quoted and the signature of the owner or other vendor agent.
 - (2) Written quotes shall be copied for the Town Supervisor's office.

§ 38-4. Emergencies.

- A. A statement that an emergency procurement makes it necessary to forego documentation evidence contained herein shall include the following as soon as circumstances permit: the time of the emergency, nature of the emergency and threat imposed.

- (1) Describe the threat to life, health or property.
 - (2) Notify the Town Supervisor.
 - (3) File a statement for the Town Supervisor's records.
- B. Emergencies not restricted by time factors or imposing a threat to life, health or property shall conform to §§ 38-2C(1)(f) and 38-3C of this Article.

§ 38-5. Procurement from county, state or Department of Corrections.

Procurement from the state, the county or the Department of Corrections requires a statement that a comparison was made from other than state or county sources and that costs are favorably comparable.

§ 38-6. Requests for proposals.

Acceptance may be based on factors other than quoted price as follows:

- A. Superior resumes.
- B. Locality experience.
- C. Staffing and suitability for needs.
- D. Experience from former town projects.
- E. Rate of success in preparing reports needed for grant applications.
- F. Specialty experience in field of project request.

§ 38-7. Sole source procurement.

In the event that procurement is considered for an item protected by a patent or is a monopoly, the following is required:

- A. A statement why the sole source item is an absolute necessity.
- B. Electric, natural gas, telephone, television cable service, etc., is expected.

§ 38-8. Awards to other than lowest responsible offer.

When determining whether other than the lowest responsible bidder has made a better offer, the reasons such an award furthers the purposes of General Municipal Law § 104-b, as set forth herein above, shall be documented as follows:

- A. Recorded facts that the vendor with the lowest dollar offer has a poor performance on making deliveries of goods and a documented complaint about goods of an inferior quality.
- B. Documented evidence that a vendor offering a service contract has a poor performance record.
- C. Complaints about goods or services shall be made, in writing, to the vendor and kept on file.
- D. Complaint letters to vendors shall be copied for the Town Supervisor's files.

§ 38-9. Items excepted from policies and procedures by Town Board.

The Town Board sets forth the following circumstances when or types of procurements for which, in the sole discretion of the Town Board, the solicitation of alternative

proposals or quotations will not be in the best interest of the Town of Marlborough:

- A. Emergencies affecting health, safety or damage to buildings or property.
- B. Procurement of necessary sole source items.
- C. Professional service requiring confidentiality.

§ 38-10. Annual review.

The Town Board shall annually review these policies and procedures. The budget officer shall be responsible for conducting an annual review of the procurement policy and for evaluation of the internal control.

- A. The budget officer is hereby directed to prepare standardized forms for use by department heads to record oral records, as required in § 38-2, and necessary in the maintenance and evaluation of interior control.
- B. Department heads are directed to file with the budget officer written comments regarding any difficulty with these procedures.

§ 38-11. Unintentional failure to comply.

The unintentional failure to fully comply with the provisions of General Municipal Law § 104-b shall not be grounds to void action taken or give rise to a cause of action against the Town of Marlborough or any officers or employees thereof.

ARTICLE II, Purchase Order Policy [Adopted 5-28-1992]

§ 38-12. Purchase order required.

Effective immediately, all purchases made by the Town of Marlborough and its employees will be accompanied by a purchase order generated from the office of the Supervisor.

§ 38-13. Issuance by department heads.

The Supervisor is permitted to delegate specific department heads to issue purchase orders for their respective departments only, and said department heads will submit said purchase orders to the office of the Supervisor on a monthly basis.

§ 38-14. Notification of vendors.

The Supervisor shall notify all vendors of the Town of Marlborough of the purchase order policy and make said vendors aware of the fact that vouchers will not be processed without the proper purchase order attached.

Chapter 41, RECORDS

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, at time of adoption of Code (see Ch. 1, General Provisions, Art. I); Art. II, 7-9-1990 as L.L. No. 2-1990. Amendments noted where applicable.]

ARTICLE I, Public Access to Records [Adopted at time of adoption of Code^{22EN}]

§ 41-1. 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. These regulations provide information concerning the procedures by which records may be obtained.
- C. Personnel shall furnish to the public the information and records required by the Freedom of Information Law (§ 84 et seq. of the Public Officers Law), as well as records otherwise available by law.
- D. Any conflict among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

§ 41-2. Records access officer.

- A. The Town Board of the Town of Marlborough is responsible for ensuring compliance with the regulations herein and designates the Town Clerk and, in his or her absence, the Deputy Town Clerk as records access officer, who shall be responsible for ensuring appropriate agency response to public requests for access to records. The designation of a records access officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.
- B. The records access officer shall ensure that personnel:
 - (1) Maintain an up-to-date subject matter list.
 - (2) Assist the requester in identifying requested records, if necessary.
 - (3) Upon locating the records, take one (1) 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, in accordance with § 41-8; 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 of Marlborough is not the custodian for such records; or

- (b) The records of which the Town of Marlborough is a custodian cannot be found after diligent search.

§ 41-3. Location of records.

Records shall be available for public inspection and copying at the office of the Town Clerk, Town Building, Milton, New York.

§ 41-4. Hours for inspection.

Requests for public access to records shall be accepted and records produced during all hours that the Clerk's office is regularly open for business.

§ 41-5. Requests for access.

- A. A written request may be required, but oral requests may be accepted.
- B. A response shall be given regarding any request reasonably describing the record or records sought within five (5) business days of receipt of the request.
- C. A request shall reasonably describe the record or records sought. Wherever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.
- D. If the records access officer does not provide or deny access to the records sought within five (5) business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten (10) business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed.

§ 41-6. Subject matter list.

- A. The records access officer shall maintain a reasonably detailed current list by subject matter of all records in his or her 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.

§ 41-7. Denial of access; appeals.

- A. Denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.
- B. If requested records are not provided promptly, as required in § 41-5D of this chapter, such failure shall also be deemed a denial of access.
- C. The Town Board shall hear appeals for denial of access to records under the Freedom of Information Law. Such appeals shall be made within thirty (30) days of a denial.

- D. The time for deciding an appeal by the body designated to hear appeals shall commence upon receipt of a written appeal identifying:
 - (1) The date of the appeal.
 - (2) The date and location of the request for records.
 - (3) The records to which the requester was denied access.
 - (4) Whether the denial of access was in writing or due to failure to provide records promptly, as required by § 41-5D.
 - (5) The name and return address of the requester.
- E. The body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to the Committee on Open Government, Department of State, 162 Washington Avenue, Albany, New York 12231.
- F. The Town Board shall inform the appellant and the Committee on Open Government of its determination, in writing, within ten (10) business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth in Subsection E of this section.

§ 41-8. Fees.

- A. There shall be no fee charged for:
 - (1) Inspection of records.
 - (2) Search for records.
 - (3) Any certification pursuant to this chapter.
- B. The fee for photocopies not exceeding eight and one-half by fourteen (8 1/2 x 14) inches is twenty-five cents (\$0.25) per page.
- C. The fee for copies of records not covered by Subsections A and B 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 town, such as operator salaries).

§ 41-9. Public notice.

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

ARTICLE II, Records Management [Adopted 7-9-1990 as L.L. No. 2-1990]

§ 41-10. Program established; Records Management Officer.

There shall be a records management program established under the aegis of the Town Board and headed by a Records Management Officer (RMO). The Officer will be responsible for administering the noncurrent and archival public records and storage areas for the Town of Marlborough in accordance with local, state and federal laws and guidelines. The RMO will appoint a designee, if needed.

§ 41-11. 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 Town of Marlborough. The Records Management Officer shall:

- A. 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 archival material. Classification shall be as follows:
 - (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 warrant their permanent retention.
 - (3) Records not subject to disposition according to state law.
- B. Establish guidelines for proper records management in any department or agency of the Town of Marlborough in accordance with local, state and federal laws and guidelines.
- C. 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. Operate a records management center for the storage, processing and servicing of all noncurrent and archival records for all Town of Marlborough departments and agencies.
- E. Establish a Town of Marlborough archives and perform the following functions:
 - (1) Advise and assist the Town of Marlborough departments in reviewing and selecting material to be transferred to the Town of Marlborough 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 Town of Marlborough records, but which have associational value to the locality or a close relationship to the existing archival collection. Such collecting 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.

§ 41-12. 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 local government counsel, the fiscal officer, members of the Town Board, the local historian and other interested citizens of the community. The Board shall meet periodically and have the following duties:

- A. Provide advice to the Records Management Officer on the development of the records management program.
- B. Review the performance of the program on an ongoing basis and propose changes and improvements.
- C. Review retention periods proposed by the Records Management Officer for records not covered by state archives' schedules.
- D. 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.

§ 41-13. Custody of records.

- A. The Town Clerk's office is designated as the legal custodian of all 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.

§ 41-14. Recovery of records.

The legal counsel for the Town of Marlborough may take steps to recover local government records which have been alienated from proper custody and may, when necessary, institute actions of replevin.

§ 41-15. Disposal of records.

No records shall be destroyed or otherwise disposed of by a department of the Town of Marlborough 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.

§ 41-16. 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 the Advisory Board 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 Town of Marlborough business.

RECORDS CENTER -- An establishment maintained by the Town of Marlborough 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 Town of Marlborough, 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; or
- (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 agency to another agency, upon request.

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 agency for official use or to the public.

Chapter 47, VEHICLES, TOWN-OWNED

[HISTORY: Adopted by the Town Board of the Town of Marlborough 1-28-1991. Amendments noted where applicable.]

GENERAL REFERENCES

Officers and employees -- See Ch. 26.

Personnel policies -- See Ch. 29.

Smoking -- See Ch. 123.

§ 47-1. Employees authorized to use vehicles. ^{23EN}

The Town Board authorizes the following employees to use town-owned vehicles:

- A. Highway Superintendent.
- B. Highway Department Foreman.
- C. Building Inspector.
- D. Dog Control Officer.
- E. Water Superintendent.
- F. Police Chief.

§ 47-2. Use of vehicles limited.

The use of town-owned vehicles is strictly limited to the direct conduct of town business, and passengers in these vehicles must be on town business, and unauthorized use shall cause an immediate loss of the use of said vehicle until adequate determination has been made by the Rules and Regulations Committee of the Town Board.

§ 47-3. Use of private vehicles.

- A. Also, private vehicle use shall be prohibited unless prior authorization is received from the Town Board.
- B. Use of personal vehicles for use of conducting town business must be approved by the Town Board and also itemized in order for mileage payment to be approved at the rate set by resolution of the Town Board.^{24EN}

§ 47-4. Provision of copies.

The Town Clerk shall send a copy to each of the above-named.

**PART II
GENERAL LEGISLATION**

Chapter 53, ALARM SYSTEMS

[HISTORY: Adopted by the Town Board of the Town of Marlborough 12-11-2000 by L.L. No. 3-2000; amended in its entirety 11-25-2002 by L.L. No. 6-2002. Subsequent amendments noted where applicable.]

§ 53-1. Title.

This chapter shall be known and be cited as the "Alarm System Local Law of the Town of Marlborough, New York."

§ 53-2. Legislative intent and purpose.

The Town of Marlborough Police Department has recorded many false burglar, holdup, fire and emergency alarms emanating from automated devices. These signals require that police and other emergency services respond to false alarms, exposing them and the public to unnecessary hazards and risks, wasting taxpayer funds and depriving other citizens of needed emergency service. This chapter is intended to regulate alarm systems, thereby reducing the number of false alarms and saving taxpayer funds and protecting other citizens.

§ 53-3. Definitions.

The following definitions pertain to this chapter:

ALARM SYSTEM -- Any device which, when activated, transmits, directly or

indirectly, a signal to Police Headquarters or to a private central alarm station or produces any audible, visual or telephone signal to which the Police Department, Fire Department or ambulance/medical service is expected to respond.

DIALER ALARM -- A telephone interfaced device that automatically connects to Police Headquarters and transmits any signal or impulse indicating that an alarm system has been activated or an emergency condition exists within the Town of Marlborough.

FALSE ALARM -- The activation of the alarm system necessitating response by the Town of Marlborough Police Department, any fire department or ambulance/medical service where an emergency does not exist because of mechanical failure, malfunction, improper installation, failure to maintain the system. and/or premises, negligence or otherwise. False alarms do not include alarms caused by violent weather conditions, public utility malfunctions or other outside interference beyond the control of the owner or his agents (see § 53-10D).

KEYHOLDER -- Owner, tenant and/or other party principally responsible for the alarm system.

PERSON -- A natural person, firm, partnership, association, limited-liability company (LLC), limited-liability partnership (LLP), corporation or any other entity licensed to operate in the State of New York, or representative or agent of said entities, who is the owner or lessee of an alarm system and/or the owner of the premises on which it is located.

POLICE CHIEF -- The Chief of the Police Department of the Town of Marlborough.

TOWN -- The Town of Marlborough.

§ 53-4. Permit required; exceptions.

- A. No person in the Town of Marlborough shall operate, maintain, monitor or install an alarm system without first obtaining a permit under this chapter.
- B. Excluded from the provisions of this chapter are any alarm systems installed in a motor vehicle or any device designed to alert the occupants of a building of an emergency condition therein and which does not transmit, directly or indirectly, a signal to Police Headquarters or to a private central alarm station or produce any audible or visual or telephone signal to which the Police Department, Fire Department and/or ambulance/medical service is expected to respond.
- C. Each permit shall be renewed annually, whenever a keyholder is changed or if the alarm system is substantially changed to affect operation of the alarm system, including but not limited to a change in alarm company. Any change in a system requiring a new application shall be considered a new permit.
- D. The permit holder shall be responsible for operation of the alarm System and liable for renewal, penalties and all other aspects of the chapter.

§ 53-5. Application for permit.

- A. An application for a permit under this chapter shall be filed with the Chief of the Town of Marlborough Police Department annually on forms supplied by the Town, together with a nonrefundable application fee of \$20 made payable to the Town Clerk. Said application shall set forth the following:
 - (1) Name, address and telephone number of both the installers of the system and the

- person or entity on whose premises the system will be operated, maintained, monitored or installed.
- (2) The location of, and where on, the premises the alarm system is proposed to be installed or has already been installed, prior to the effective date of this chapter, including postal street address and directions from a main road.
 - (3) The type of emergency the alarm system is designed to detect.
 - (4) The name, address and telephone number of at least two persons who can be notified and will be available to come to the premises on a twenty-four-hour daily basis if and when the Town Police Department receives a signal, message or warning from said alarm system. This list shall be updated annually, whenever a keyholder is changed or if the alarm system is substantially changed to affect operation of the alarm system. Further, on the application should be all of the information that the Chief of Police needs to approve the application as set forth under Subsection B(1), (2) and (3), as well as any other information or documentation requested by the Chief of Police.
 - (5) The applicant shall agree that if the person to be notified either refuses to come to the premises upon request of the Town Police Department or cannot be reached within a reasonable time by telephone or otherwise, the Town Police Department may, without any liability for any changes, claims or causes of action as a result of disconnection, or any liability as a result of responding to an alarm or alarms, do either of the following: disconnect the system itself, if possible. or contact the installer to disconnect the system.
- B. The Chief of the Police Department, or his designee, shall approve such application if he finds that:
- (1) The use of the alarm system to transmit a signal, message or warning to the Town Police Department will not interfere with the orderly transaction of Town business.
 - (2) The installer of the system maintains a licensed service organization to repair, maintain or otherwise service alarm systems sold or leased by him. The service organization concerned must be licensed as per Article 6D, § 69, of the New York State General Business Law.
 - (3) The alarm system meets the following minimum requirements:
 - (a) The alarm system shall be equipped with an automatic audible signal cut-off device so that the maximum time any alarm shall cause an externally audible signal to be emanated does not exceed 15 minutes per activation.
 - (b) The alarm system shall be equipped with a standby power source sufficient to maintain the system in a state of readiness for at least six hours in the event of a power failure.
 - (c) If equipped, automatic dialer devices, upon a single stimulus, shall not exceed two separate calls to the Police Department, and no such call shall exceed one minute in duration. There must be at least a two-minute interval between calls, with the second call clearly identified as such.
 - (d) The contents of any recorded message to be transmitted to the Police Department must be intelligible and in a format approved by the Chief of Police as appropriate for the type of emergency being reported.
 - (e) Automatic dialer devices shall be connected to the Police Department only

via a telephone number designated by the police for this purpose.

- C. The Police Chief, or the designee, may impose such other and further reasonable conditions on the granting of said permit as he may deem necessary or proper in carrying out the provisions, legislative intent and purposes of this chapter.

§ 53-6. Denial, suspension or revocation of permit.

Any applicant whose application for a permit has been denied, and any person whose permit has been suspended or revoked, may appeal such denial, suspension or revocation in writing to the Town Board of the Town of Marlborough within 30 days after such denial, suspension or revocation and may appear before such Town Board at a time and place to be determined by the Town Board in support of his or its contention that the permit should not have been denied, suspended or revoked. The decision of the Town Board shall be final.

§ 53-7. Existing systems.

All persons operating, maintaining or monitoring an existing alarm system who are not in compliance with the provisions of this chapter shall be considered to be in violation and subject to penalties under this chapter.

§ 53-8. Cancellation codes.

A cancellation code will be available through the Police Department for every alarm user permit. The code will allow the alarm user the ability to abort any alarm activation. Alarm signals that are properly aborted by code prior to rapid response by emergency personnel will not be charged against the alarm user as a false alarm.

§ 53-9. Change of location.

If the location of police headquarters should be changed at any time, the Town shall not be responsible for any expense incurred by the owner or lessee or business licensee or alarm agent for moving alarm systems or reconnecting such systems to the relocated police headquarters.

§ 53-10. Penalties for false alarms.

- A. Upon the second false alarm, in any one calendar year, the holder of the permit shall be sent written notice, by certified or registered mail, from the Police Chief of possible fines to be levied upon all subsequent false alarms.
- B. Upon the third false alarm in any one calendar year, the holder of the permit shall be assessed a fine of up to \$50 by the Town of Marlborough, and, for each subsequent false alarm thereafter, the fee may be increased up to a fee of \$200 per violation, until reaching the 10th violation.
- C. Upon receiving a 10th false alarm, as well as for all subsequent violations in any one calendar year, the permit holder may be assessed a fine of up to \$2,000 for each such violation.

- D. The Police Chief shall have the authority to not count a false alarm or alarms from the annual total for good cause shown by the person in writing. The permit holder will have the burden of proof for conditions beyond the permit holder's control such as: violent weather conditions, public utility malfunctions or other such interferences. The Police Chief shall maintain records concerning the reasons any such alarm was disregarded.

§ 53-11. Penalties for offenses.

- A. In addition to the suspension or revocation of a license or permit, a violation of this chapter may subject the violator to the following fines and penalties:
- (1) Operating, maintaining, monitoring or installing an alarm system without a permit: a fine of up to \$100 may be imposed as well as an additional \$20 each day after receiving the initial violation until such time that a permit application has been approved.
 - (2) Operating, maintaining, monitoring or installing an alarm system after a permit has been suspended or revoked: a fine of \$250 per day may be imposed.
- B. Each day that a violation continues shall constitute a separate offense.

§ 53-12. Construction with other laws.

This chapter is not intended to contradict or contravene any law, rule, regulation, restriction or proscription of the United States, State of New York, County of Ulster or Town of Marlborough, which may now or may hereafter pertain, and accordingly, such legislation and regulations shall be deemed continued in full force and effect and unaffected by this chapter.

§ 53-13. Severability.

If any part of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this chapter.

§ 53-14. When effective.

This chapter shall become effective upon filing with the New York State Secretary of State's office.

Chapter 55, ALCOHOLIC BEVERAGES

[HISTORY: Adopted by the Town Board of the Town of Marlborough 12-28-1978 as L.L. No. 4-1978. Amendments noted where applicable.]

GENERAL REFERENCES

- Game rooms -- See Ch. 58, Art. I.**
Bingo and games of chance -- See Ch. 64.
Drugs -- See Ch. 82.

§ 55-1. Definitions.

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

ALCOHOLIC BEVERAGES -- Includes alcohol, spirits, liquor, wine, beer, hard cider and every liquid, patented or not, containing alcohol, spirits, wine or beer, capable of being consumed by a human being.

PUBLIC PLACE -- A place to which the public or a substantial group of people has access and includes, but is not limited to, highways, sidewalks, transportation facilities, schools and playgrounds, excluding, however, premises licensed to sell alcoholic beverages under the Alcoholic Beverage Control Law of the State of New York and the Cluett Schantz Memorial Park.

§ 55-2. Consumption or intention to consume. ^{25EN}

It shall be unlawful for any person to drink or otherwise consume alcoholic beverages or have in his possession or carry an open container of an alcoholic beverage on or in any public place in the town with intent to consume said alcoholic beverage in said public place.

§ 55-3. Penalties for offenses. ^{26EN}

Upon conviction of a violation of this chapter, a person or persons shall be punishable by a fine of not more than two hundred fifty dollars (\$250.) or by imprisonment for not more than fifteen (15) days, or both.

Chapter 58, AMUSEMENT DEVICES

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, 1-18-1982 as L.L. No. 1-1982. Amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages -- See Ch. 55.
Bingo and games of chance -- See Ch. 64.
Zoning -- See Ch. 155.

ARTICLE I, Game Rooms [Adopted 1-18-1982 as L.L. No. 1-1982]

§ 58-1. Definitions.

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

AMUSEMENT GAME -- Any mechanical, electric or electronic device used or designed to be operated for entertainment or as a game by the insertion of money, coins, tokens or other articles or by paying money to have it activated. This definition does not include:

- A. A jukebox.
 - B. Rides.
 - C. Any device maintained within a residence for the use of the occupants or guests.
 - D. Any device, the possession or use of which is prohibited by law.
- GAME ROOM -- A building or place containing five (5) or more amusement games.
- OWNER -- A record owner, contract purchaser, lessee, assignee, bailee, receiver or trustee.
- PERSON -- One (1) or more individuals, a corporation, partnership, association, trust or firm and any trustee, receiver or assignee.
- TOWN -- The Town of Marlborough.

§ 58-2. License required; classes of premises.

No person shall maintain or operate a game room in the town unless it is licensed under this Article. Licenses shall be issued according to the class of the premises where the game room is located.

- A. Class One premises are those where the game room is accessory to a principal permitted use, as indicated in Chapter 155, Zoning, of the Code of the Town of Marlborough, or a nonconforming use, as described in Article VI of said chapter.
- B. Class Two premises are those where the game room is a principal business enterprise.

§ 58-3. Application for license; location and other restrictions.

- A. An application for a game room license shall be made to the Town Clerk on forms prepared and containing information prescribed by the Town Clerk.
- B. Upon receipt of an application for a game room license, the Town Clerk shall refer it to:
 - (1) The Building Inspector, to determine whether the premises comply with all applicable laws, codes, rules and regulations. For that purpose, the Building Inspector shall have the right to enter upon and inspect the premises during normal business hours.
 - (2) The Chief of Police, to cause an investigation to be made of the background of the owner and the operator of the game room.
- C. Game room locations.
 - (1) Class One licenses may be issued for premises classified commercial under Chapter 155, Zoning.
 - (2) Class Two licenses may be issued in the C-1 Commercial District as a special use, pursuant to Chapter 155, Zoning, of this Code.
- D. Game rooms on Class Two premises are not permitted within rooms or space licensed for on-premises consumption of alcoholic beverages or within connected rooms or appurtenant space.
- E. Except as provided in the New York Correction Law, Article 23-A, no game room license shall be issued to or held by any person who has been convicted of a crime or by any corporation, partnership or association, a member, officer, director or holder of the stock of which has been convicted of a crime.

§ 58-4. Review and approval of application; issuance of license; hearing.

- A. After review of the application has been completed, the Town Clerk shall forward it, with his report and the recommendations of the Building Inspector and the Chief of Police, to the Town Board for its approval.
- B. In approving a license, the Town Board may establish conditions to promote and protect the health, safety and general welfare of the town and its inhabitants.
- C. After approval by the Town Board, the Town Clerk shall issue a game room license upon payment of the license fee established in § 58-6, less the amount of the application fee. The license shall state:
 - (1) The number of amusement games permitted in the game room.
 - (2) The maximum number of persons permitted in the game room at any time.
 - (3) Any other conditions or restrictions imposed by the Town Board.
 - (4) The class thereof according to the premises licensed.
- D. Upon request by the applicant, the Town Clerk shall schedule a hearing for the first Town Board meeting for which five (5) days' notice, published in the official newspaper, can be given if the Town Board denies the application or approves it with limits or conditions not satisfactory to the applicant.

§ 58-5. Operation.

- A. The owner and operator of any game room shall comply with all provisions of law, ordinance, rule or regulation relating to the conduct of business and the use and maintenance of the premises.
- B. The owner and operator of any game room shall cause the game room license to be posted at all times in a conspicuous place on the premises.
- C. The owner and operator of any game room shall not permit a greater number of persons on the premises at any time than the capacity approved by the Town Board as set forth in the license.
- D. The owner and operator of any game room and the members, officers, directors and holders of the stock of any corporation, partnership or association owning or operating a game room shall be of good moral character.
- E. The owner and operator of any game room shall maintain good order on the premises at all times. The lack of good order on the premises of a game room shall include, but shall not be limited to, the following:
 - (1) Fighting and rowdy behavior.
 - (2) Possession or consumption of alcoholic beverages, except within Class One premises licensed by the state for on-premises consumption of those beverages.
 - (3) Gambling.
 - (4) Permitting the use of marijuana or any controlled substance, possession of which is prohibited by the New York Penal Law.
- F. The owner or operator of any game room shall not permit an amusement game therein to be played or operated after 10:00 p.m. by a person under the age of sixteen (16) unless accompanied by and under the supervision of a parent or other guardian over the age of twenty-one (21).
- G. The owner or operator of a game room shall not allow it to be open or used unless it is under the control of and supervision by a person at least eighteen (18) years of age

who shall ensure that it is operated in compliance with this Article.

- H. The owner and operator of a game room containing more than thirty (30) amusement games shall provide additional supervisory personnel, all of whom shall be at least eighteen (18) years of age, adequate to assure orderly operation of the game room at all times.
- I. The owner and operator of a game room on Class Two premises shall not allow it to be open or the amusement games therein played Monday through Saturday between the hours of 2:00 a.m. and 8:00 a.m. and on Sunday between the hours of 2:00 a.m. and 12:00 noon.
- J. The owner and operator of a game room shall not allow more amusement games than the number permitted in the license to be located therein at any time.
- K. The owner and operator of any game room shall not permit games to be played for prizes.

§ 58-6. Fees. ^{27EN}

- A. An application for a game room license shall be accompanied by a nonrefundable fee in an amount set by resolution of the Town Board. ^{28EN}
- B. The annual fee for a game room license shall be in an amount set by resolution of the Town Board. ^{29EN}

§ 58-7. Inspection of premises.

The premises of all game rooms in the town, when open for the transaction of business, shall be subject to inspection by any peace officer, acting pursuant to his special duties, or any police officer.

§ 58-8. Expiration of licenses; renewal.

Game room licenses shall expire one (1) year from the date of issuance. Applications for renewal of game room licenses shall be submitted at least thirty (30) days before the expiration of the existing license.

§ 58-9. Revocation of license.

The Town Board may revoke a game room license for cause after a public hearing.

§ 58-10. Penalties for offenses.

- A. Any person who violates any provision of this Article shall be guilty of an offense punishable by a fine not exceeding two hundred fifty dollars (\$250.) or imprisonment for fifteen (15) days, or both.
- B. Each day that a violation exists, occurs or continues shall constitute a separate offense.

Chapter 60, ANIMALS

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, 3-28-1977 by L.L. No. 3-1977 as Ch. 55 of the 1976 Code of the Town of Marlborough. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning -- See Ch. 155.

ARTICLE I, Dogs [Adopted 3-28-1977 by L.L. No. 3-1977 as Ch. 55 of the 1976 Code of the Town of Marlborough]

§ 60-1. Purpose.

The purpose of this Article shall be to promote the health, safety, morals and general welfare of the town, including the protection and preservation of the property of the town and its inhabitants and of the peace and good order, by adopting and enforcing certain regulations and restrictions on the privileges of the owners of dogs and the rights and privileges of the residents of the town and by imposing restrictions upon the keeping and running at large of dogs within the area of public assembly within the town.

§ 60-2. Definitions.

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

DOG -- Any dog of either sex and of any age.

DOG CONTROL OFFICER -- Any person appointed by the Town Board to assist in the enforcement of this Article. [Amended 2-15-1982 by L.L. No. 2-1982]

OWNER -- Includes any person owning, harboring or keeping a dog within the limits of this town and the parent, guardian or other adult person with whom a minor owner of a dog resides.

§ 60-3. Running at large restricted.

- A. No person who owns, possesses or harbors a dog shall allow or permit such dog to run at large in the town unless effectively restrained by a leash not exceeding eight feet in length or unless accompanied by its owner or other responsible person in full control of such dog.
- B. For the purpose of this section, "full control" means that the dog will respond to the command, order or signal of the owner or other responsible person and that the owner or other responsible person shall at all times, by his command, order or sign, prevent his dog from bothering, worrying, annoying, chasing or barking at any person or animal.
- C. No person who owns, possesses or harbors a female dog shall permit such dog to be outside a building or fenced enclosure in time of heat.

§ 60-4. Where running at large permitted.

- A. A dog shall be permitted to run at large in the town while engaged in the sport of hunting, field training or field trials and accompanied by the owner or other responsible person.
- B. A dog shall be permitted to run at large on the property of the owner or other person harboring the same, provided that:
 - (1) The dog is not dangerous.
 - (2) The dog does not chase or bark at persons, automobiles, bicycles or moving vehicles, cause unreasonable disturbance in the neighborhood or imperil the safety or disturb the comfort and repose of any person.

§ 60-5. Additional restrictions.

- A. Permitting dog to damage property prohibited. No person who owns a dog shall permit or suffer such dog to damage or destroy property of any kind.
- B. Keeping of persistently barking dog prohibited. No person shall keep, suffer or permit to be kept on the premises occupied by such person any dog which, by its continual barking, howling or whining or other frequent or long-continued noises, shall unreasonably disturb the comfort or repose of any person.
- C. Sanitary requirements. No person who owns a dog shall permit the premises, structures or enclosures in which such dog is kept to be unclean or unsanitary.
- D. Leashing of certain dogs. No person shall suffer or permit to run at large any dog which has been ordered to be confined, but any such order shall not be deemed violated while such a dog is personally and effectively restrained by a leash not to exceed eight feet in length.
- E. Running at large on place of public assembly prohibited. No person owning, keeping, harboring or having the care, custody and/or control of any dog shall permit such dog to be at large on the grounds or on premises of places of public assembly unless restrained and under leash not exceeding eight feet in length.
- F. Keeping dog which runs in a pack prohibited. No person shall permit, keep or suffer to be kept any dog which runs at large in a pack or with a pack of other dogs.
- G. Kennels or dog hospitals. No person shall keep or maintain a kennel and/or hospital for the raising, breeding, boarding, care or treatment of dogs in the town unless the same are enclosed or housed in a suitable enclosure. [Amended 3-8-1999 by L.L. No. 4-1999]

§ 60-6. Dog Control Officer; appointment; powers and duties. [Amended 2-15-1982 by L.L. No. 2-1982]

The Town Board shall appoint a Dog Control Officer or Officers, as needed, pursuant to the appropriate statutes of the State of New York. It shall be the duty of such Dog Control Officer or Officers, as well as of any peace officer, when acting pursuant to his special duties, or of a police officer in the employ of the Town of Marlborough to enforce the appropriate provisions of this article and the Agriculture and Markets Law of the State of New York with respect to dogs in the town. The Dog Control Officer or Officers, as well as any peace officer, when acting pursuant to his special duties, or police officers in the employ of the Town of Marlborough shall seize any dog not restrained in violation of this article, as well as any dog or dogs otherwise required to be seized under and by virtue of

the Agriculture and Markets Law of the State of New York. All complaints concerning alleged violations of this article shall be communicated to the Dog Control Officer or Officers. All such complaints shall be investigated, and it shall be the duty of the Dog Control Officer or Officers, of any peace officer, when acting pursuant to his special duties, or of police officers in the employ of the Town of Marlborough, in an appropriate case, to proceed with civil or criminal enforcement of this article or any other provisions of the law hereto.

§ 60-7. Redemption of seized dog. [Amended 6-14-1999 by L.L. No. 5-1999]

- A. 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 following impoundment fees:
- (1) Twenty-five dollars for the first impoundment of any dog owned by that person, plus a kennel fee of \$12 per day for every day impounded.
 - (2) An impoundment fee of \$50 and a kennel fee of \$12 for each additional 24 hours or part thereof for the third and subsequent impoundments, within one year of the first impoundment, of any dog owned by that person.
 - (3) An impoundment fee of \$75 and a kennel fee of \$12 for each additional 24 hours or part thereof for the third and subsequent impoundments, within one year of the first impoundment, of any dog owned by that person.
- B. In addition to impoundment and kennel fees, after-hours pickup fees will be \$50. Normal pickup hours are 8:00 a.m. to 6:00 p.m., Monday through Friday.

§ 60-8. License fees. [Added 8-22-1994 by L.L. No. 2-1994]

The annual fee for each dog license issued shall be \$10 for an unspayed dog and \$5 for a spayed dog.

§ 60-9. Penalties for offenses. [Amended 8-22-1994 by L.L. No. 2-1994; 6-14-1999 by L.L. No. 5-1999]

An offense against this article shall be deemed a violation, and a person convicted of such offense shall be punishable by a fine of not more than \$25 and/or five days' imprisonment for each violation, except that where the person has violated this article within the preceding five years, the fine shall be not less than \$50 and/or 10 days' imprisonment, and where the person has committed two or more such violations within the preceding five years, the fine shall be not less than \$100 or imprisonment for not more than 15 days, or both.

Chapter 64, BINGO AND GAMES OF CHANCE

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, 3-28-1977 by L.L. No. 3-1977 as Ch. 43 of the 1976 Code of the Town of Marlborough; Art. II, 4-4-

1977 as L.L. No. 5-1977. Amendments noted where applicable.]

GENERAL REFERENCES
Amusement devices -- See Ch. 58.

ARTICLE I, Bingo [Adopted 3-28-1977 by L.L. No. 3-1977 as Ch. 43 of the 1976 Code of the Town of Marlborough]

§ 64-1. Conduct of games authorized; license required.

It shall be lawful for any authorized organization, upon obtaining a license therefor as provided by Article 14-H of the General Municipal Law, to conduct the game of bingo within the boundaries and territorial limits of the Town of Marlborough, subject to the provisions of said Article and subject to the provisions of the state lottery laws enacted, amended and ordained.

§ 64-2. License fee.^{30EN}

The license fee for any such license shall be the sum of eighteen dollars and seventy-five cents (\$18.75) for each occasion upon which any games of chance are to be conducted under said license, to be disposed of as provided by said Article 14-H of the General Municipal Law.

§ 64-3. Conduct of games restricted to licensees.

No person, firm, association, corporation or organization other than a licensee under the provisions of Article 14-H of the General Municipal Law shall conduct such game or shall lease or otherwise make available for conducting bingo a hall or other premises for any consideration whatsoever, direct or indirect.

§ 64-4. Payment of percentage of receipts as rent prohibited.

No bingo games shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or partly, on the basis of a percentage of the receipts or net profits derived from the operation of such game.

§ 64-5. Purchase and receipt of supplies and equipment restricted.

No authorized organization licensed under the provisions of Article 14-H of the General Municipal Law shall purchase or receive any supplies or equipment specifically designed or adapted for use in the conduct of bingo games from other than a supplier licensed under the Bingo Control Law^{31EN} or from another authorized organization.

§ 64-6. Disposition of net proceeds.

The entire net proceeds of any game of bingo and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.

§ 64-7. Maximum permitted value of prizes.

- A. No prize shall exceed the sum or value of two hundred fifty dollars (\$250.) in any single game of bingo.
- B. No series of prizes on any one (1) bingo occasion shall aggregate more than one thousand dollars (\$1,000.).

§ 64-8. Operation restricted to members of organization; remuneration prohibited.

- A. No person except a bona fide member of any such organization shall participate in the management or operation of such game.
- B. No person shall receive any remuneration for participating in the management or operation of any game of bingo.

§ 64-9. Limited period bingo. ^{32EN}

Limited period bingo shall be conducted in accordance with the provisions of Article 14-H of the General Municipal Law and the rules and regulations of the State Racing and Wagering Board.

§ 64-10. Penalties for offenses.

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

ARTICLE II, Games of Chance [Adopted 4-4-1977 as L.L. No. 5-1977^{33EN}]

§ 64-11. Title.

This Article shall be cited and may be referred to as the "Games of Chance Licensing Law."

§ 64-12. Statutory authority.

This Article is enacted pursuant to all the conditions and provisions contained in Article 9-A of the General Municipal Law of the State of New York and amendments thereto.

§ 64-13. Legislative intent.

It is declared to be the public policy of the Town of Marlborough that the raising of funds for the promotion of bona fide charitable, educational, scientific, health, religious and patriotic causes and undertakings where the beneficiaries are undetermined is in the

public interest and that all phases of the supervision, licensing and regulation of games of chance and the conduct of games of chance should be closely controlled and that the laws, ordinances and regulations pertaining thereto should be strictly construed and rigidly enforced to prevent commercialized gambling, to prevent participation by criminal and other undesirable elements and to prevent the diversion of funds from the purposes herein authorized.

§ 64-14. Applicability.

This Article shall be applicable to all territory within the limits of the Town of Marlborough.

§ 64-15. Definitions.

- A. As used in this Article, the terms "municipality," "authorized organization," "lawful purposes," "net proceeds," "net lease," "authorized games of chance lessor," "prize," "authorized supplier of games of chance equipment" and "one (1) occasion" shall have the meanings designated in the definitions set forth in Article 9-A of the General Municipal Law.
- B. As used in this Article, the following terms shall have the meanings indicated:
LICENSED PERIOD -- A period of time not to exceed fourteen (14) consecutive hours and, for the purposes of the game of chance known as a "bell jar," a period of time running from January first to December 31 of each year. ^{34EN}
OFFICER -- The Chief of Police of the Town of Marlborough shall be the officer designated in Article 9-A of the General Municipal Law as chief law enforcement officer of this municipality.
STATE BOARD -- The New York State Racing and Wagering Board.
TOWN BOARD -- The Town Board of the Town of Marlborough.
TOWN CLERK -- The Town Clerk of the Town of Marlborough.
- C. This Article shall also include such additional definitions of terms as set forth in Article 9-A of the General Municipal Law and any amendments thereto.

§ 64-16. Restrictions on conduct of games of chance.

- A. No person, firm, association, corporation or organization, other than a licensee under the provisions of this Article, shall conduct such games of chance or shall lease or otherwise make available for conducting games of chance a hall or other premises for any consideration whatsoever, direct or indirect, except as provided herein.
- B. No person except a bona fide member of a licensed organization, its auxiliary or affiliated organization shall participate in the management or operation of such games.
- C. No person shall receive any remuneration for participation in the management of any such games.
- D. No game shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or partly, on a basis of a percentage of the receipts or net profits derived from the operation of such games.
- E. No authorized organization licensed under the provisions of the Article shall purchase

or receive any supplies or equipment specifically designed or adapted for use in the conduct of games of chance other than from a licensed supplier or from another authorized organization.

- F. The entire net proceeds of any game of chance and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.
- G. No prize shall exceed the sum or value of three hundred dollars (\$300.) in any operation or conducting of a single game of chance, except that for merchandise wheels and bell jars, no single prize shall exceed the sum or value of two hundred fifty dollars (\$250.), nor shall any single wager exceed six dollars (\$6.).^{35EN}
- H. Series of prizes.^{36EN}
 - (1) Except for merchandise wheels, no series of prizes on any one (1) occasion shall aggregate more than four hundred dollars (\$400.) when the licensed authorized organization conducts five (5) single types of games of chance during any one (1) license period. Except for merchandise wheels and bell jars, no series of prizes on any one (1) occasion shall aggregate more than five hundred dollars (\$500.) when the licensed authorized organization conducts less than five (5) single types of games of chance, exclusive of merchandise wheels and bell jars during any one (1) license period.
 - (2) No authorized organization shall award a series of prizes consisting of cash or of merchandise with an aggregate value in excess of one thousand dollars (\$1,000.) during the successive operations of any one (1) merchandise wheel or bell jar.
- I. In addition to merchandise wheels and bell jars, no more than five (5) other single types of games of chance shall be conducted during any one (1) license period.^{37EN}
- J. Games of chance shall be permitted on the first day of the week commonly known and designated as "Sunday" if so provided in the license issued for the holding, operating and conducting thereof. No games of chance, however, shall be conducted on Easter Sunday, Christmas Day or New Year's Eve.
- K. No person under the age of eighteen (18) years shall be permitted to play any game or games of chance conducted pursuant to any license issued under this Article. No person under the age of eighteen (18) years shall be permitted to conduct or assist in the conduct of any games of chance conducted pursuant to any license issued under this Article.
- L. No game or games of chance shall be conducted under any license issued under this Article more often than twelve (12) times in any calendar year. Games shall be conducted only between the hours of 12:00 noon and 12:00 midnight on Monday, Tuesday, Wednesday and Thursday and only between the hours of 12:00 noon on Friday and 2:00 a.m. Saturday and only between the hours of 12:00 noon on Saturday and 2:00 a.m. Sunday. The 2:00 a.m. closing shall also apply to a legal holiday. The above restrictions shall not apply when only the game of chance known as the "bell jar" is conducted.^{38EN}
- M. Subject to the applicable provisions of the Alcoholic Beverage Control Law, beer may be offered for sale during the conduct of games of chance, but the offering of all other alcoholic beverages is prohibited; provided, however, that nothing herein shall be construed to limit the sale of any other alcoholic beverage in the premises where only the game of chance known as the "bell jar" is conducted. No alcoholic beverage shall be offered or given as a prize in any game of chance.^{39EN}

- N. Not more than two dollars (\$2.) shall be charged by any licensee for admission to any room or place in which any game or games of chance are to be conducted under any license issued under this Article. The officer or department may in its discretion fix a minimum fee.
- O. Each winner shall be determined and each prize shall be awarded and delivered within the same calendar day as that upon which the game was played.
- P. No game of chance conducted or to be conducted in this town shall be advertised as to its location, the time when it is to be or has been played, the prizes awarded or to be awarded or transportation facilities to be provided to such game by means of radio or sound trucks or by means of billboards or any other means addressed to the general public, except that a licensee may advertise the conduct of games of chance by means of newspaper, circular, handbill and poster, and one (1) sign not exceeding sixty (60) square feet in area may be displayed on or adjacent to the premises owned or occupied by a licensed authorized organization. When an organization is licensed to conduct games of chance on the premises of an authorized games of chance lessor, one (1) additional such sign may be displayed on or adjacent to the premises in which the games are to be conducted. 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 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. All advertisements shall be limited to the description of such event as "games of chance" or "Las Vegas Night," the name of the authorized organization conducting such games, the license number of the authorized organization and the date, location and time of the event.^{40EN}

§ 64-17. Application for license.

- A. Each applicant for a license shall, after obtaining an identification number from the New York State Racing and Wagering Board, file with the Town Clerk of the Town of Marlborough a written application therefor in a form to be prescribed by the State Board, duly executed and verified, in which shall be stated:
 - (1) The name and address of the applicant, together with sufficient facts relating to its incorporation and organization to enable the Town Clerk to determine whether or not it is a bona fide authorized organization.
 - (2) The names and addresses of its officers and the place or places where and the date or dates and the time or times when the applicant intends to conduct games under the license applied for.
 - (3) The amount of rent to be paid or other consideration to be given, directly or indirectly, for each licensed period for use of the premises of an authorized games of chance lessor.^{41EN}
 - (4) All other items of expense intended to be incurred or paid in connection with the holding, operating and conducting of such games of chance and the names and addresses of the persons to whom and the purposes for which they are to be paid.
 - (5) The purposes to which the entire net proceeds of such games are to be devoted and in what manner, that no commission, salary, compensation, reward or recompense will be paid to any person for conducting such game or games or for

assisting therein, except as in this Article otherwise provided, and such information as shall be prescribed by such rules and regulations.

- (6) The name of each single type of game of chance to be conducted under the license applied for and the number of merchandise wheels, if any, to be operated.^{42EN}
- B. In each application there shall be designated not less than four (4) active members of the applicant organization under whom the game or games of chance will be conducted. Each member so designated shall execute a statement that he or she will be responsible for the conduct of such games in accordance with the terms of the license, the rules and regulations of the State Board and the provisions of this Article. Such statements shall be attached to and filed with the written application.
- C. Each applicant for a license to lease premises to a licensed organization for the purpose of conducting games of chance therein shall file with the Town Clerk a written application therefor in a form to be prescribed by the State Board, duly executed and verified, which shall set forth the name and address of the applicant, the designation and address of the premises intended to be covered by the license sought, a statement that the applicant in all respects conforms with the specifications contained in a definition of authorized organization, as set forth in Article 9-A of the General Municipal Law, and such other information as shall be prescribed by the State Board.

§ 64-18. Investigation; issuance and duration of license; fees.

- A. The Town Clerk shall make an investigation of the qualifications of each applicant and the merits of each application with due expedition after the filing of the application.
- B. If the Town Clerk shall determine that the applicant is duly qualified to be licensed to conduct games of chance under this Article; that the member of the applicant designated in the application to manage games of chance is a bona fide active member of the applicant and is a person of good moral character and has never been convicted of a crime or, if convicted, has received a pardon or a certificate of good conduct; that such games of chance are to be conducted in accordance with the provisions of this Article and in accordance with the rules and regulations of the State Board and that the proceeds thereof are to be disposed of as provided by this Article; and if the Town Clerk is satisfied that no commission, salary, compensation, reward or recompense whatsoever shall be paid or given to any person holding, operating, conducting or assisting in holding, operating or conducting any games of chance, except as otherwise provided in this Article; and that no prize will be given in excess of the sum or value of three hundred dollars (\$300.) in any single game of chance, except that for merchandise wheels and bell jars, no single prize shall exceed the sum or value of two hundred fifty dollars (\$250.) and that the aggregate of all prizes given on one (1) occasion under said license shall not exceed the sum or value of one thousand dollars (\$1,000.) during the successive operations of any one (1) merchandise wheel or bell jar; or more than four hundred dollars (\$400.) when the licensed authorized organization conducts five (5) single types of games of chance; or more than five hundred dollars (\$500.) when the licensed authorized organization

conducts fewer than five (5) single types of games of chance, exclusive of merchandise wheels and bell jars, the Town Clerk shall issue a license to the applicant for the conduct of games of chance upon payment of a license fee of twenty-five dollars (\$25.) for each license period.^{43EN}

- C. If the Town Clerk shall determine that the applicant seeking to lease a hall or premises for the conduct of games of chance to an authorized organization is duly qualified to be licensed under this Article; that the applicant satisfies the requirements for an authorized games of chance lessor, as defined in Article 9-A of the General Municipal Law; that there is a public need and that a public advantage will be served by the issuance of the license; that the applicant has filed its proposed rent for each game of chance occasion; that there is no diversion of the funds of the proposed lessee from the lawful purposes, as defined in Article 9-A of the General Municipal Law; and that the leasing of a hall or premises for the conduct of games of chance is to be in accordance with the provisions of this Article and in accordance with the rules and regulations of the State Board, he shall issue a license permitting the applicant to lease said premises for the conduct of games of chance to the authorized organization set forth in the application during the period therein specified or such shorter period as the Town Clerk shall determine, but not to exceed one (1) year, upon payment of a license fee of fifty dollars (\$50.).
- D. Under this Article, no license shall be issued which shall be effective for a period of more than one (1) year.

§ 64-19. Hearings; appeals; amendment of licenses.

- A. No application for the issuance of a license to an authorized organization shall be denied by the Town Clerk until after a hearing is held, upon due notice to the applicant, at which time the applicant shall be entitled to be heard upon its qualifications and the merits of the application.
- B. Any applicant for or holder of any license hereunder, aggrieved by any action of the Town Clerk to which an application has been made or by which a license has been issued, may appeal to the State Board from the determination of the Town Clerk by filing with the Town Clerk written notice of appeal within thirty (30) days after the determination or action appealed from, and, upon the hearing of such appeal, the evidence, if any, taken before the Town Clerk and any additional evidence may be produced and shall be considered in arriving at a determination of the matters in issue. The action of the State Board upon said appeal shall be binding upon the Town Clerk and all parties to said appeal.
- C. Any license issued hereunder may be amended upon application to the Town Clerk if the subject matter of the proposed amendment could lawfully and properly have been included in the original license and upon payment of any additional license fee as would have been payable if it had been so included.

§ 64-20. Form, content and display of license.^{44EN}

Each license to conduct games of chance shall be in a form as shall be prescribed in the rules and regulations promulgated by the State Board or the Town Clerk and shall contain

a statement of the name and address of the licensee, the name and address of each member of the licensee under whom the games of chance shall be managed, of the place where and the date and time when the games of chance are to be conducted and of the purposes to which the entire net proceeds of the games of chance are to be devoted. If any prizes are to be given in cash, a statement of the amounts of the prizes authorized so to be given and any other information which may be required by said rules and regulations shall be contained therein. Each license issued for the conduct of any games of chance shall be conspicuously displayed at the place where the same is to be conducted at all times during the conduct thereof.

§ 64-21. Control and supervision; suspension of license; inspection of premises. ^{45EN}

The officer shall have and exercise rigid control and close supervision over all games of chance conducted under each license, to the end that the same are fairly conducted in accordance with the provisions of said license, the provisions of this Article and the provisions of the rules and regulations promulgated by the State Board. The officer and the State Board shall have the power and authority to temporarily suspend any license issued by the Town Clerk pending a hearing and, after notice and hearing, may suspend or revoke the same and declare the violator ineligible to apply for a license for a period not exceeding twelve (12) months thereafter. The officer and the State Board shall have the right of entry, by their respective officers and agents, at all times, into any premises where any game of chance is being conducted or intended to be 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. An agent of the appropriate officer shall make an on-site inspection during the conduct of all games of chance licensed pursuant to this Article.

§ 64-22. Statement of receipts and expenses; additional license fees.

- A. Within seven (7) days after the conclusion of any licensed period, the authorized organization which conducted the games of chance and its members who were in charge thereof and, when applicable, the authorized organization which rented its premises therefor shall each furnish to the Town Clerk a statement subscribed by the member in charge and affirmed by him as true, under the penalties of perjury, showing the amount of the gross receipts derived therefrom, each item of expense incurred or paid, each item of expenditure made or to be made other than prizes, the name and address of each person to whom each item of expense has been paid or is to be paid, with a detailed description of the merchandise purchased or the services rendered therefor, the net proceeds derived from the conduct of the games of chance during the license period and the use to which such proceeds have been or are to be applied, and a list of the prizes and the values thereof offered and given. It shall be the duty of each licensee to maintain and keep such books and records as may be necessary to substantiate the particulars of each statement of receipts.
- B. Upon filing the statement of receipts, the authorized organization furnishing the same shall pay to the Town Clerk as and for an additional license fee a sum based upon the reported net proceeds, if any, for the licensed period covered by the statement and determined in accordance with the schedule as shall be established from time to time

by the State Board or the Town Clerk to defray the actual cost to the Town of Marlborough of administering the provisions of this Article, but such license fee shall not exceed five percent (5%) of the net proceeds for such license period.^{46EN}

- C. The Town Clerk and the State Board shall have the power to examine or cause to be examined the books and records of the following. Any information so received shall not be disclosed except for the purpose of carrying out the provisions of this Article.
- (1) Any authorized organization which is and has been licensed to conduct games of chance so far as they may relate to games of chance, including the maintenance, control and disposition of the net proceeds derived from games of chance or from the use of its premises for games of chance, and to examine any manager, officer, director, agent, member or employee thereof under oath in relation to the conduct of any games of chance under any license, the use of its premises for games of chance or the disposition of the net proceeds derived from games of chance, as the case may be.
 - (2) Any authorized games of chance lessor, so far as the same may relate to leasing premises for games of chance, and to examine said lessor or any manager, officer, director, agent or employee thereof under oath in relation to said leasing.

§ 64-23. Prohibitions; penalties for offenses.

- A. No person shall operate or conduct any games of chance under any license issued under this Article except an active member of the authorized organization to which the license is issued, and no person shall assist in holding, operating or conducting any games of chance under any license except 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 member of an organization or association which is affiliated with the licensee by being, with it, auxiliary to another organization or association. At least two (2) officers, directors, trustees or clergy of the authorized organization shall, upon request, certify under oath that the persons assisting in holding, operating or conducting any game of chance are bona fide members of such authorized organization, auxiliary or affiliated organization.
- B. No games of chance shall be conducted with any equipment except that owned or leased by the authorized organization so licensed or used without payment of any compensation therefor by the licensee.
- C. No items of expense shall be incurred or paid in connection with the conducting of any game of chance pursuant to any license issued under this Article except those that are reasonable and are necessarily expended for games of chance supplies and equipment; prizes; stated rental, if any; bookkeeping or accounting services according to a schedule of compensation prescribed by the State Board; janitorial services and utility supplies, if any; license fees; and the cost of bus transportation, if authorized by the officer.
- D. No person, association, corporation or organization lawfully conducting or participating in the conduct of games of chance or permitting the conduct upon any premises owned or leased by him or it under any license issued hereunder shall be liable to prosecution or conviction for violation of any provision of Article 225 of the

Penal Law or any other law or ordinance to the extent that such conduct is specifically authorized by this Article. However, this immunity shall not extend to any person or corporation knowingly conducting or participating in the conduct of games of chance under any license obtained by any false pretense or by any false statement made in any application for a license or otherwise or permitting the conduct upon any premises owned or leased 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.

- E. Any person, association, corporation or organization holding, operating or conducting games of chance shall be guilty of a misdemeanor except when operating, holding or conducting:
- (1) In accordance with a valid license issued pursuant to this Article.
 - (2) On behalf of a bona fide organization of persons sixty (60) years of age or over, commonly referred to as "senior citizens," solely for the purpose of amusement and recreation of its members where:
 - (a) The organization has applied for and received an identification number from the State Board.
 - (b) No player or other person furnishes anything of value for the opportunity to participate.
 - (c) The prizes awarded or to be awarded are nominal.
 - (d) No person other than a bona fide active member of the organization participates in the conduct of the games of chance.
 - (e) No person is paid for conducting or assisting in the conduct of games of chance.
- F. The unauthorized conduct of a game of chance shall constitute and be punishable as a misdemeanor.

Chapter 67, BUILDING CONSTRUCTION

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 as L.L. No. 1-1977. Amendments noted where applicable.]

GENERAL REFERENCES

- Electrical inspections -- See Ch. 86.**
Flood damage prevention -- See Ch. 97.
Mobile homes -- See Ch. 102.
Sewers -- See Ch. 118.
Subdivision of land -- See Ch. 134.
Water -- See Ch. 149.
Zoning -- See Ch. 155.

§ 67-1. Appointment of Building Inspector; residency requirement; compensation.

The Town Board may appoint one or more Building Inspectors as the need may appear. The Building Inspector must be a resident of the Town of Marlborough, Ulster County. The compensation of such Building Inspector shall be fixed by the Town Board.

§ 67-2. Conflicts of interest.

No Building Inspector shall engage in any activity inconsistent with his duties, nor shall he, during the term of his employment, be engaged, directly or indirectly, in any building business or in the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building or the preparation of plans or specifications therefor within the Town of Marlborough, except only that this provision shall not prohibit the Building Inspector from such activities in connection with the construction of a building or structure owned by him and not constructed for sale.

§ 67-3. Powers and duties of Building Inspector.

- A. Except as otherwise specifically provided by law, ordinance or regulation or except as herein otherwise provided, the Building Inspector shall administer and enforce all the provisions of laws, ordinances and regulations applicable to the construction, alteration, repair, removal and demolition of buildings and structures, the installation and use of materials and equipment therein and the location, use, occupancy and maintenance thereof.
- B. The Building Inspector or the Town Clerk shall receive applications and the Building Inspector shall issue permits for the erection, alteration, removal and demolition of buildings or structures or parts thereof and shall examine the premises for which such applications have been received or such permits have been issued for the purpose of ensuring compliance with the laws, ordinances and regulations governing such building construction.
- C. The Building Inspector shall issue all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to ensure compliance during the entire course of construction with the requirements of such laws, ordinances or regulations as may be applicable. The Building Inspector shall make all inspections which are necessary or proper for the carrying out of his duties.
- D. Whenever necessary or appropriate to assure compliance with the provisions of applicable laws, ordinances or regulations covering building construction, the Building Inspector may require the performance of tests in the field by experienced professional persons or by accredited and authoritative testing laboratories or service bureaus or agencies.

§ 67-4. Cooperation of other departments.

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

§ 67-5. Building permits required; method of obtaining permits.

- A. Buildings permits shall be obtained pursuant to the provisions of Chapter 155,

Zoning, of the Code of the Town of Marlborough.^{47EN}

- B. The issuance of a building permit shall constitute authority to the applicant to proceed with the work in accordance with the approved plans and specifications and in accordance with the applicable building laws, ordinances or regulations. All work shall conform to the approved application, plans and specifications.^{48EN}

§ 67-6. Stop-work orders.

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

§ 67-7. Right of entry granted to Building Inspector.

The Building Inspector, upon the showing of proper credentials and in the discharge of his duties, may enter upon any building, structure or premises at any reasonable hour, and no person shall interfere with or prevent such entry.

§ 67-8. Certificates of occupancy required; method of obtaining certificates.

Certificates of occupancy shall be obtained pursuant to the provisions of Chapter 155, Zoning, of the Code of the Town of Marlborough.

§ 67-9. Tests of materials and equipment.

Whenever there are reasonable grounds to believe that any material, construction, equipment or assembly does not conform to the requirements of the applicable building laws, ordinances or regulations, the Building Inspector may require the same to be subjected to tests in order to furnish proof of such compliance.

§ 67-10. Unsafe buildings and structures. [Amended 8-22-1994 by L.L. No. 2-1994; 2-25-2002 by L.L. No. 1-2002]

- A. All buildings which are structurally unsafe, unsanitary or not provided with adequate egress, or which constitute a fire hazard or are otherwise dangerous to human life or which in relation to existing use constitute a hazard to the safety or health by reason of inadequate maintenance, delapidation, obsolescence or abandonment severally for the purpose of this section are declared unsafe buildings. All such unsafe buildings

are hereby declared to be illegal and shall be abated by repair and rehabilitation, or by demolition in accordance with the procedures of this section and of Subdivision 16 of § 130 of the Town Law.

- B. The Town Board hereby appoints the Building Inspector of the Town of Marlborough as the official to make an inspection and report as to the unsafe condition of any building within the Town of Marlborough.
- C. Upon completion of said inspection, the Building Inspector shall cause to be served a notice on the owner or someone of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the same, either personally or by registered mail addressed to the last known address, if any, of the owner's or someone of the owner's executors, legal representatives, agents, lessees or other persons having a vested or contingent interest in the same as shown by the records of the Receiver of Taxes containing a description of the premises, a statement of the particulars in which the building or structure is unsafe or dangerous, and an order requiring that the same be made safe and secure or removed; and if such service be made by registered mail or a copy of such notice to be posted on the premises.
- D. The notice shall further provide for the time which such person served with such notice may commence the securing or removal of the buildings or structures.
- E. The Building Inspector shall file a copy of such notice in the office of the County Clerk of the county within which said building or structure is located, which notice shall be filed by such Clerk in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules, and shall have the same effect as a notice of pendency as provided, except as otherwise hereinafter provided in this subsection. A notice so filed shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon the order of a judge or justice of a court of record, or upon the consent of the Town Attorney. The Clerk of the county where such notice is filed shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or of a certified copy of such order. Such notice shall further provide for a hearing before the Town Board, notice of which time and place thereof to be specified in the notice to repair or demolish served upon the owner and such person having an interest in the property or structure as is herein prescribed.
- F. If after such hearing the Town Board determines that said building is an unsafe building and the owner fails to remove or refuses to repair the same within the time provided, the Town Board may order the removal of such building or structure.
- G. If the Town shall be required to remove such structure, the assessment of all costs and expenses incurred by the Town in connection with the proceeding to remove or secure, including the cost of actually removing the building or structure, shall be levied against the land on which building or structures are located.

§ 67-11. Penalties for offenses.

- A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, remove, demolish, equip, use or occupy or maintain any building or structure or portion thereof in violation of any provisions of this chapter or to fail in any manner to comply with a notice, directive or order of the Building Inspector or to construct, alter or use and occupy any building or structure or part thereof in a manner

not permitted by an approved building permit or certificate of occupancy.

- B. Any person who shall fail to comply with a written order of the Building Inspector within the time fixed for compliance therewith and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or his agents or any other person taking part or assisting in the construction or use of any building who shall knowingly violate any of the applicable provisions of this chapter or any lawful order, notice, directive, permit or certificate of the Building Inspector made thereunder shall be punishable by a fine of not more than \$1,000 per day of violation or imprisonment not exceeding one year, or both. In the enforcement of this chapter, the Town of Marlborough shall have the remedies provided by § 382 of the Executive Law. [Amended 8-22-1994 by L.L. No. 2-1994]
- C. Except as provided otherwise by law, such offense shall not be a crime, and the penalty or punishment imposed therefor shall not be deemed for any purpose a penal or criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness or otherwise of any person convicted thereof.^{49EN}

§ 67-12. Additional remedies.

Appropriate actions and proceedings may be taken at law or in equity to prevent unlawful construction, to restrain, correct or abate a violation, to prevent illegal occupancy of a building, structure or premises or to prevent illegal acts, conduct or business in or about any premises, and those remedies shall be in addition to the penalties prescribed in the preceding section.

Chapter 68, BUILDINGS, NUMBERING OF

[HISTORY: Adopted by the Town Board of the Town of Marlborough 4-10-2000 by L.L. No. 1-2000. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction -- See Ch. 67.

Mobile homes -- See Ch. 102.

Subdivision of land -- See Ch. 134.

Zoning -- See Ch. 155.

§ 68-1. Legislation intent.

Ulster County, New York has implemented an enhanced 911 telephone system whereby an individual will be able to dial a 911 telephone in the event of an emergency. The intent and purpose of this chapter is to assist in rapid recognition, by 911 personnel, of the location of a residence and/or business in an emergency situation and for the purpose of assigning street addresses as well as street names to all developed properties in the town as well as to future developed properties in the town.

§ 68-2. Legislation findings.

The Town Board of the Town of Marlborough hereby determines that it is in the best interest of the public health, safety and welfare of the residents of the town to adopt and implement a uniform system of street names and property numbers in the town to assist and facilitate the providers of emergency services to the residents of the town.

§ 68-3. Definitions.

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

BUILDING -- The principal building or buildings on each lot.

COLLECTOR ROAD -- All town roads that connect a main road, as herein defined, at two different points or that lead from one main road to another main road. In addition, the term "collector road" shall include roads that may be used as detours should a main road be closed due to a catastrophe or reconstruction.

LOCAL ROAD -- Shall include all low-traffic roads within the town, such as those servicing residential neighborhoods or which end in a dead end, cul-de-sac or empty into another low-volume road.

MAIN ROAD -- All New York State routes and all county highways within the town.

§ 68-4. Assignment of numbers; review of determination.

- A. The Town Assessor for the Town of Marlborough and, in the absence of the Town Assessor, the Building Inspector for the Town of Marlborough shall be authorized to decide which building or buildings on any particular lot shall be numbered. The Assessor and, in the absence of the Assessor, the Building Inspector shall designate separate numbers for buildings which have no designated street number, and they shall also have the authority to redesignate numbers for buildings when deemed necessary.
- B. Any property owner aggrieved by the determination of the Assessor or Building Inspector may seek review of that determination by the Town Board of the Town of Marlborough upon a written request to the Town Supervisor setting forth the reasons for seeking such review. The Town Board may uphold, modify or change the determination of the Assessor or Building Inspector, and such determination shall be final and binding.
- C. The following numbering system is adopted in order to implement the uniform property numbering system:
 - (1) Main roads.
 - (a) Numbers shall start at the southern Ulster County line and increase in a northerly direction.
 - (b) Generally, numbers shall start at the Hudson River and increase in a westerly direction.
 - (c) Numbers shall continue in sequence on such roads, in spite of any road name changes or changes in jurisdiction.
 - (2) Collector roads.
 - (a) Generally, numbers shall start at a main road and increase in a northerly or westerly direction.
 - (b) Numbers shall continue in sequence on such roads, in spite of any road name changes or changes in jurisdiction.

- (3) Local roads. Numbers shall start at a main or collector road and increase in any direction going away from such main or collector road.

§ 68-5. Odd/even numbering.

- A. Generally, odd numbers shall be used on the west and south sides of any roads.
- B. Generally, even numbers shall be used on the east and north sides of any roads.
- C. When the numbering under Subsections A and B is in conflict, such as when a road runs in two directions, e.g., east then north, or loops, the resolution of the conflict shall be to make a judgment based upon the longest segment of the road.
- D. Generally, when entering dead-end roads or culs-de-sac, odd numbers shall be used on the left and even numbers shall be used on the right, taking into consideration whether said dead-end road or cul-de-sac may be continued with future development of property.

§ 68-6. Spacing of numbering.

- A. In spacing numbering, a fifty-foot module shall be used with a number assigned to each 50 feet on each side of a road. When there are two structures with access from one driveway in a fifty-foot module, a separate number shall be assigned to each structure. Driveways providing access to three or more structures must have their own road name.
- B. The use of alphanumeric designations is prohibited, except when a number of units, structures and uses coexist on the same parcel of land. Examples of parcels requiring the use of alphanumeric designations include apartment projects, condominium projects, mobile home parks, office parks, planned unit developments, recreational vehicle parks, recreational areas, shopping centers and other uses where the use of alphanumeric designations would clarify the location of an individual unit for public safety purposes. To provide alphanumeric numbers, the Town Planning Board shall work with the owner, principal occupant or person in charge of the project to determine a logical numbering system under this chapter. By way of example, a duplex designated as number seven would have one unit as 7-A and one unit as 7-B. A mobile home park with the street number 11 would then have each lot within designated by a separate letter going from 11-A through 11-Z and, if additional unit numbers are needed, then commencing with 11-AA and so on. All lettering must be in sequence. Directory signs in larger complexes may be required by the Board or enforcement officer or agency.

§ 68-7. New construction; subdivisions.

- A. Prior to the issuance of any driveway permit, building permit and/or certificate of occupancy for new construction within the town ("New construction" shall also mean additions to existing structures.), the Assessor shall assign a number to each structure for which such permit or certificate is sought or assign the additional numbering for the extension of any existing structure, park, etc.
- B. Prior to final subdivision approval, whether for a minor or major subdivision, the Planning Board shall require all new plat maps to contain both the approved street

names and street numbering in fifty-foot modules on the mylar signed by the Board for filing in the Ulster County Clerk's office. Corner lots should be assigned numbers on each road to accommodate final driveway placement.

- C. The Town Assessor shall assign the final number when the certificate of occupancy is issued. The address must be relayed to the Town Building Inspector's office, the Town Clerk's office, all post offices within the town, all fire departments within the town, the Town of Marlborough Police Department, the County Emergency Management Services, the Town of Marlborough Volunteer Ambulance Corps or any successor in interest to said agencies. Said notification shall be done by the Town of Marlborough Assessor's office.
- D. The Assessor's office shall notify the County Planning Board on a regular basis of all address assignments for new subdivisions, parcels and lots.

§ 68-8. Street name; map adopted; system of street naming.

- A. No new street or road shall be accepted by said Town of Marlborough until such street shall be identified and designated by name, and if new streets or extensions of existing streets, the name of such street shall be attached to such extension. If such new street is not an extension of an existing street, then the name by which the new street is designated shall not be identical to nor bear any similarity to or conflict with the names of any existing street, and shall avoid names which indicate a direction, within the town as shown on the official street index and official map.
- B. Street names will be restricted to 28 characters in order to comply with the requirements of the current telephone database.
- C. In addition to other requirements of this chapter, streets will be named in compliance with the United States Postal Service addressing guidelines.
- D. New streets will be named, initiated and adopted by the Town Planning Board in adherence to the principles enumerated in this chapter.
- E. Changes to existing street names will be initiated and adopted by the Town Board.
- F. Adoption of a street name or its inclusion in the official street naming and structure numbering map index or official street naming and structure numbering map or the subsequent posting of any public sign does not commit the Town of Marlborough or the County of Ulster to maintain a private road.
- G. All proposed street name changes or additions shall be sent by the Town Board or Town Planning Board, respectively, to the county and the United States Postal Service for review and comment, as well as adjoining municipalities. The county and the United States Postal Service, as well as the adjoining municipalities, will have 30 days to comment on the proposed changes or additions before adoption and acceptance of them.

§ 68-9. Compliance; display; standards and specifications.

- A. It shall be the duty of every owner and/or every occupant/tenant of a building in the Town of Marlborough to cause to be displayed thereon the street number of said building in conformity to this chapter, as well as to maintain such number in compliance with the provisions of this chapter.
- B. All properties or parcels of land within the town shall hereafter be identified for street

location purposes by reference to the uniform numbering system adopted herein. All existing numbers of property and buildings not now in conformity with the provisions of this chapter shall be changed to conform to the system herein adopted within three months after the adoption of this chapter.

- C. Each principal building shall bear the number assigned to the street frontage on which the driveway entrance is located, but if no driveway, then on which the front entrance is located. In case a principal building is occupied by more than one business or family dwelling unit, the entrance to each separate entity in said principal building shall bear a separate number in accordance with this chapter.
- D. Numerals indicating the official numbers for each principal building or for each separate entrance, as specified above, shall be posted in a manner as to be visible from the street on which the property is located. Whenever any building is situated more than 20 feet from the edge of the street or road serving the building, the number shall, in addition to the other requirements of this chapter, be displayed on a post or other structure clearly visible from the street and stationed on the same side of the street as the building or premises for which it is intended. Said post, gate, fence, tree or other appropriate place shall be at least four feet in height and not exceed eight feet in height and shall be displayed in a prominent and conspicuous place in such manner as to be plainly legible and visible from the center of the street and easily discernible when traveling in either direction on the street so as to show clearly, if not otherwise evident, which is the driveway for the property. The numbers shall not be less than four inches in height and shall be made of a durable and clearly visible reflective material. The color of said numbers shall be in sharp contrast to the color of their background, and these conditions shall apply both to the numerals placed upon the building as well as numerals placed on any post, mailbox, gate, fence, etc.
- E. Wherever practicable, said number shall be placed near some light or source of illumination so that it may be readily seen at night.
- F. In the event that more than one building has access from a single driveway, a street number of each building must be displayed at each location at which the driveway access diverges from the common access.
- G. Display of any number other than the number authorized or assigned by the designated person or board under this chapter is expressly prohibited.
- H. In such cases where the assigned number cannot be posted as required above, the number shall be posted as prescribed by the Town Building Inspector in accordance with the intent of this chapter and after consultation with the owner, occupant or person in charge.
- I. The official numerals shall be placed on buildings by the owner or agent within 30 days after notice to the owner or agent of the number assigned.
- J. The official numerals shall be placed in the immediate vicinity of the entranceway to the building and shall be placed not less than four feet from the bottom of the entranceway door nor more than eight feet from the bottom of said entranceway door using a color to be in sharp contrast to the color of the background with said numerals being made of durable, clearly visible reflective material at least four inches in height and a minimum of one inch in width, using block numbering and lettering where appropriate.

§ 68-10. Private road signs.

- A. Private road signs must be erected and maintained by the property owner or owners on said road. Private road signs must have white lettering on a green background. Newly created private roads must have a road name approved by the Planning Board prior to subdivision approval or by the Building Inspector prior to issuing a certificate of occupancy, and the owner must, prior to approval, submit to either the Planning Board or Building Inspector, in the appropriate situations, proof that notice has been given to the Town Highway Superintendent, the Town Building Inspector, appropriate fire department, Town Police Department, local ambulance corps, school bus garage, 911 Coordinator and County 911, by certified mail, return receipt requested, of the new road name, location and assigned number.
- B. The private road signs must be installed and maintained in accordance with the rules, regulations and requirements of the Town Code, state, county or federal government, whichever is controlling.

§ 68-11. Noncompliance; notice; remedy; costs.

- A. Noncompliance deemed a violation. Any person, corporation, partnership or other entity owning a building and or real property within the Town of Marlborough failing or neglecting, for 60 days after the initial notice from the Building Inspector, 911 Coordinator or agency, or post office, or Town Planning Board or Town Board of their new number, to place the new number on said building and/or along the street as provided by this chapter, as well as to install required private road signs, shall be deemed in violation of this chapter.
- B. Nonmaintenance deemed a violation. Any person, corporation, partnership or other entity owning a building and or real property within the Town of Marlborough failing to maintain structure numbers on the structure and/or along the street as provided and required herein, as well as private road signs required herein, shall be deemed in violation of this chapter.
- C. Service of notice. The notice provided for herein may be given by personal service or by certified mail, return receipt requested, to the last known address of the owner and/or occupant of the structure as shown on the last assessment roll on file in the Assessor's office of the Town of Marlborough.
- D. Numbering of the building by the town. In the event of the failure, neglect or refusal of any owner and/or occupant/tenant, after notice, to cause said building to be properly numbered, or private road sign installed or replaced, the Building Inspector of the Town of Marlborough shall cause said building to be properly numbered and/or private road sign installed or replaced.
- E. Report and assessment of cost. The Building Inspector shall report the cost of numbering said building to the Town Board, or installation or replacement of the private road sign, and such Board shall order said cost assessed as a lien against the property of the owner and collected in the same manner as other town taxes or assessments.

§ 68-12. Penalties for offenses; enforcement.

- A. This chapter shall be enforced by the Building Inspector or any other official appointed by the Town Board.
- B. Any person committing an offense against any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each week or portion thereof the offense is continued, a separate and distinct violation.

Chapter 71, BURNING, OUTDOOR

[HISTORY: Adopted by the Town Board of the Town of Marlborough 4-21-1986 as L.L. No. 1-1986. Amendments noted where applicable.]

§ 71-1. Permit required.

No person shall burn or cause to be burned leaves, trash, brush or rubbish of any kind unless a permit is first obtained from the Building Inspector of the Town of Marlborough.

§ 71-2. Permit terms and conditions.

The Town Board of the Town of Marlborough shall, by resolution, set the terms and conditions under which the permit may be used.

§ 71-3. Open burning prohibited in certain zones. ^{50EN}

Open burning of any type, including in a container, is prohibited in the R and C Zones. ^{51EN}

§ 71-4. Penalties for offenses.

Any person committing an offense against any provision of this chapter shall be guilty of a violation, punishable by a fine not exceeding two hundred fifty dollars (\$250.) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment.

Chapter 75, CLEARING AND GRADING

[HISTORY: Adopted by the Town Board of the Town of Marlborough 11-25-2002 by L.L. No. 5-2002. ^{52EN} Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land -- See Ch. 134.
Zoning -- See Ch. 155.

§ 75-1. Definitions.

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

AGRICULTURAL OPERATIONS -- All activities directly related to the growing or raising of crops or livestock for the sale of agricultural produce, dairy and meat products, including horticulture and fruit farming operations.

AUTHORIZE OFFICIALS -- The Town Building Inspector or other persons designated by the Town Board to administer and maintain the provisions of this chapter.

CLEARING -- Any activity which removes or significantly disturbs living trees, brush, grass or any other kind of vegetation, excepting the products of agricultural operations in an area of any size.

CLEARING DEBRIS -- Any residue associated with clearing, including, but not limited to, stumps, trunks, trees, treetops and branches.

DRAINAGE -- The gravitational movement of water by surface runoff of subsurface flow.

DRAINAGE CONTROL STRUCTURE -- The use of an extended detention pond as defined under the Environmental Conservation Law.

EROSION -- The wearing away of the land surface by action of wind, water, gravity or other natural forces.

EXCAVATION -- Any activity which removes or disturbs rock, gravel, sand, soil or mineral deposits.

FILLING -- Any activity in which deposit is natural or artificial material so as to modify the surface or subsurface condition of lands, lakes, ponds, watercourses.

GRADING -- The alteration of surface or subsurface condition of lands, lakes, ponds or watercourses by excavation or filling.

LICENSED PROFESSIONAL -- A New York State licensed engineer, architect, landscape architect or land surveyor with the appropriate exemption under state law.

SEDIMENT -- Solid material, both mineral and organic, that is being transported, has been deposited or has been removed from its original location.

SOIL -- All minerals, material and nonliving organic material of whatever origin which overlays bedrock.

TYPE 1 PERMITS -- Those requiring review only by the Building Inspector.

TYPE 2 PERMITS -- Those permits requiring approval of both the Building Inspector and Planning Board.

WATERCOURSE -- Any natural or artificial stream, river, creek, channel, canal, conduit, culvert, drainageway, gully, ravine, or wash in which water flows in a definitive direction or course, which includes both continuous and intermittent flow.

WETLANDS -- Those areas as defined by the New York State Department of Environmental Conservation and/or the U.S. Army Corps Of Engineers as wetlands.

§ 75-2. General provisions.

It is the purpose of this chapter to protect the public health, safety and welfare of the residents of the Town of Marlborough by providing for the proper use of land and regulating site preparation, construction activities and other activities impacting the land, including excavation, filling, grading and clearing. It is the intent of this chapter to protect the natural environment in order to prevent indiscriminate and excessive

disturbance to land and prevent problems related to erosion, sediment or excessive drainage.

§ 75-3. Purpose; additional regulations.

- A. The purpose of this chapter is to:
- (1) Preserve the quality of the natural environment from adverse impacts such as pollution of watercourses, unnecessary destruction of vegetation, excessive exposure of soil to erosion and the unnecessary modification of topography.
 - (2) Protect people and property from adverse effects of activities impacting the land, such as increased runoff, erosion and sediment control, threats to life and property from flooding, landslides and increased stormwater to prevent slope stability problems for the creation of unstable slopes.
 - (3) No provision of this chapter shall exempt the applicant from NYSDEC mined land reclamation or Town of Marlborough Code § 155-26.

§ 75-4. Activities requiring permit.

None of the following activities shall be commenced or undertaken until a permit has been issued under provisions of this chapter, where the parameters are set forth under the regulations are met or exceeded:

- A. Site preparation within wetlands or within 100 feet of a NYSDEC regulated water body.
- B. Site preparation with a one-hundred-year floodplain.
- C. Excavation.
- D. Clearing.
- E. Grading.
- F. Filling.

§ 75-5. Exemptions.

The following activities are exempt from permit requirements:

- A. Activities not meeting the criteria set forth in § 75-4.
- B. Agricultural operations.
- C. Repair to occupied structures.
- D. Correcting hazards causing an imminent threat to life or property.
- E. Excavation or filling which affects less than 400 cubic yards of material within any one parcel.
- F. Clearing or grading which affects less than 20,000 square feet of ground surface.
- G. Clearing of brush or undercover vegetation less than four inches in diameter.
- H. Household gardening or activities related to the maintenance of landscape features.
- I. Governmental activities.
- J. Activities performed in conjunction with a building permit.
- K. Activities performed in conjunction with site plan approvals or subdivision approvals.
- L. Activities which have received approval from a Town agency prior to enacting this chapter.
- M. Harvesting of firewood for private use.

§ 75-6. Permit application, review, issuance and compliance procedures.

- A. Before any activity requiring a permit under § 75-5 of this chapter is commenced, three copies of the permit application shall be filed with the Building Inspector. Applications shall be approved by the Planning Board. Upon filing of the application for a permit, the applicant shall pay the Town a fee as set forth in Chapter 155, Zoning. The Building Inspector shall have authority to grant or deny permits for all activities subject to this chapter. The Building Inspector shall be authorized to classify any application as a Type 2 permit should the Building Inspector deem the application warrant Planning Board review.
- B. The Building Inspector shall not grant a permit for the following activities without approval of the Town Planning Board. All applications exceeding the below-referenced thresholds shall be considered Type 2 permits and shall be sent to the Planning Board for approval prior to authorization by the Building Inspector:
- (1) Clearing that impacts more than one acre of ground surface within any one parcel of any one project.
 - (2) Excavation which affects more than 1,000 cubic yards of material.
 - (3) Filling which exceeds a total of 1,000 cubic yards of material.
 - (4) Grading which affects more than one acre of ground surface.
 - (5) Site preparation within wetlands, buffer strips or critical environmental areas.
 - (6) The Building Inspector, Town Engineer and Superintendent of Highways, when appropriate, shall submit their respective recommendations on an application referred to the Planning Board within 30 days of the date of filing. The Town Engineer may, where appropriate, forward a copy of the permit to the Soil and Water Conservation District for its review and recommendations. Any costs associated with the review of the application by Town consultants or outside consultants shall be paid for by the applicant. Applications referred to the Planning Board for approval shall bear the stamp of a licensed professional and shall contain the following information:
 - (a) Existing and proposed contours; two-foot contour interval.
 - (b) Existing structures within 200 feet of the property line.
 - (c) The property lines of the entire parcel of land impacted.
 - (d) Natural drainage courses within the parcel.
 - (e) Erosion and sediment control method to be implemented.
 - (f) Compliance with New York State DEC SPDES permit requirements.
 - (g) Staging areas and topsoil stockpile areas for reclamation.
 - (h) Any other information requested by the Planning Board.

§ 75-7. Duration of permit.

Permits shall be issued for a period of time not to exceed six months. Permits may be extended one time for a period not to exceed three months upon application to and inspection by the Building Inspector.

§ 75-8. Revocation of permit.

Any permit may be revoked by the Building Inspector for cause. Revocation of a Type 2

permit will require the permit holder to appear before the Planning Board before a new permit may be issued or any work may be continued. The Planning Board may require a new review of the permit application at its discretion. The Building Inspector shall have the authority to place a stop-work order on any action which may not be in compliance with the permit.

§ 75-9. Penalties for offenses.

- A. Revocation of a permit by the Building Inspector shall cause all work to stop and action to be taken as directed by the Building Inspector to insure health, safety and welfare. No work may continue without application and approval of a new permit.
- B. Violations of this chapter shall result in a fine of up to \$500 per day.
- C. In addition, penalties may include requiring the permit holder to restore the affected area to its original condition or a state which meets the approval of the Building Inspector.

§ 75-10. Fees.

- A. Fees shall be set in accordance with the schedule of fees as established by the Town Board.
- B. Type 2 permit applications shall also be required to post a deposit to cover all engineering consultant fees, planning consultant fees and any other necessary fee deemed appropriate by the Planning Board under the same procedures as in § 155-47, Fees. Said deposit shall be a minimum of \$500.

§ 75-11. Jurisdiction.

Upon the approval of this chapter by the Town Board, all site preparation, construction activities requiring a permit under this chapter shall be in conformance with the provisions set forth herein.

§ 75-12. Conflict with other laws.

Where this chapter imposes greater restrictions or requirements than are imposed by provision of any other law, ordinance, including the Town's Municipal Code, zoning chapters, regulation or private agreements, this chapter shall control. Where greater restrictions are required, by any law, ordinance, including the Town's Municipal Code, regulations or private agreements than are imposed by this chapter, such greater restrictions or requirements shall control.

Chapter 82, DRUGS AND DRUG PARAPHERNALIA

[HISTORY: Adopted by the Town Board of the Town of Marlborough: Art. I, 7-9-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages -- See Ch. 55.

ARTICLE I, Drug-Free School Zone [Adopted 7-9-1990]

§ 82-1. Establishment; scope.

A drug-free zone is established encompassing all areas up to one thousand (1,000) feet from the property line of the schools in the Marlboro Central School District. The drug-free zone will include those portions of those properties and roadways which lie within those zones.

§ 82-2. Penalties for manufacture, sale or distribution of drugs.

- A. The Marlborough Police Department, the Ulster County Sheriff's Department and the New York State Police shall be thereby authorized to follow 21 U.S.C. § 845A, providing that persons manufacturing, selling or distributing narcotics, controlled substances, marijuana and their derivatives within one thousand (1,000) feet of any public property or college or university shall be guilty of a Class C felony.
- B. By reason thereof, the penalty under 21 U.S.C. § 841B provides for doubling of the mandatory ten-year-to-life imprisonment penalty and the maximum fine of four million dollars (\$4,000,000.) if found guilty of certain quantities of manufacture, sale or distribution of these substances within the above-mentioned drug-free zones in the Town of Marlborough.

Chapter 86, ELECTRICAL INSPECTIONS

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 as L.L. No. 2-1977. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction -- See Ch. 67.

Mobile homes -- See Ch. 102.

§ 86-1. Electrical Inspectors authorized to inspect for town. ^{53EN}

The Chief Inspector and each of the duly appointed Inspectors of the New York Board of Fire Underwriters or other authorized agency are hereby authorized and deputized as agents of the Town of Marlborough to make inspections and reinspections of all electrical installations heretofore and hereafter described and to approve or disapprove the same. In no event, however, will the cost or expense of such inspections and reinspections be a charge against the Town of Marlborough.

§ 86-2. Duties of Inspector.

- A. It shall be the duty of the Inspector to report, in writing, to the Chief Building Inspector, whose duty it shall be to enforce all provisions of the New York State Uniform Fire Prevention and Building Code, all violations or deviations from or omissions of the electrical provisions of the Building Code applicable to the Town of Marlborough and of all local laws, ordinances and the Building Code as referred to in this chapter, insofar as any of the same apply to electrical wiring. The Inspector shall make inspections and reinspections of electrical installations in and on properties in the Town of Marlborough upon the written request of an authorized official of the Town of Marlborough or as herein provided. The Inspector is authorized to make inspections and reinspections of electrical wiring, installations, devices, appliances and equipment, in or on properties within the Town of Marlborough, where he deems it necessary for the protection of life and property. In the event of an emergency, it is the duty of the Inspector to make electrical inspections upon the oral request of an official or officer of the Town of Marlborough.^{54EN}
- B. It shall be the duty of the Inspector to furnish written reports to the proper officials of the Town of Marlborough and owners and/or lessees of property where defective electrical installations and equipment are found upon inspections. He shall authorize the issuing of a certificate of compliance when electrical installations and equipment are in conformity with this chapter. He shall direct that a copy of the certificate of compliance be sent to the Town of Marlborough, to the attention of the Building Inspector.

§ 86-3. Prohibited activities. ^{55EN}

It shall be a violation of this chapter for any person, firm or corporation to install or cause to be installed or to alter electrical wiring for light, heat or power in or on properties of the Town of Marlborough until an application for inspection has been filed with the New York Board of Fire Underwriters or other authorized agency. It shall be a violation of this chapter for a person, firm or corporation to connect or cause to be connected electrical wiring in or on properties for light, heat or power to any source of electrical energy supply prior to the issuance of a temporary certificate or a certificate of compliance by the New York Board of Fire Underwriters or other authorized agency.

§ 86-4. Penalties for offenses.

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

Chapter 89, ENVIRONMENTAL QUALITY REVIEW

[HISTORY: Adopted by the Town Board of the Town of Marlborough 1-31-1983 as L.L. No. 1-1983. Amendments noted where applicable.]

GENERAL REFERENCES

- Building construction -- See Ch. 67.**
- Flood damage prevention -- See Ch. 97.**
- Subdivision of land -- See Ch. 134.**
- Zoning -- See Ch. 155.**

§ 89-1. Purpose.

The purpose of this chapter is to implement, for the Town of Marlborough, the provisions of the State Environmental Quality Review Act and the State Environmental Quality Review Regulations, thereby incorporating environmental factors into existing planning and decisionmaking processes.

§ 89-2. Statutory authority.

This chapter is adapted under authority of the Municipal Home Rule Law, the State Environmental Quality Review Act and the State Environmental Quality Review Regulations.

§ 89-3. Definitions.

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

EAF -- Environmental assessment form.

EIS -- Environmental impact statement.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR) -- Article 8 of the Environmental Conservation Law, which is Chapter 43-B of the Consolidated Laws of the State of New York.

STATE ENVIRONMENTAL QUALITY REVIEW REGULATIONS (PART 617) -- Part 617 of Title 6 of the official compilation of codes, rules and regulations of the State of New York.

B. All other terms for which definitions are given in SEQR and/or Part 617 have the same meanings in this chapter.

§ 89-4. Applicability.

All agencies, boards, departments, offices, other bodies or officers of the Town of Marlborough must comply with SEQR, Part 617, and this chapter, to the extent applicable, prior to carrying out, approving or funding any action other than an exempt, excluded or Type II action.

§ 89-5. Lead agency.

A. The lead agency is the agency (i.e., board, department, office, other body or officer of the Board) principally responsible for carrying out, funding or approving an action.

The lead agency is responsible for determining whether an EIS is required for the action and for preparing and filing the EIS if it is required.

B. Where more than one (1) agency is involved, the lead agency is determined and

designated as provided in Sections 617.6 and 617.7 of Title 6, except that for the following specific Type I and unlisted actions, in cases where a federal or state agency permit or approval is not necessary, the lead agency is:

- (1) Adoption, amendment or change in zoning or land use regulations: Town Board.
 - (2) Variances: Zoning Board of Appeals.
 - (3) Construction or expansion of Town of Marlborough buildings, structures and other facilities, including highways within the town: Town Board.
 - (4) Purchase, sale and/or lease of real property by the town: Town Board.
 - (5) Planned unit development or cluster zoning: Planning Board.
 - (6) Site plan review and special use permits: Planning Board.
 - (7) Construction or expansion of a nonresidential facility: Planning Board.
- C. The Town Supervisor will be the town's clearinghouse for lead agency designation. It will assist agencies and applicants to identify other federal, state and local agencies that may be involved in approving, funding or carrying out Type I and unlisted actions. The clearinghouse will make recommendations on designation of lead agencies for particular actions.
- D. Environmental review of actions involving a federal agency will be processed in accordance with Section 617.16 of Title 6.

§ 89-6. Environmental assessment and determination of significance.

- A. When any agency, department, body, board or officer of the town contemplates directly carrying out, funding or approving any Type I action, a full environmental assessment form (EAF) must be prepared by it or on its behalf. When an unlisted action is contemplated, either a full or short-form EAF, as appropriate, must be prepared. The EAF forms given in Appendixes A and B of Part 617 will be used as models, but may be modified to meet the needs of particular cases. However, the final scope of such a modified EAF must be at least as comprehensive as the scope of the model forms.
- B. When any person submits an application for funding or a permit or other approval of a Type I or unlisted action to any agency, department, body, board or officer of the town, an EAF must accompany the application. For Type I actions, a full EAF must be prepared; for unlisted actions, either the full EAF or the short-form may be used, as appropriate. An applicant may choose to prepare a draft EIS in place of an EAF.
- C. The lead agency must make a determination of environmental significance of the action. This determination must be based on the EAF or, with respect to unlisted actions, its own procedures, as the case may be, and on such other information as it may require. The criteria stated in Section 617.11 of Title 6 must also be considered by the lead agency in making its determination of significance. The determination must be made within fifteen (15) days of its designation as lead agency or within fifteen (15) days of its receipt of all information it requires, whichever is later.
- D. For Type I actions, the lead agency must give public notice and file a determination of nonsignificance, as provided in Subdivision 617.10(b) of Title 6. For unlisted actions, the lead agency must send a determination of nonsignificance to the applicant and maintain its own records thereof, in accordance with Subdivisions 617.7(e) and 617.10(f) of Title 6.
- E. If the lead agency makes a determination of nonsignificance, the direct action,

approval or funding involved will be processed without further regard to SEQR, Part 617, or this chapter.

- F. The time of filing an application for approval or funding of an action commences from the date the determination of environmental nonsignificance is made. If the applicant prepared a draft EIS in lieu of an EAF, the time of filing commences from the date the lead agency accepts the draft EIS as adequate in scope and content and commences the public comment period.

§ 89-7. Environmental impact statement preparation.

- A. If, based on review of the EAF and other information, the lead agency determines that the proposed action may be environmentally significant, then an EIS must be prepared.
- B. If an EIS is required, the lead agency must proceed as provided in Sections 617.8, 617.9 and 617.10 of Title 6. The draft EIS will normally be prepared by the applicant. If the applicant fails to prepare a draft EIS or prepares a draft EIS which is unacceptable to the lead agency, the lead agency may either prepare a draft EIS itself, discontinue further processing until the applicant can provide an acceptable draft EIS or deem the application abandoned and discontinue review.
- C. If a public hearing is held on the draft EIS, it must, whenever possible, be concurrent with any other hearing on the application.

§ 89-8. Fees.

- A. The fees for review or preparation of an EIS involving approval or funding of an action will be fixed from time to time by resolution of the Town Board.
- B. Fees so fixed will be consistent with the limitations set by Section 617.17 of Title 6. When the EIS is prepared by an agency on behalf of the applicant, fees will reflect the cost of preparation, including publication of notices, but not the cost of environmental review by the agency. However, the agency may not charge a fee for its determination of significance.

§ 89-9. Designation of critical areas. ^{56EN}

Critical areas of environmental concern will be designated from time to time by resolution of the Town Board in accordance with provisions of Subdivision 617.4(h) of Title 6.

§ 89-10. Type I actions.

- A. For purposes of this chapter, Type I actions include all those given in Section 617.12 of Title 6.
- B. In addition, the following are deemed Type I actions: none.

§ 89-11. Type II actions.

- A. For purposes of this chapter, Type II actions include all those listed in Section 617.13

of Title 6.

B. In addition, the following are deemed Type II actions: none.

Chapter 93, EXPLOSIVES AND BLASTING

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

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 130.

§ 93-1. Title.

This chapter shall be known as the "Explosives and Blasting Law of the Town of Marlborough, New York."

§ 93-2. Permit required; application; insurance.

- A. No person shall blast or cause to be blasted any rock or other substance with any explosive in the Town of Marlborough, as defined in this chapter, without having first obtained a permit from the Building Inspector covering the specific blasting operation, upon written application. Such blasting operations shall be conducted under the direct control and supervision of competent and licensed persons and in accordance with the provisions of New York State laws and regulations and the provisions of this chapter.
- B. The application for a blasting permit shall be on a form approved by the Building Inspector and contain such information as is required by the Building Inspector, accompanied by the fee as required. As part of the application for a blasting permit, the applicant shall also submit a description of all structures, including residential dwellings, located within three hundred (300) feet of the blast site and a list of the names and addresses of the owner or owners of any parcel of property on which the blasting is to take place, as shown on the most recent tax rolls of the Town of Marlborough.
- C. Before such a permit is issued, the person shall submit evidence, in the form of a certificate of insurance issued by an insurance company authorized to do business in the State of New York, guaranteeing that the applicant has in full force and effect a policy of public liability insurance, including a specific endorsement covering the liabilities arising from blasting and providing bodily injury coverage of not less than five hundred thousand/one million dollars (\$500,000./\$1,000,000.) and property damage insurance of not less than five hundred thousand/one million dollars (\$500,000./\$1,000,000.). Such policy shall also provide to save the town harmless from all claims, actions and proceedings brought by any person, firm or corporation for injury to person or property resulting from or occasioned by such blasting operations. Such policy shall contain the provision that the policy shall not be canceled, terminated, modified or changed by the company unless thirty (30) days'

prior written notice is sent to the town by certified mail. No permit shall be valid unless such insurance is in full force and effect.

§ 93-3. Issuance of permit; fee; revocation.

- A. Such permit, when approved and signed by the Building Inspector and upon payment of a fee in an amount set by resolution of the Town Board^{57EN} to the Building Inspector shall be issued and signed by the Building Inspector, who shall keep a record thereof. Each permit shall specify the name of the permittee, the date of expiration [which shall be no later than six (6) months from the date of issue] and the particular place where the blasting is to be done.
- B. The Town Board may revoke any permit issued hereunder at any time for good cause shown. If permit revocation occurs, a hearing shall be conducted by the Town Board upon written notification of the permittee of the time and place of and reason for such hearing.

§ 93-4. Amount of explosives used.

No person shall use, in a blasting operation, a quantity of explosives greater than necessary to properly start the rock or other substances, nor use such an amount as will endanger persons or property.

§ 93-5. Precautions required.

All blasts within two hundred (200) feet of any roadway or structure, before firing, shall be covered with metal rope or metal matting, heavy timbers chained together or other suitable screens of sufficient size, weight and strength to prevent the escape of broken rock or other material in a manner liable to cause injury or damage to persons or property. All blasts not within two hundred (200) feet of any roadway or structure shall have a suitable screen so as not to cause injury or damage to persons or property.

§ 93-6. Warning flags.

No person shall fire or explode or direct or cause to be fired or exploded any blast in or near any highway or public place in the Town of Marlborough unless competent persons carrying a red flag shall have been placed at a reasonable distance on all sides of the blast to give proper warning thereof at least three (3) minutes in advance of firing.

§ 93-7. Hours of operation.

No person shall conduct blasting operations within the Town of Marlborough after the hour of 5:00 p.m. and before 8:00 a.m., nor at any time on Sunday, except in the case of emergency or necessity, and then only with permission of the Building Inspector or the Fire Inspector.

§ 93-8. Notice of intent to blast.

- A. Not more than thirty (30) days nor less than seventy-two (72) hours prior to the intended blasting, a notice of intent to blast shall be served upon:
 - (1) The inhabitants or users of any structure, including residential dwellings, located within three hundred (300) feet of the blast site.
 - (2) The owner or owners of any parcel of property immediately adjoining or abutting the parcel of property on which the blasting is to take place.
- B. The notice of intent to blast shall be delivered to the inhabitants or users set forth in Subsection A(1) or (2) of this section. In the event that personal delivery of the notice of intent to blast cannot be effected, the notice of intent to blast may be left or posted at the structure or dwelling in a conspicuous place or a certified letter, return receipt requested, may be sent to the affected structure or dwelling. The certified letter shall be mailed to the property owner. The addresses of property owners shall be obtained from the Tax Assessor's office.
- C. The notice of intent to blast shall also be delivered to the Town Clerk, the New York State Police and the Ulster County Sheriff's Department no less than seventy-two (72) hours prior to blasting.
- D. Delivery of the notice of intent to blast, as required by this section, shall be the sole responsibility of the applicant for the blasting permit

§ 93-9. Special exceptions.

Public utilities and governmental agencies may be granted an exception to the provisions of this chapter only by the Town of Marlborough Building Inspector and only upon written request by such public utility or governmental agency for such special exception. Such written request shall state the reasons for the request and the blasting for which such exception is requested and shall include as part of such request certificate(s) of insurance as required in § 93-2C of this chapter. Such request shall be accompanied by a fee in an amount set by resolution of the Town Board.^{58EN} Such special exception shall be granted for a period not to exceed twelve (12) months and may be renewed from time to time upon written request and payment of the fee as required by this section.

§ 93-10. Penalties for offenses; enforcement.

- A. Any person or corporation violating any of the provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be subject to a fine of not more than two hundred fifty dollars (\$250.) or imprisonment for not more than fifteen (15) days, or both, for each offense. Every violation of any provision of this chapter shall be a separate and distinct offense, and, in case of continuing violation, every day's continuance thereof shall be deemed to be a separate and distinct offense.
- B. This may be enforced by the Building Inspector.

§ 93-11. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:
NOTICE OF INTENT -- Includes a written notice setting forth the location and approximate date or dates when blasting will occur. (See § 93-8A.)
PERSON -- Includes an individual, corporation, association, firm or partnership.

Chapter 97, FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the Town Board of the Town of Marlborough 6-8-1987 as L.L. No. 2-1987. Amendments noted where applicable.]

GENERAL REFERENCES

- Building construction -- See Ch. 67.
- Environmental quality review -- See Ch. 89.
- Mobile homes -- See Ch. 102.
- Sewers -- See Ch. 118.
- Subdivision of land -- See Ch. 134.
- Water -- See Ch. 149.
- Zoning -- See Ch. 155.

§ 97-1. Findings.

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

§ 97-2. 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.

§ 97-3. Objectives.

The objectives of this chapter are to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally

- undertaken at the expense of the general public.
- D. Minimize prolonged business interruptions.
 - E. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines and streets and bridges, located in areas of special flood hazard.
 - F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
 - G. Provide that developers are notified that property is in an area of special flood hazard.
 - H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 97-4. 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 - 99, V, VO, VE or V1 - 30. 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." ^{59EN}
 - 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 shear walls.
 - FLOOD BOUNDARY - 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 the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) -- An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries or 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 the basement, i.e., the top of the slab in concrete slab construction or the 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 -- The lowest level, including the 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 is 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 a 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 datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME -- The same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD) -- As corrected in 1929, a

vertical control used as a reference for establishing 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 -- 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 § 97-12B of this chapter. ^{60EN}

START OF CONSTRUCTION -- The initiation, excluding planning and design, of any phase of a project or physical alteration of the property, including land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of 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 -- 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 before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. 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:

- (1) Any project for 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
- (2) 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.

§ 97-5. Applicability.

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

§ 97-6. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration on its Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) No. 361220, dated December 6, 1974, are hereby adopted and declared to be a part of this chapter. The FHBM or FIRM is on file at the office of the Town Clerk.

§ 97-7. Interpretation; conflict with other provisions.

- 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 highest standards shall govern.

§ 97-8. Penalties for offenses.

No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or who 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 contained shall prevent the Town of Marlborough from taking such other lawful action as is 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 §§ 97-16 and 97-17 will be declared noncompliant, and notification shall be sent to the Federal Emergency Management Agency.

§ 97-9. 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 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 Marlborough, 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.

§ 97-10. Designation of local administrator.

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

§ 97-11. Development permit.

A development permit shall be obtained before the start of construction or any other development within the areas of special flood hazard as established in § 97-6. 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) The elevation, in relation to mean sea level, of the proposed lowest floor, including the basement or cellar, of all structures.
- (2) The 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 § 97-13C(1).
- (4) A certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 97-14A(2).
- (5) A 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 shall be 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 shall be 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.

§ 97-12. Duties and responsibilities of local administrator.

The 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 purposes 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 effect, then the permit shall be granted consistent with the provisions of this chapter.

- (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
- (4) Review all development permits for compliance with the provisions of § 97-13E, Encroachments.
- B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 97-6, 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 § 97-13D(4), in order to administer § 97-14, Specific standards for flood hazard reduction, and § 97-15, 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 the 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 §§ 97-13 and 97-14.
 - (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 § 97-6 and/or Subsection B, when available, shall be used to accurately delineate the areas 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 areas 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 § 97-8 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 § 97-8 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 which is hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of 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 will be based upon the inspections conducted subject to § 97-12G 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.

§ 97-13. General standards 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, 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 or eliminate infiltration of floodwaters into the system.
 - (3) New and replacement sanitary sewerage systems shall be designed to minimize

or eliminate 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 § 97-12A(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 § 97-12B or 97-13D(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 the special flood hazard where floodway data is provided or available pursuant to § 97-12B, the requirements of § 97-15, Floodways, shall apply.

§ 97-14. Specific standards for flood hazard reduction.

A. In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 97-6, Basis for establishing areas of special flood hazard, and § 97-12B, Use of other base flood and floodway data, the following standards are required:

- (1) Residential construction. New construction and substantial improvements of any residential structure shall:
 - (a) Have the lowest floor, including the basement or cellar, elevated to or above the base flood elevation.
 - (b) 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:
 - [1] A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
 - [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.
- (2) Nonresidential construction. 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 the 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 for every square foot of enclosed area subject to flooding shall be provided.
 - [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 the 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, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and 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.
- (3) Construction standards for areas of special flood hazard without base flood elevations.
 - (a) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including the basement, elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.
 - (b) 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:

- [1] A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
 - [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. The local administrator shall maintain on record a copy of all such certificates noted in this section.

§ 97-15. Floodways.

Located within areas of special flood hazard are areas designated as floodways. (See § 97-4, Definitions and word usage.) 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 § 97-12B, all encroachments, including fill, new construction and 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.

§ 97-16. Appeals Board.

- A. The Zoning Board of Appeals, as established by the Town Board, shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (1) The danger that materials may be swept onto other lands to the injury of others.
 - (2) The danger to life and property due to flooding or erosion damage.
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (4) The importance of the services provided by the proposed facility to the community.
 - (5) The necessity to the facility of a waterfront location, where applicable.
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use to the Comprehensive Plan and floodplain

- management program of that area.
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (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 Subsection D(1) through (12) and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- 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.

§ 97-17. Variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that § 97-16D(1) through (12) have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.
- 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 of:
- (1) A showing of good and sufficient cause.
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant.
 - (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 102, MOBILE HOMES

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 by L.L. No. 3-1977 as Ch. 100 of the 1976 Code of the Town of Marlborough. Amendments noted where applicable.]

GENERAL REFERENCES

- Planning Board -- See Ch. 33.**
Building construction -- See Ch. 67.
Flood damage prevention -- See Ch. 97.
Sewers -- See Ch. 118.
Streets and sidewalks -- See Ch. 130.
Subdivision of land -- See Ch. 134.
Water -- See Ch. 149.
Zoning -- See Ch. 155.

§ 102-1. Title. [Amended 10-15-1984 by L.L. No. 4-1984]

This chapter shall be known as the "Regulation of Mobile Homes and Mobile Home Parks in the Town of Marlborough."

§ 102-2. Purpose. [Amended 10-15-1984 by L.L. No. 4-1984]

It is the purpose of this chapter to promote the health, safety, morals and general welfare of the Town of Marlborough by the proper regulation of mobile homes and mobile home parks. Standards enacted herein for the siting of mobile homes outside of mobile home parks are designed to assure that such mobile homes will be compatible in appearance with site-built housing that has been or may be constructed in adjacent or nearby locations. Such aesthetic considerations are necessary to protect property values and promote the general welfare.

§ 102-3. Definitions. [Amended 10-15-1984 by L.L. No. 4-1984]

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

EXTERIOR SIDING MATERIALS -- Where specified, traditional site appearance shall be achieved through the use of exterior siding materials, such as clapboard, shingles and shakes, which may be fabricated from metal or other synthetic materials manufactured to closely resemble these traditional siding materials. Such "exterior siding materials" may include masonry, wood board and batten and textured exterior plywood, but shall not include artificial masonry or simulated board and batten made of metal.

FROST WALL -- A masonry foundation wall extending below the ground surface, supported by footings extending below the frost line.

GRADE BEAM -- That part of the foundation system which supports the exterior wall of the superstructure; commonly designed as a beam which bears directly on the column footings or may be self supporting. The "grade beam" is located at the ground surface and is well-drained below.

MOBILE HOME or HOUSE TRAILER -- Any structure fourteen (14) feet wide or less, adaptable to be moved by a power connected thereto and so designed as to permit occupancy thereof for dwelling or sleeping purposes or for the conduct of any business, profession, occupation or trade or for storage, and provided with any combination of the following mechanical systems and equipment: plumbing, heating, electrical, cooking and refrigeration. Such structure has a steel frame attached to the underside and may or may not have axles and wheels affixed to the frame. Such "mobile home" or "house trailer" shall be in conformity with the New York State Code for the Construction of Mobile Homes, March 13, 1974, as amended, and such certificates of the United States Department of Housing and Urban Development as may supersede such code.

MOBILE HOME PARK or TRAILER PARK -- Any plot of ground upon which two (2) or more mobile homes or house trailers occupied for dwelling or sleeping purposes or any of the purposes noted above are located, regardless of whether or not a charge is made for such accommodations.

PERSON -- Includes a person, partnership, firm, company, corporation, tenant, owner, lessee or licensee or their agents, heirs or assigns.

SKIRTING -- Material used to close the vertical space between ground level and the underside of the exterior perimeter of the mobile home or house trailer. "Skirting" shall rest on a frost wall and, if made of other than masonry material, must be recommended by the New York State Manufactured Housing Association and approved by the Building Inspector.

§ 102-4. Mobile home park plan.

A. Every person desiring to establish a mobile home park within the limits of the Town of Marlborough shall first file with the Town Clerk of said town a site plan prepared by a professional engineer or architect licensed in the State of New York showing the exact location of said mobile home park and planned in accordance with § 102-6 hereof and showing all the items required therein. For trailer parks not situated within the confines of public water and sewer systems, private systems must be provided and each site plan shall have the stamp of approval affixed by the Ulster County Department of Health. All plans shall then be submitted to the Town Planning Board for review and shall be approved and signed by the Town Board prior to any work being started for the establishment of a trailer park. For every trailer park so established:

- (1) A space of not less than twenty thousand (20,000) square feet for each trailer or mobile home to be placed thereon shall be provided. There shall be a maximum density of two (2) trailers permitted on one (1) acre [forty-three thousand five hundred sixty (43,560) square feet] of land. The minimum size of a trailer park shall be ten (10) acres.
- (2) Connections to the park water supply system and general sewage disposal system shall be provided for each site proposed to be used for the location of a trailer. Such sites shall be so arranged that no trailer or accessory structure shall be

- placed within fifty (50) feet of another trailer and no trailer or accessory structure shall be nearer to the front line of the lot than twenty-five (25) feet, nor within twenty-five (25) feet of the side line, the rear line or the outer right-of-way of an internal road.
- (3) In any trailer park where sites shall be provided adjacent to a public highway, no trailer, mobile home or accessory structure shall be placed in any position nearer to the right-of-way of the highway than fifty (50) feet.
 - (4) A roadway leading directly to a public highway shall be provided for each proposed trailer park. All water, sewer and power lines shall be five (5) feet from the outer right-of-way line of the highway leading to and within the trailer park. All such rights-of-way shall be not less than fifty (50) feet in width, and not less than twenty-five (25) feet shall be treated in accordance to Subsection A(9).
 - (5) No part of the site used as a space for a trailer location may be used as any part of the sewage disposal system, nor shall any source of water supply for trailers be on the trailer location.
 - (6) A water supply, where the trailer park is not served by public water supply, shall be sufficient to provide three hundred (300) gallons of water daily to each trailer proposed to be located thereon and must be approved by the Ulster County Department of Health.
 - (7) A sewage disposal plant shall be provided, of a capacity and efficiency approved by the Ulster County Department of Health, to serve a population of three (3) persons for every trailer site thereon, unless regular sewer connections are provided.
 - (8) Each trailer site shall be provided with one-hundred-ampere, two-hundred-twenty-volt electrical current of the standard frequency generally provided in the area.
 - (9) Roadways provided for moving vehicles and mobile homes shall be paved in accordance with the standards set forth in the minimum road specifications of the Town of Marlborough.^{61EN}
 - (10) Each mobile home park shall have at all times provisions, other than those in the mobile home or trailer, for bathing and toilet facilities, a minimum of one (1) bath or shower, one (1) toilet and one (1) lavatory for each sex for each four (4) trailer sites, connected to the park water supply.
 - (11) The toilet and other sanitation facilities for males and females either shall be in separate buildings or shall be separated, if in the same building, by a soundproof wall. The sanitation facilities for males and females shall be distinctly marked to denote the sex for which they are intended.
 - (12) Each trailer site within a trailer park other than area used for the location of the trailer and a driveway shall be graded and seeded with a perennial grass and landscaped. At least ten percent (10%) of the total area of the park shall be set aside for public recreation use.
- B. Any deviation from the submitted site plan resulting in relocation of trailers or addition of trailers or accessory structures shall be cause to make a permit void. Applications for revisions to an existing permit shall be filed with the Town Clerk, reviewed by the Town Planning Board and presented to the Town Board for approval prior to making these changes.

§ 102-5. Permit required for mobile homes parked outside parks. [Amended 10-15-1984 by L.L. No. 4-1984; 6-17-1985 by L.L. No. 2-1985; 8-11-1986 by L.L. No. 2-1986]

No mobile home or house trailer used or occupied as living or sleeping quarters may be parked or stored for a time in excess of seventy-two (72) hours within the Town of Marlborough without first the procuring of a permit from the Town Clerk and/or the Building Inspector, except as herein provided. None of the provisions below shall be applicable to any mobile home or house trailer stored or garaged and not being used or occupied as living or sleeping quarters. The Town Clerk and/or the Building Inspector shall issue a permit, as required in this chapter, only upon submission of proof that the mobile home or house trailer for which the permit is required meets with the following conditions and standards:

- A. Mobile homes are permitted in the R-Ag-1 Zone. They shall not be permitted unless they are preexisting in the R District, R-1 District, HD District, C-1 Commercial District and I Industrial District and can be replaced only:
 - (1) By code-approved mobile homes.
 - (2) If the present mobile home is destroyed by fire or natural disaster.
 - (3) If the applicant has an economical or distress hardship that can be determined by the Planning Board.
- B. Replacement of a mobile home must be completed within one hundred twenty (120) days of loss of the existing mobile home or be granted a variance for one hundred twenty (120) days by the Building Inspector for complicating circumstances.
- C. No mobile home shall be sited and no existing mobile home shall be moved, altered, added to or enlarged, nor shall any land or mobile home be designed, used or intended to be used for any purpose or in any manner other than as specified among the uses hereinafter listed as permitted in the zone in which such mobile home or land is located.
- D. No permit shall be issued unless the Building Inspector is satisfied that:
 - (1) Proper facilities for water supply, sewage and drainage have been provided and such facilities will be accepted by the Ulster County Health Department.
 - (2) Structural stability is provided as required by federal, state and local laws.
- E. An application fee in an amount as set by resolution of the Town Board is to be paid upon filing of the application.^{62EN}
- F. A permit will be issued only when it shows that:
 - (1) The applicant owns the real property on which the mobile home is to be located.
 - (2) The real property on which the mobile home is located has the same area as is required by Chapter 155, Zoning, for a one-family home in the same zone.
 - (3) The approval of a highway entrance has been obtained from the Highway Superintendent having jurisdiction and a private drive has been provided on the site plan.
 - (4) Setbacks are the same as is required by Chapter 155, Zoning, for a one-family home in the same zone.
 - (5) The applicant agrees to place said trailer upon poured concrete or concrete block piers of sufficient size and number to comply with the mobile home manufacturer's specifications. The piers shall be erected upon a footing of poured concrete at a depth below grade to prevent heaving by frost, and the mobile

home shall be fastened to such piers by anchor bolts or equivalent fastening devices adequate to enable the attached mobile home to withstand all wind loads in accordance with New York State Uniform Fire Prevention and Building Construction Code specifications.^{63EN}

- (6) The applicant agrees to construct a landing platform under the doors of not less than three by five (3 x 5) feet, with permanent steps, within ninety (90) days after placement on the site.
 - (7) The mobile homes to be sited meet the following standards:
 - (a) Peak roof.
 - (b) Shingle or shingle-like roofing.
 - (c) Exterior siding per § 102-3 of this chapter.
 - (d) Frost wall foundation.
 - (e) Skirting as specified in § 102-3 of this chapter.
 - (8) The size of the proposed mobile home or house trailer is shown on the application.
- G. Failure to comply with this subsection shall be cause for revocation of the permit.

§ 102-6. License for mobile home park.

- A. It shall be unlawful for any person to establish, maintain or operate or permit to be maintained or operated upon any property owned or controlled by him a mobile home park or a trailer park within the Town of Marlborough without having first secured a license therefor in compliance herewith. Such a license shall expire on May 1 following the date of issuance, but may be renewed under the provisions of this chapter for the additional period of one (1) year.
- B. ^{64EN}The application for such license or renewal thereof shall be filed with the Town Clerk and shall be accompanied by the fee as provided herein. The license fee shall be the amount as set by resolution of the Town Board.^{65EN} The first year's annual fee shall be apportioned to the period of time remaining until May 1 of the following year. Such application shall include the name and address of the applicant, the nature and extent of his interest in the business for which a license is desired and whether he is the owner of the property (if the fee is vested in some person other than the applicant, a duly verified statement by that person that the applicant is authorized by him to construct or maintain the trailer park and make the application) and such a legal description of the premises upon which the trailer park is located or will be located as will readily identify and definitely locate the premises. The application shall be verified and shall also state the number of units in said proposed park and such other information as may be required. It shall be accompanied by two (2) copies of the park plan, drawn to scale on a survey map prepared by a professional engineer or architect duly licensed by the State of New York, showing the following:
 - (1) The extent and area used for park purposes.
 - (2) Roadways, driveways and walkways.
 - (3) The location of sites or units for house trailers.
 - (4) The separate location of parking facilities for automobiles and tow vehicles.
 - (5) The location and number of sanitary conveniences, including toilets, washrooms, laundries and utility rooms.

- (6) The method and plan of sewage disposal.
- (7) The method and plan of refuse disposal or removal.
- (8) The plan for water supply.
- (9) The plan for electrical lighting of units and park roadways and walkways.
- C. The Town Clerk shall immediately submit said application and plan to the Town Board, who shall examine the same and inspect the property and, after holding a public hearing thereon, either approve or disapprove the application within sixty (60) days.
- D. If the application is granted, the license shall be issued by the Town Clerk. If the application is disapproved by the Town Board, it shall be endorsed accordingly, together with the reason for such disapproval. Any person deeming himself aggrieved by the action of the Town Board may, within thirty (30) days thereafter, apply to the Town Board for review of such action. The Town Board may reaffirm, reverse or modify its determination and may direct the Town Clerk to issue or refuse such license.

§ 102-7. Management standards for parks.

- A. In every trailer park or mobile home park there shall be a building in which shall be located the office of the operator or person in charge of said park. A copy of the park license and of this chapter shall be posted therein, and the park register shall at all times be kept in such office.
- B. It is hereby made the duty of the attendant or person in charge, together with the licensee, to:
 - (1) Keep at all times a register of all guest or mobile home occupants, which shall be open at all times for inspection by state and federal officers and officers of the Town of Marlborough, showing for each such house trailer the following:
 - (a) The name and address of each occupant.
 - (b) The date of arrival.
 - (c) The name of the owner of the mobile home.
 - (d) The make of the mobile home.
 - (e) The state of registry of the mobile home.
 - (f) The registration number of the mobile home.
 - (g) The year of issue of the registration and, in addition, for each mobile home being propelled by an automobile or vehicle to which it may be attached, the following:
 - [1] The name of the owner of the vehicle.
 - [2] The state of registry of the vehicle.
 - [3] The registration number of the vehicle.
 - [4] The year of issue of the registration.
 - [5] The make of the vehicle.
 - (h) The number of occupants for which the mobile home is designed.
 - (2) Maintain the park in a clean, orderly and sanitary condition at all times.
 - (3) See that the provisions of this chapter are complied with and enforced and report promptly any communicable diseases in the park to the Ulster County Department of Health.
 - (4) Prohibit the use of any mobile home by a number of occupants greater than that

which it is designed to accommodate.

- (5) Prohibit the use of the park by more mobile homes than the park is licensed to accommodate.
- (6) If the water is supplied from a private well or source other than a public water supply, display evidence that the water supply system has been inspected and approved by the Ulster County Department of Health within the preceding twelve (12) months.

§ 102-8. Inspection of park premises.

Before the trailer park or mobile home park commences operations and at least semiannually thereafter, the Town Board, through the Town Clerk and/or the Building Inspector, shall make an inspection of the premises to determine that all requirements of this chapter have been and are being complied with.

§ 102-9. Revocation and suspension of licenses.

None of the provisions of this chapter shall be construed as granting vested interest to anyone licensed under this chapter, and the Town Board hereby reserves the right to withdraw all permissions and to revoke all licenses granted under this chapter.

§ 102-10. Applicability to existing parks.

This chapter shall apply to all existing mobile home parks in the Town of Marlborough on the date of its adoption, except that holders of mobile home park permits issued prior to December 28, 1970, shall make application to the Planning Board for any proposed changes.

§ 102-11. Applicability to farm labor camps.

Mobile homes used in farm labor camps, as defined in the State of New York Sanitary Code and licensed by the Health Commissioner having jurisdiction over labor camps located in the Town of Marlborough, shall be exempt from the provisions of this chapter, except for the setback provisions as set forth in § 102-4A hereof, provided that the farm laborers shall live in said premises free of all rent or expense other than heat or light. This exemption shall apply only upon the farm operator displaying annually to the Town Clerk and/or the Building Inspector the permit granted by the Health Commissioner of Ulster County having jurisdiction over such farm labor camps.

§ 102-12. Construal of provisions.

Nothing herein contained shall be construed to abrogate any provisions of the Sanitary Code of the State of New York or of the County of Ulster as the same now provides or may hereafter be amended to provide. In the event of inconsistencies existing between the provisions of this chapter and said code or codes, said code or codes shall govern.

§ 102-13. Penalties for offenses.

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

Chapter 111, PEDDLING AND SOLICITING

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 by L.L. No. 3-1977 as Ch. 80 of the 1976 Code of the Town of Marlborough. Amendments noted where applicable.]

§ 111-1. 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 a person transacts business and deals in the goods, wares, publications 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 public place or by going from house to house or place of business, on foot or on or from any animal or vehicle standing in a street or highway, sells or barter or offers for sale or barter any goods, wares, publications 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 the street or public place taking or offering to take orders for goods, wares, publications or 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.

§ 111-2. Applicability. ^{66EN}

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 of Marlborough or their employees; to the peddling of meats, fish, fruits, vegetables and similar produce by farmers and persons who produce such commodities; 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 York; or to any person soliciting or collecting for any bona fide nonprofit or charitable organization. This chapter shall also

not apply to, so as unlawfully to interfere with, interstate commerce.

§ 111-3. License required; exception.

- A. No hawker or peddler shall peddle or canvass his goods, wares, publications or merchandise, including the solicitation of magazine subscriptions, at private residences, unless invited or requested by the occupant of said private residences to do so, without having first obtained a license as herein required.
- B. It shall be unlawful for any person within the territorial limits of the Town of Marlborough to act as a hawker, peddler or solicitor, as herein defined, without having first obtained and paid for and having in force and effect a license therefor.

§ 111-4. Application for license.

- A. Every applicant for a license, as herein provided, shall submit to the Town Clerk a written application under affidavit setting forth the following information:
 - (1) That he is a citizen of the United States.
 - (2) That he never has been convicted of a felony or misdemeanor (or, if so, giving details).
 - (3) A detailed statement of the particular trade, business or occupation for which the license is requested.
 - (4) 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.
 - (5) The kind of goods, wares, publications and merchandise he desires to sell or the kind of service he desires to render.
 - (6) The name, address and age of the applicant, the name and address of the persons, 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.
 - (7) Such other information as may be required by the Town Clerk.
- B. The applicant shall provide two (2) photographs of himself, taken within sixty (60) days of the time of application, two by two (2 x 2) inches in size, showing his head in a clear and distinguishing manner. [Added 3-28-1977]
- C. The fingerprints of the applicant shall be taken. [Added 3-28-1977]

§ 111-5. Issuance, duration and use of license.

- A. Upon the filing of the application, as provided in § 111-4, the Town Clerk shall, upon his approval of such application, issue to the applicant a license, as provided in § 111-3B, signed by the Town Clerk. Except as hereinafter provided, no licenses shall be refused except for a specific reason and for the protection of public safety, health or morals or the general welfare.
- B. A license shall not be assignable. Any holder of such license who permits it to be used by any other person or any person who uses such license granted to any other person shall be guilty of a violation of this chapter.
- C. Such a 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.
- D. No license shall be granted to a person under eighteen (18) years of age.
 - E. No applicant to whom a license has been refused or who has a license that has been revoked shall make further application until a period of at least six (6) months shall have elapsed since the last previous rejection or the revocation no longer exists.
 - F. 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.

§ 111-6. License fees. ^{67EN}

The license fee to hawkers, peddlers or solicitors shall be an amount as set by resolution of the Town Board. ^{68EN}

§ 111-7. 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 wares, but such person shall so act only while accompanying a licensed peddler, hawker or solicitor.

§ 111-8. Vehicle identification.

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 painted 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.

§ 111-9. Refusal or revocation of license.

- A. Upon 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 prescribed in § 137 of the Town Law shall be complied with.
- B. When a license shall be revoked, no refund of any unearned portion of the license fee shall be made.
- C. 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.

§ 111-10. Restrictions on activities of licensee.

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 (1) 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 lessee of the premises objects.
- D. Not sell any confectionery or ice cream within five hundred (500) 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 any booth 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, publications 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.
- H. Not enter upon private or public property for the purpose of peddling, hawking or soliciting before the hours of 9:00 a.m. of any day or after the hour of 9:00 p.m. of any day, except upon the invitation of the householder or occupant, nor at any time on Sundays or holidays. [Amended 3-28-1977]

§ 111-11. Issuance of receipt for moneys deposited required.

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 payment or deposit of money is paid to the solicitor.

§ 111-12. Required 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 this chapter, giving the number and date of each license, the name and address of the person licensed, the amount of the license fee paid and the date of revocation of all licenses revoked.

§ 111-13. Penalties for offenses. [Amended 3-28-1977]

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

Chapter 114, PROPERTY MAINTENANCE

[HISTORY: Adopted by the Town Board of the Town of Marlborough 6-10-2002 by L.L. No. 2-2002; amended in its entirety 7-28-2003 by L.L. No. 4-2003. (This chapter was adopted as Ch. 69, but was renumbered to fit into the alphabetical organization of the

Code.) Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Building construction -- See Ch. 67.
Numbering of buildings -- See Ch. 68.
Outdoor burning -- See Ch. 71.

§ 114-1. Legislative intent.

The Town Board of the Town of Marlborough hereby determines it is necessary for the public health, safety and general welfare of the residents of the Town of Marlborough to provide regulations in accordance with Public Health Law § 302 whereby properties, waterways, ponds, and other standing water within the incorporated portion of the Town are kept clean and relatively free from vermin, noxious weeds, and disease-bearing insects, including but not limited to ticks, mosquitoes and flies; are properly maintained; and are kept free of nuisances, hazards, debris and litter. Further, it is found and declared that by reason of lack of maintenance and progressive deterioration, certain properties and structures have the further effect of creating blighting conditions leading towards the creation of slum-type areas and that, if the same are not curtailed and removed, the conditions will grow and impact the entire community. By reason of timely regulations and restrictions, the public health may be protected, blighted areas prevented and the desirability and amenity value of properties maintained.

§ 114-2. Definitions.

- A. For purposes of this chapter, certain words and phrases shall be construed herein as set forth in this section unless it is apparent from the context that a different meaning is intended. When not inconsistent with the context, the present tense shall include the future, and words used in the plural shall include the singular and vice versa.
- B. As used in this chapter, the following terms shall have the meanings indicated:
- DEBRIS** -- The remains of something broken down or destroyed or ruins, rubble, or fragments.
- GARBAGE** -- Any animal or vegetable refuse or waste matter capable of fermentation or decay.
- HAZARDS** -- A source of danger, peril, conditions creating a risk or a chance of an accident, unhealthy condition, or unsightly conditions.
- LITTER** -- Trash polluting the environment. A disorderly accumulation of objects and/or carelessly discarded waste materials or scraps.
- NOXIOUS WEEDS** -- Plants or other flora growth that may be hurtful, harmful or may physically affect individuals or animals, including but not limited to such as poison ivy, sumac (trees, bushes or vines), deadly nightshade, Japanese Heliotrope and bindweed. "Noxious weeds" shall not include those plants normally cultivated in gardens.
- NUISANCE**
- (1) Any public or private condition that would constitute a nuisance according to the statutes, laws and regulations of the State of New York, its governmental agencies or the regulations and laws of the Town.

- (2) Any physical condition existing in or on any premises which is potentially dangerous, detrimental or hazardous to the life, health or safety of persons on, near or passing within the proximity of premises where said condition exists.
- (3) Any waste material or any other matter attractive to vermin, likely to breed disease or which present a fire hazard, create offensive odors or otherwise are prejudicial to good health or are so unsightly of appearance as to be offensive to surrounding properties.

OCCUPANT -- Any person residing, using, living or sleeping in or on the premises or having actual possession, use or occupancy of any structure on the premises or any person or entity in possession of or using any premises or part thereof, whether or not the owner thereof and regardless of the duration of time of such possession, use or occupancy and regardless of whether the property is vacant or not.

OWNER -- Any person, persons or entity who shall have legal or equitable title in any form whatsoever to any premises or part thereof, with or without accompanying actual possession thereof, or who shall have charge, care or control of any lot, premises, building, structure or part thereof as agent of the owner or as a fiduciary, trustee, receiver, guardian, lessee or mortgagee in possession, regardless of how such possession was obtained. Any person, group of persons or entity who is a lessee, sublessee or assignee of a lessee of any part or all of any building, structure or land shall be deemed to be a co-owner with the lessor for the purposes of this chapter and shall have responsibility over the premises sublet, leased or assigned.

PERSON -- Any individual, partnership, association, firm, corporation or any entity which can own or lease real property under New York State law.

PREMISES -- A lot, plot or parcel of land, including the buildings or structures thereon.

SOLID WASTE -- Materials or substances discharged, discarded or rejected as being spent, useless, worthless or in excess by the owner at the time of such discard or rejection, except sewage and other highly diluted water-carried materials or substances and those in gaseous form. Such waste shall include but is not limited to garbage, sludge, rubbish, ashes, incinerator residue, street cleanings, dead animals, refuse, abandoned vehicles, agricultural waste, industrial waste, commercial waste and construction and demolition debris.

§ 114-3. Duties of owners and occupants.

- A. In furtherance of the purposes of this chapter, it shall be the duty and responsibility of the owner or occupant of premises to comply with any or all of the requirements and standards of this chapter to keep the premises free of conditions which constitute violations hereof and to promptly remove, prevent or abate such conditions as well as any county, state and federal laws, codes or regulations.
- B. Owners and occupants shall have all the duties, obligations and responsibilities prescribed in this chapter, and no such person or entity shall be relieved of any duty, obligation or responsibility hereunder nor be entitled to assert, as a defense against any charge made against him or them for violation of this chapter, the fact that another owner, operator or occupant or any other third person or entity is also responsible therefor and in violation thereof.

§ 114-4. Applicability of provisions.

The provisions of this chapter shall supplement state and local laws, codes or regulations. Where a provision of this chapter is found to be in conflict with a provision of a state or local law, code or regulation, the more restrictive provision shall prevail when legally permissible.

§ 114-5. General requirements.

- A. Surface and subsurface water shall be appropriately drained to prevent the development of stagnant ponds.
- B. Premises shall be maintained in a clean, safe and sanitary condition free of physical hazards, fire hazards, solid waste, infestation, roaches, junk vehicles, hazardous substances, construction and demolition material, noxious weeds or nuisances.
- C. All fences must be kept maintained free from broken or missing sections, as well as being secured into the ground. All repairs should be made upon disrepair.
- D. Premises shall be maintained in such a manner that noxious weeds do not encroach upon adjoining properties, and the grasses thereon shall be mowed or cut when the height of growth exceeds 24 inches. Exempt from this provision are those parcels located in RAG-1 and those premises for active farming, wood lots, grazing, pasture or the growing of hay for feed.
- E. The landscaping on all premises improved with a building thereon shall be properly maintained. Such maintenance shall include but not be limited to the trimming or removal of trees and potentially hazardous or diseased trees, shrubs or portions thereof. Lawns shall be kept mowed to a height not to exceed 12 inches.
- F. Steps, walks, driveways, parking spaces, parking lots and similar paved areas shall be repaired, replaced and maintained so as to be free from any holes, cracks, or any other hazard, so as to afford safe passage to the public under normal use and weather conditions.
- G. Ground cover shall be properly established to prevent undue soil erosion due to the elements.
- H. Premises shall be maintained so that the plant growth thereon shall not:
 - (1) Harm or binder the development of valued frees and/or shrubs on public or private property;
 - (2) Intrude upon the property of an adjoining property owner;
 - (3) Render offensive odors;
 - (4) Create or present a hazard to others.
- I. That portion of the public right-of-way between the private property line and the traveled roadway portion of any right-of-way adjoining the private property owner shall be maintained by the abutting private property owner or occupant in the same manner as provided in § 114-5.
- J. Buildings and structures.
 - (1) All exterior exposed surfaces not inherently resistant to deterioration shall be repaired, coated, treated or sealed with a protective coating of paint or other suitable preservative to protect them from deterioration.
 - (2) All signs exposed to public view shall be maintained in good repair. Excessively weathered or faded signs shall be repaired, restored or removed. Inoperative

- electrical or other mechanical signs shall be repaired or removed.
- (3) Except in one- and two-family dwellings, all floors, walls, ceilings, stairs and fixtures of a building's exterior walls, roofs, porches or appurtenances thereto shall be maintained in a clean, safe and sanitary condition and shall be maintained in a manner so as to prevent injury to the occupants of the building or to the public.
 - (4) The foundation walls of every building shall be maintained in a structurally sound condition.
 - (5) The exterior parts of a building shall be maintained so as to keep water from entering the building. Material which have been damaged or show evidence of dry rot or other deterioration shall be repaired or replaced and refinished in a workmanlike manner. Exterior walls, gutters, leaders, soffits, cupolas, roofs and other parts of the building shall be free from loose and unsecured objects and materials. Such objects or materials shall be removed, repaired or replaced.
 - (6) Buildings and structures shall be maintained free of fleas, roaches, insects, vermin, and rodent harborage and infestation, and any other animals causing unsanitary or unhealthy conditions.
 - (7) Adequate sanitary facilities and methods shall be used for the collection, storage, handling and disposal of garbage and refuse. Garbage and refuse containers shall be of an approved waterproof type.

§ 114-6. Administration and enforcement.

- A. Enforcement officer; appearance tickets. The Code Enforcement Officer of the Town of Marlborough and the Police Chief are hereby designated as the officers charged with the enforcement of this chapter, and either is hereby authorized to issue appearance tickets to secure enforcement. Such appearance tickets shall be in the form prescribed by the Town Board, and returnable before the Town Court.
- B. Enforcement procedure.
 - (1) Whenever an enforcement officer determines that there is or has been any violation of any provision of this chapter, he shall give notice of such violation to the person, persons, or entities responsible therefor. Such notice shall be in writing and shall include a concise statement of the reasons for its issuance. Such notice shall be deemed to be properly and sufficiently served if a copy thereof is sent by registered or certified mail to the last known address of the person or entity upon which the same is served, as shown by the most recent assessment roll of the Town, or a copy thereof is personally delivered (as if a summons) to said person or persons or a copy thereof is left at the usual place of abode or office of said person or entity.
 - (2) Notice shall be given as aforesaid within or without the Town.
 - (3) The notice shall also state that unless the violation is abated, removed, cured, prevented or desisted from within five days of the date of service of such notice, exclusive of the date of service, an appearance ticket shall be issued for such violation. The enforcement officer may extend the period for compliance with the violation stated in the notice for a period in excess of the aforesaid five days if, in his judgement, the abatement, removal, prevention, cessation or cure of the condition violated can not reasonably be effected within the five-day period, and

in such cases, the enforcement officer shall state such reasonably required extended period in the notice, which shall then be applicable instead of the aforesaid five days.

- (4) Whenever a violation has not been remedied within the time specified in the notice of violation, an enforcement officer can issue a summons, bringing the person into the Justice Court.
- C. Emergency conditions. Whenever the enforcement officer finds that an emergency condition in violation of this chapter exists, which condition requires immediate attention in order to protect the public health or safety, he may issue an order by service of notice in the manner set forth above, reciting the existence of such an emergency condition and requiring that such action be taken by the violator as soon as it is reasonably necessary to meet the emergency. Notwithstanding any other provision of this chapter, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon objection in writing to the Enforcement Officer, and returnable before the Town Court, any such person shall be afforded a hearing before the Town Justice.
- D. Failure to comply with the direction of any official of the Town of Marlborough when notice has been provided in accordance with this chapter shall constitute a separate and distinct offense hereunder.
- E. Action by Town; indemnification.
- (1) Nothing contained in this chapter shall be construed or interpreted as limiting the authority of the Town to take all steps reasonable or necessary to promote and protect the public health, safety and welfare by providing for safe passage of pedestrians and vehicles on streets, sidewalks and public ways. The Town Board, in its discretion, may authorize local authorities to remove obstructions or nuisances, standing water, including snow, ice and vegetative growth, which impair the customary use of street, sidewalks and public ways. The Town Board may determine to undertake or authorize action, in whole or in part, by reasonable classification based upon location, amount of public use and degree of danger or impairment presented. The undertaking of the Town to take these actions upon default of the property owner shall not relieve the owner of any responsibilities imposed by this chapter.
 - (2) The failure or omission by the Town to undertake to provide services shall not create any liability attributable to the Town. With respect to any dangerous conditions for which the Town may be liable, it shall be entitled to receive notice of defect in accordance with Chapter 114 of the Code of the Town. Any duty on the part of the Town pursuant to this chapter is a general duty of the Town. No person is authorized to create or imply or to assume or infer a special duty by the Town.

§ 114-7. Removal by Town; charges.

- A. Upon the failure of a person to comply with a notice to correct a condition complained of the Town Board may, after a public hearing, abate the condition, including authorizing the Code Enforcement Officer or such other person, department or independent contractor as it shall deem appropriate to remove, cut or trim brush, grass, rubbish or weeds causing the hazard or to spray the same, charging the total

cost thereof to the owner of such real property, which cost shall be assessed and constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged, and the same shall be collected in the same manner and at the same time as other Town charges. In the emergency circumstances, the public hearing may take place after removal or abatement action by the Town.

- B. The removal of any nuisance, hazard or litter by the Town Board or its agents shall not operate to excuse the owner, tenant or occupant from properly maintaining any premises as required by this chapter, and such owner, tenant or occupant shall, notwithstanding such action, be subject to any penalties provided for herein.
- C. All direct and indirect costs of labor and equipment, supplies, disbursements and payments made or incurred by the Town in enforcement of this chapter, performing the work to abate the conditions which violate this chapter and in otherwise securing compliance shall be payable to this Town by the owner of the property. Any sums unpaid shall be a lien on the real property and shall be assessed against such property, with 9% interest per annum, and shall be relieved and collected in the same manner as real property taxes.

§ 114-8. Penalties for offenses.

- A. Criminal penalty. Any person or entity who shall violate any of the provisions of this chapter or any order promulgated hereunder shall, upon conviction, be fined up to \$250 plus up to 15 days in Ulster County Jail for each offense.
- B. Civil penalties. Alternatively or in addition to those criminal penalties prescribed for violations under this chapter and/or state law, any person, firm or corporation who violates this chapter shall be liable to the Town for a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. Said civil penalties shall be recoverable in an administrative proceeding held by and before the Town Board pursuant to the following procedure.
 - (1) An enforcement officer can issue a petition to bring the property owner and/or occupant before the Town Board.
 - (a) Such petition shall be served personally or by mailing a copy of such petition by certified mail to the property owner and/or occupant, to their last known addresses as shown by the records of the Town, and by posting a copy of such petition on said premises.
 - (b) A copy of said petition may be filed in the Town Building Inspector's office and entered in the same manner as any other code violations. A petition so filed shall be effective as an open violation and shall remain until cleared. It may be cancelled upon the written consent of the Attorney for the Town, or by resolution of the Town Board by a majority vote. The Building Inspector shall mark the violation as cancelled upon written direction from the Attorney for the Town or a Town Board resolution.
 - (2) Content of petition. Said petition shall state the nature of the violation; the provision violated or a description of the violation; and the date, time and place for a hearing before the Town Board. The hearing shall be set for a date not less than seven days after the date the petition is personally served or mailed.
 - (3) Conduct of hearing.
 - (a) The Town Board shall conduct a hearing at the date, time and place specified

in the petition. The hearing may be adjourned from time to time upon the written consent of both the enforcement officer and the property owner and/or occupant or by the Town Board at the request of either party. No formal rules of evidence shall apply, nor shall a stenographic transcript be required.

- (b) The property owner, occupant and any others subject to the petition may be represented by an attorney and shall have the right to present evidence and examine witnesses to show why penalties should not be assessed or modified.
 - (c) The hearing should be in a similar fashion as to a small claims proceeding, i.e., an informal procedure. The enforcement officer shall set forth his proof, the property owner and/or occupant shall have the right to cross-examine, and then the property owner and/or occupant shall have the right to submit their proof and the enforcement officer shall have the right to cross examine. All witnesses shall be sworn in by the Town Board. Either party may make an opening statement or a closing statement but none shall be required. All documents or proof submitted shall be retained by the Town Board unless otherwise stipulated to between the parties. After the hearing is closed, the Town Board shall make a finding and determination indicating the basis and reason for the decision in setting forth the dollar amount of any penalties imposed.
 - (d) Any fines imposed, plus any costs awarded, including but not limited to attorneys fees and administrative costs, shall be immediately due and payable. Administrative costs shall be determined from time to time by resolution of the Town Board.
 - (e) The determination of the Town Board may be reviewed in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is commenced within 30 days of such determination.
 - [1] The 30 days shall commence running as follows:
 - [a] If a verbal decision is rendered to the parties after the close of the hearing, said 30 days shall commence running from said verbal decision.
 - [b] If the Board renders a written decision, the 30 days shall commence from the Board's notification to the parties by certified mail.
 - [2] Judicial review shall not stay payment of any fine, administrative costs or fees awarded nor lift any stop-work order imposed by the enforcement officer on the property owner and/or occupant.
- (4) Assessment of fines and costs. All costs and administration fees awarded in the administrative proceeding, if unpaid, shall be a lien on the real property and shall be assessed against such property and shall be charged interest of 9% per annum from the date of the petition and shall be levied and collected in the same manner as real property taxes.
- C. Injunction. In addition to the above-provided penalties and punishment, the Town Board of the Town of Marlborough may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain, by injunction, the violation of this chapter or any order promulgated hereunder.

§ 114-9. Severability.

If any phrase, sentence or provision of this chapter is judged invalid by any court of competent jurisdiction, such judgement shall be confined to that phrase, sentence or provision rejected by such judgement and shall not affect the validity of the remainder of this chapter.

Chapter 115, RIGHT TO FARM

[HISTORY: Adopted by the Town Board of the Town of Marlborough 11-25-2002 by L.L. No. 4-2002. Amendments noted where applicable.]

GENERAL REFERENCES

Property maintenance -- See Ch. 114.

Subdivision of land -- See Ch. 134.

Zoning -- See Ch. 155.

§ 115-1. Title.

This chapter shall be known as the "Right to Farm Law of the Town of Marlborough."

§ 115-2. Legislative intent and purpose.

It is the general purpose and intent of this chapter to maintain and preserve the character of the Town of Marlborough to permit and encourage the continuation of the business of farming within the Town of Marlborough to protect the existence and operation of established farms, and to encourage the initiation and expansion of farming.

- 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 chapter of those persons' and/or entities' rights 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 chapter to reduce the loss to the Town of its agricultural industry as a whole. It is the purpose and intent of this chapter 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 chapter 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 Town law.
- C. An additional purpose of this chapter 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 operations. It is intended that 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.

§ 115-3. Definitions.

- A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them 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:
AGRICULTURAL ACTIVITIES -- The production of crops, livestock, and livestock products as defined in § 301 (2) of the Agriculture and Markets Law of the State of New York.
FARMLAND -- Land used in agricultural production, as defined in § 301 (4) of the Agriculture and Markets Law.

§ 115-4. Right to farm.

- A. Farmers, both full-time and part-time, as well as those employed, retained or otherwise authorized to act on behalf of farmers, may lawfully engage in farming practices within the Town of Marlborough at any and all such times and all such locations as are reasonably necessary to conduct the business of farming.
- B. For any activity or operation, in determining the reasonableness of the time, place and methodology of such operation, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge and improved technologies.
- C. It is hereby declared that agricultural activities conducted on farmland are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.
- D. No agricultural or farming operation, place, establishment or facility shall be or shall become a nuisance, as a result of changed conditions in or around the locality of such agricultural or farming operation, place or establishment if it was not a nuisance at the time it began operation.

§ 115-5. Right to farm statement.

The Town Board shall adopt a Right to Farm Statement and prescribe the method of its dissemination.

§ 115-6. Construction with other laws.

This chapter is not intended to contradict or contravene any law, rule, regulation, restriction or proscription of the United States, State of New York, County of Ulster or Town of Marlborough, which may now or may hereafter pertain, and accordingly, such legislation and regulations shall be deemed continued in full force and effect and

unaffected by this chapter.

§ 115-7. Severability.

If any part of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this chapter.

§ 115-8. When effective.

This chapter shall become effective upon filing with the New York State Secretary of State's office.

Chapter 118, SEWERS

[HISTORY: Adopted by the Town Board of the Town of Marlborough 10-17-1983 by L.L. No. 7-1983. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 130.

Subdivision of land -- See Ch. 134.

Water -- See Ch. 149.

ARTICLE I, Definitions

§ 118-1. Definitions and word usage.

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

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., expressed as parts per million by weight.

BUILDING DRAIN -- That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys to the inner face of the building wall.

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

COMBINED SEWER -- A sewer which carries both sanitary sewage and storm- and surface water.

COMMERCIAL KITCHEN AND RESTAURANTS -- A commercial kitchen and/or restaurant shall be classified as any such cooking facility wherein fees are paid either directly or indirectly for the food or service at such facility or if provided as part of the work facility. [Added 7-24-2000 by L.L. No. 2-2000]

CONTRACT USER -- A property that borders the boundaries of a Sewer Improvement Area on at least one side and has a sewer discharge or a proposed sewer discharge which

is located within 200 feet of the sewer improvement area. The owner of said properties may petition the Town Board to become a contract user of the sanitary sewer system.

[Added 4-22-1996 by L.L. No. 5-1996]

GARBAGE -- Solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce. ^{69EN}

IMPROVEMENT BOUNDARIES -- The physical boundaries as presently established or as may be extended from time to time as duly provided by town law.

INDUSTRIAL or COMMERCIAL -- Classification which bears upon applications, rates, fees or other considerations shall be determined solely by the Town Board of the town.

INDUSTRIAL WASTES -- The liquid wastes from industrial processes as distinct from sanitary sewage.

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

PERSON -- An individual, firm, company, association, society, corporation or group.

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

PROPERLY SHREDDED GARBAGE -- The wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than 1/2 inch in any dimension.

PUBLIC SEWER -- A sewer in which all owners of abutting properties have equal rights and which is controlled by public authority.

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

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

SEWAGE TREATMENT PLANT -- Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS -- All facilities for collecting, pumping, treating and disposing of sewage.

SEWER -- A pipe or conduit for carrying sewage.

SEWER DEPARTMENT -- Person, agency, department, contractor or other designated by the Town Board to administer the rules and regulations and enforce the Sewer Code.

[Added 7-24-2000 by L.L. No. 2-2000]

SEWER IMPROVEMENT AREA -- Sewer improvement area in either the Hamlet of Marlborough and/or the Hamlet of Milton in the Town of Marlborough, Ulster County, State of New York. [Added 7-24-2000 by L.L. No. 2-2000]

STORM SEWER or STORM DRAIN -- A sewer which carries storm- and surface waters and drainage but excludes sewage and polluted industrial wastes.

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

TOWN -- The Town of Marlborough, Ulster County, New York.

TOWN BOARD -- The duly elected Town Board of the Town of Marlborough or its authorized deputy or representative.

TOWN ENGINEER -- The professional engineer retained as Town Engineer for the Town of Marlborough or his authorized deputy, agent or representative.

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

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

ARTICLE II, Use of Public Sewers Required

§ 118-2. Deposit of waste restricted.

It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon public or private property within the improvement or in any area under the jurisdiction of the improvement any human or animal excrement, garbage or other objectionable waste.

§ 118-3. Discharge of waste to natural outlet restricted.

It shall be unlawful to discharge to any natural outlet within the improvement or in any area under the jurisdiction of the improvement any sanitary sewage, industrial wastes or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.

§ 118-4. Use of privies, septic tanks and similar facilities restricted.

Within the improvement, it shall be unlawful to construct, use or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage, except as hereinafter provided.

§ 118-5. Connection to public sewer required; abandonment of private facilities; penalties for offenses. [Amended 7-24-2000 by L.L. No. 2-2000]

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purpose situated within the improvement boundaries are hereby required, at their expense, to install suitable plumbing facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter within 180 days after the date of official notice to do so, and any septic tanks, cesspools and similar private sewage disposal facilities shall be cleaned of sludge and liquid, abandoned and filled with suitable material within 90 days after connection to the public sanitary sewer of the improvement. Failure to properly abandon a private facility in the specified time frame shall be a violation of this section and subject to a fine of \$10 per day for the first 30 days from notification of a violation and \$25 per day thereafter until the violation is corrected.

§ 118-6. Car washes.

Owners of premises upon which a commercial car wash is operated and the operators of any such car washes may, if the premises on which any such car washes are located have adequate and satisfactory sewerage facilities to dispose of the water used in the car wash, continue to use such sewerage facilities solely to dispose of the water used in actually washing vehicles, but must separate the plumbing facilities for that water from the plumbing facilities carrying all other forms of sewage and connect the latter plumbing facilities directly with the proper public sewer in accordance with all the provisions of this chapter. The owner and/or operator of any car wash continuing to use a private sewage system as aforesaid shall separate the pipes supplying water to the actual vehicle-washing operation from all water lines to the premises on which said car wash operations are located and shall, at his own cost, connect the pipes supplying water to the actual vehicle-washing operation to a separate water meter so that the quantity of water used in the actual car wash operation is separately metered and measured.

ARTICLE III, Private Sewage Disposal Systems

§ 118-7. When permitted; compliance with provisions.

Where a public sanitary sewer is not available under the provisions of § 118-5 above, the building sewer shall be connected to a private sewage disposal system complying with the provisions established by the Ulster County Department of Health.

§ 118-8. Permit required.

Hereafter, before commencement of construction of a private sewage disposal system within the district boundaries, the owner shall first obtain a written permit from the Ulster County Health Department. The permit shall be made on a form furnished by the Ulster County Health Department and may be supplemented by any plans, specifications and other information as are deemed necessary by the Ulster County Health Department.

§ 118-9. When permit becomes effective; inspection required.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Ulster County Health Department, when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the Ulster County Health Department.

§ 118-10. Specifications and restrictions.

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Department of Health of the State of New York. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

§ 118-11. Responsibility of owner to operate and maintain.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at his own expense and at no expense to the improvement.

§ 118-12. Connection to public sewer; abandonment of private facilities.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Article II, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be cleaned of sludge and liquid, abandoned and filled with suitable material.

§ 118-13. Additional requirements.

No statement contained in Articles II and III shall be construed to override or interfere with any additional requirements that may be imposed by the authorized representative of the Ulster County Department of Health or the New York State Department of Health.

ARTICLE IV, Building Sewers and Connections

§ 118-14. Permit required.

No unauthorized 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 Town Board.

§ 118-15. Building sewer permit.

A. Classes.

- (1) There shall be two classes of building sewer permits:
 - (a) For residential and commercial services.
 - (b) For service to establishments producing industrial wastes and all others.
[Amended 7-24-2000 by L.L. No. 2-2000]
- (2) In either case, the owner or his agent shall make the application on special forms furnished by the town.

B. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Town Board.

C. A permit and inspection fee in an amount as set by resolution of the Town Board for a sewer permit shall be paid to the Town Clerk at the time the application is filed.^{70EN}
[Amended 8-22-1994 by L.L. No. 2-1994]

§ 118-16. Responsibility of owner.

All costs and expenses incident to the installation and connection of the building sewer

shall be borne by the owner. The owner shall pay for and indemnify the town from any loss or damage that may, directly or indirectly, be occasioned by the installation of the building sewer.

§ 118-17. Buildings to have separate building sewers; exceptions.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as a separate building sewer.

§ 118-18. Old building sewers. [Amended 7-24-2000 by L.L. No. 2-2000]

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Town Engineer, or other engineer approved by the town, to meet all requirements of this chapter.

§ 118-19. Pipe specifications.

The building sewer shall be ductile iron soil pipe, AWWA C151, thickness Class 2 or equal, or PVC SDR 35 or other suitable material approved by the Town Engineer. Joints shall be gastight and watertight. Any part of the building sewer that is located within 10 feet of a water service pipe shall be constructed of ductile iron pipe. Ductile iron pipe may be required by the Town Engineer where the building sewer is exposed to damage by tree roots. If installed in filled or unstable ground, the building sewer shall be of ductile iron soil pipe, except that nonmetallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the Sewer Department. Bedding material is to be placed in the trench so as to obtain equal support for all sections of pipe.

§ 118-20. Size and slope.

The size and slope of the building sewer shall be subject to the approval of the Sewer Department, but in no event shall the diameter be less than four inches. The slope of such four-inch pipe shall not be less than 1/8 inch per foot, nor more than 1/2 inch per foot, or as may be required.

§ 118-21. Depth, placement and changes in direction.

The depth shall be sufficient to afford protection from frost. No building sewer shall be laid parallel to or within three feet of any bearing wall, which might thereby be weakened. The building sewer shall be laid at uniform grade and in straight alignment, insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings. Where horizontal bends of more than 11 1/4° are required, cleanouts of a type approved by the Sewer Department are to be installed.

§ 118-22. Building drains.

- A. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved artificial means and discharged to the building sewer, and the cost of furnishing such artificial means shall be paid by the improvement where the aforesaid building drain was in place and in existence as of the time that the public sewer is installed. The cost of installation, repairs, replacing, maintenance and utilities shall be paid by the owner.
- B. The cost of installation, maintenance, repair and replacement of any artificial means of lifting sanitary sewage from a building drain to the public sewer, as well as the utility costs incurred in the operation thereof, which artificial means are made necessary by the construction and installation of the building drains subsequent to the installation of the public sewer, shall be paid by the owner of the premises on which any such building drain is located.

§ 118-23. Excavations and backfilling. [Amended 7-24-2000 by L.L. No. 2-2000]

All excavations required for the installation of a building sewer shall be open-trench work unless otherwise approved by the Sewer Department. Pipe laying and backfill shall be performed in accordance with the section of the construction specifications for the Sewer Improvement Area entitled "Excavation, Trenching and Backfilling for Utilities Systems."

§ 118-24. Connection to existing public sewer; costs and expenses. [Amended 7-24-2000 by L.L. No. 2-2000]

The connection of the building sewer into an existing public sewer shall be at the property line. If a lateral connection has not previously been provided, the lateral will be constructed from the existing public sewer to the property line by the Sewer Department or a contractor approved by the Sewer Department upon submittal of a proper application by the property owner. The method of connection of the lateral to the public sewer will be dependent upon the type of sewer material used and, in all cases, shall be approved by the Sewer Department. The cost of constructing the lateral shall be paid by the property owner. The town or its designee shall approve and inspect all work and will collect a rock cut and/or curb cut fee if required.

§ 118-25. Inspection; installation of meter.

The applicant for the building sewer permit shall notify the Sewer Department when the building sewer is ready for inspection and connection to the public sewer lateral. The connection shall be made under the supervision of the Sewer Department or such other person appointed by the Town Board. Prior to connection, the Water Superintendent or assistant shall certify that the meter is installed and working properly.

§ 118-26. Inspection of trenches. [Amended 7-24-2000 by L.L. No. 2-2000]

When trenches are opened for the laying of house sewer lateral pipes, such trenches shall

be inspected by the Town Engineer, or engineer approved by the town, or his deputy or representative before the trenches are filled, and the plumber performing such work shall notify the Sewer Department when the laying of the house sewer is completed. If a trench is filled before inspection is made, the plumber to whom a permit is issued must reexcavate the trench to permit the required inspection.

§ 118-27. Safety precautions for excavations; restoration.

All excavation for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.

§ 118-28. Discharge of stormwaters and industrial cooling waters.

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the Town Engineer. Industrial cooling water or unpolluted process waters may be discharged upon approval of the Town Engineer and the New York State Department of Environmental Conservation and shall require a New York State Pollutant Discharge Elimination System (SPDES) permit to be discharged to natural drainage.

ARTICLE V, Sewer Extensions

§ 118-29. Design; approval of plans.

- A. All extensions to the sanitary sewer system owned and maintained by the town shall be properly designed in accordance with the Recommended Standards for Sewage Works, as adopted by the Great Lakes - Upper Mississippi River Board of State Sanitary Engineers and in strict conformance with all requirements of the New York State Department of Health.
- B. Plans and specifications for sewer extensions shall be submitted to and approval obtained from the engineer and the New York State Department of Health before construction may proceed.
- C. The design of sewers must anticipate and allow for flows from all possible future extensions or developments within the immediate drainage area.

§ 118-29.1. Contract use by bordering property owners.

- A. When a property is outside the boundaries of the Sewer Improvement Area but adjoins said boundary on at least one side, the owner of said property may, by contract approved by the Town Board, become a contract user of the Sewer Improvement Area, provided that the proposed user's sewer discharge is within 400 feet of the Sewer Improvement Area boundary line.
- B. The contract user shall be assessed a property tax and sewer use fees calculated in the

same manner as a property within the Sewer Improvement Area as defined elsewhere in this chapter. In addition, the contract user shall pay a proportional share of a special district construction assessment, if applicable. [Amended 7-24-2000 by L.L. No. 2-2000]

- C. The contract user shall pay legal fees incurred by the Sewer Improvement Area for contract preparation.
- D. The contract user is subject to all rules and regulations as defined in this chapter.

§ 118-30. Construction by town; proposal of extensions.

- A. Sewer extensions, including individual building sewer laterals to the property line, may be constructed by the town under public contract if, in the opinion of the Town Board, the number of properties to be served by such extension warrants its cost.
- B. Under this arrangement, the property owner shall pay for and install the building sewer from the property line to the building in accordance with the requirements of Article IV. [Amended 7-24-2000 by L.L. No. 2-2000]
- C. Thereafter, each property owner served by the extended public sewers will be charged at the full service charge rate as outlined in Article X.
- D. Property owners may, in accordance with applicable law, propose sewer extensions within a Sewer Improvement Area or other parts of the town by drafting a written petition, signed by a majority of the benefiting property owners, and filing it with the Town Board. [Amended 7-24-2000 by L.L. No. 2-2000]

§ 118-31. Construction by owner.

- A. If the town does not elect to construct a sewer extension under public contract, the property owner, builder or developer may construct the necessary sewer extension if this extension is approved by the Town Board in accordance with the requirements of the section.
- B. The property owner must pay for the entire installation, including all expenses incidental thereto. [Amended 7-24-2000 by L.L. No. 2-2000]
- C. Each building sewer must be installed and inspected as required by Article IV, and the inspection fees shall be paid.
- D. Design of sewers shall be as specified in § 118-32.
- E. The installation of the sewer extension must be subject to full-time inspection by the Town Engineer, and the expenses for this inspection shall be paid for by the owner, builder or developer. The Town Engineer's decision shall be final in matters of quality and methods of construction. The sewer, as constructed, must pass the exfiltration test required in § 118-34 before it is to be used. The cost of the sewer extension thus made shall be absorbed by the developers or the property owners, and, thereafter, the property owners will be subject to a sewer service charge proportional to their use of trunk sewers and treatment plants and their proportion of operational and maintenance costs as outlined in Article X.

§ 118-32. Design specifications.

- A. Sewer design shall be in accordance with the following provisions:

- (1) Pipe shall be of a type approved by the Town Engineer. Trench widths as measured just above the crown of the pipe shall not exceed the following:

Pipe Diameter (inches)	Trench Width
8	3 feet 3 inches
10	3 feet 6 inches
12	3 feet 9 inches

- (2) If the trench widths are found, during field inspection, to exceed the limits in the above table, the sewer pipe shall be encased with a minimum of six inches of concrete. Pipe shall be firmly and evenly bedded on a minimum of three inches of No. 1A or No. 1 crushed stone (New York State Department of Transportation specification). Pipe thickness and field strength shall be calculated on the following criteria:
- (a) Safety factor: 1.5.
 - (b) Load factor: 1.7.
 - (c) Weight of soil: 120 pounds per cubic foot.
 - (d) Wheel loading: 16,000 pounds.

- B. Utilizing the above information, design shall then be made as outlined in Chapter IX of the Water Pollution Control Federation Manual of Practice No. 9, Design and Construction of Sanitary and Storm Sewers.

§ 118-33. Manholes.

- A. Manholes shall be constructed at all changes in slope alignment or at intervals not exceeding 400 linear feet.
- B. The manholes shall be constructed with a poured concrete base of 3,000 pounds per square inch, steel-troweled concrete or mortar inverts and precast four-foot-diameter concrete manhole barrel sections and a tapered top section.
- C. The manhole frame and cover shall be the standard design of the town and shall be set with no less than two courses of brick underneath to allow for later adjustment in elevation.

§ 118-34. Exfiltration test.

- A. All sewers shall satisfy requirements of a final exfiltration test before they will be approved and sewage flow accepted from them by the town. This test consists of filling the pipe with water to provide a head of at least five feet above the top of the pipe or five feet above groundwater, whichever is higher, at the highest point of the pipe line under test, and then measuring the loss of water from the line by the amount which must be added to maintain the original level. In this test, the line must remain filled with water for at least 24 hours prior to the taking of measurements. Exfiltration shall be measured by the drop of water level in a standpipe with closed bottom end or in one of the sewer manholes available for measurement.

- B. When a standpipe and plug arrangement is used in the upper manhole of a line under test, there must be some positive method of releasing entrapped air in the sewer prior to taking measurements. The test length intervals for either type of test shall be as ordered approved, but in no event shall they exceed 100 feet. In the case of sewers laid on steep grades, the length of line to be tested by exfiltration at any one time may be limited by the maximum allowable internal pressure on the pipe and joints at the lower end of the line. The test period, wherein the measurements are taken, shall not be less than two hours in either type of test.
- C. The total leakage of any section tested shall not exceed the rate of 100 gallons per mile of pipe per 24 hours per inch of nominal pipe diameter. For purposes of determining the maximum allowable leakage, manholes shall be considered as sections of forty-eight-inch diameter pipe, five feet long. The equivalent leakage allowance shall be 4.5 gallons per manhole per 24 hours for forty-eight-inch diameter manholes. If leakage exceeds the specified amount, the necessary repairs or replacements required shall be made to permanently reduce the leakage to within the specified limit, and the tests shall be repeated until the leakage requirement is met.

§ 118-35. Extensions to become town property; guaranty. [Amended 7-24-2000 by L.L. No. 2-2000]

All sewer extensions constructed at the property owner's, builder's or developer's expense, after final approval and acceptance by the Town Engineer, shall become the property of the town and shall thereafter be maintained by the town. Said sewer extensions, after their acceptance by the town, shall be guaranteed for one year. The guaranty shall be in a form provided for by the town. At the sole discretion of the town, a completion bond and/or maintenance bond or certified check may be demanded as part of the guaranty.

§ 118-36. Requirements for new development.

No builder or developer shall be issued a building permit for a new dwelling or structure requiring sanitary facilities within the improvement boundaries unless a suitable and approved method of waste disposal is proposed. All new developments shall be provided with an approved system of sanitary sewers.

ARTICLE VI, Use of Public Sewers

§ 118-37. Discharge to public sewers.

- A. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:
 - (1) Any liquid or vapor having a temperature higher than 150° F. (65° C.) or which would cause a temperature above 40° C. to enter the treatment facilities.
 - (2) Any water or wastes which contain grease or oil or other substances that will solidify or become discernibly viscous at temperatures between thirty-two

degrees and one hundred fifty degrees Fahrenheit (32° and 150° F.).

- (3) Any water or wastes containing emulsified oil and grease exceeding an average of 50 parts per million gallons of ether-soluble matter.
 - (4) Any gasoline, benzine, naphtha, fuel oil or mineral oil or other flammable or explosive liquid, solid or gas.
 - (5) Any noxious or malodorous gas, such as hydrogen sulfide, sulfur dioxide or nitrous oxide or other substance, which, either singly or by interaction with other wastes, is capable of creating a public nuisance or hazard to life or of preventing entry into sewers for their maintenance and repair.
 - (6) Any garbage that has not been properly pulverized or ground to fine powder.
 - (7) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, wood, paunch manure, hair and fleshings, entrails, lime residues, beer and distillery slops, chemical residue, paint residues, cannery waste, bulk solids or any other solid viscous substance capable of causing obstruction to the flow of the sewers or other interference with the proper operation of the sewage system.
 - (8) Any waters or wastes, acid and alkaline in reaction, having corrosive properties capable of causing damage or hazard to structures, equipment and personnel of the sewage system; free acids and alkalis must be neutralized, at all times, within a permissible pH range of 6.0 to 9.0.
 - (9) Any long half-life (over 100 days) of toxic radioactive isotopes, without special permit.
 - (10) Any waters or wastes that, for a duration of 15 minutes, have a concentration greater than five times the average of that of normal sanitary sewage, as defined in Subsection C of this section, as measured by suspended solids and BOD, and/or which is discharged continuously at a rate exceeding 1,000 gallons per minute, except by special permit.
 - (11) Any stormwater, roof drains, springwater, cistern or tank overflow, cellar or footing drains, discharge from any vehicle rack or motor or the contents of any privy vault, holding tank, septic tank or cesspool or the discharge of effluent from any air-conditioning machine or refrigeration unit.
- B. Limits of toxic substances.
- (1) No person shall discharge or cause to be discharged any waters or wastes containing a toxic or poisonous substance, a high chlorine demand or suspended solids in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters or the effluent of the wastewater treatment facility. Such toxic substances shall be limited to the average concentrations listed hereinafter in the sewage. If concentrations listed are exceeded, individual establishments will be subject to control in volume and concentration by the Town Engineer.

**Limits of Toxic
Substances in
Sewage at Point of
Entry Into
Municipal Systems**

Effluent Concentration Limits (milligrams per liter)		
Substa nce	30- Day Avera ge	24- Hour Avera ge
Cadmi um	0.4	0.8
Hex. chromi um	0.2	0.4
Total chromi um	4.0	8.0
Coppe r	0.8	1.6
Lead	0.2	0.4
Mercu ry	0.2	0.4
Nickel	4.0	8.0
Zinc	1.2	2.4
Arseni c	0.2	0.4
Availa ble chlorin e	50.0	50.0
Cyanid e, free	0.4	0.8

Cyanide, complex	1.6	3.2
Selenium	0.2	0.4
Sulfide	6.0	12.0
Barium	4.0	8.0
Manganese	4.0	8.0
Gold	0.2	0.4
Silver	0.2	0.4
Fluorides		
To fresh water	4.0*	8.0*
To saline water	36.0	72.0
Phenol	4.0	8.0

*NOTE: May be multiplied by a factor of 1.5 if the municipal water supply is not fluoridated.

- (2) The list of toxic limits provided herein will be replaced by the list of limits of toxic substances established pursuant to Section 307 of the Clean Water Act, when promulgated. Any limits in the existing list which are either more stringent than the federal limit for a particular substance or for a substance not included in

the federal list may remain.

- C. Normal sanitary sewage shall be construed to be all within the following ranges at the effluent of the industrial plant in question.

	Consti tuents	Norm al
		Range (parts per millio n)
Suspen ded solids		180 to 350
BOD		140 to 300
Chlori ne deman d		5 to 15

§ 118-38. Grease, sand and oil interceptors. [Amended 7-24-2000 by L.L. No. 2-2000]

- A. When required. Grease and oil traps and interceptors shall be installed at all premises of commercial kitchens and restaurants engaged in the preparation or service of food for the proper handling of liquid wastes containing grease in excessive amounts, flammable wastes or other harmful ingredients prior to entering the public wastewater collection system. Interceptors shall not be required for private living quarters or dwelling units.
- B. Construction, general. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.
- C. Existing installations. When in the opinion of the Building Inspector an existing installation is incapable of handling liquid waste, the owner shall install a one-thousand-gallon precast exterior grease interceptor if there is available space on the premises. The manufacturer's specification and installation plan must be reviewed and approved by the Building Inspector prior to installation. When adequate space is not available on the premises, a one-hundred-pound grease trap shall be installed inside the building, at a maximum distance from hot water discharges, as acceptable to the

Building Inspector. All interceptors shall be located as to be readily and easily accessible for cleaning and inspection. The manufacturer's specification and the installation plan from the owner must be reviewed and approved by the Superintendent prior to installation. All installations shall comply with New York State Department of Environmental Conservation (NYSDEC), Ulster County Health Department and local laws governing this type of construction.

- D. New construction. All food service facilities hereafter established shall be fitted with separate grease traps of precast concrete having a minimum one-thousand-gallon capacity exterior to the structure, and accessible for inspection and pump-out, except that any food service facility with a seating capacity in excess of 150 seats shall be provided with a grease trap with a minimum capacity of 2,000 gallons. All installations shall comply with NYSDEC, Ulster County Health Department and local laws governing this type of installation.
- E. Preexisting nonconforming uses. All food service facilities which do not have grease and oil traps and interceptors at the premises shall install such interceptors in accordance with the requirements of this section within 30 days of connecting to the public sewer.
- F. Maintenance. All grease and oil interceptors shall be maintained at the owner's expense in continuously efficient operation at all times. The grease and oil interceptor shall be pumped out when it is at 80% of its intended capacity and the contents disposed of at a NYSDEC approved disposal facility.
- G. Inspection. All installation shall be readily accessible and open to inspection by the town or its designee at any time. If during the time of inspection it is determined that the interceptor is at or above capacity, and not adequately performing its intended function, the owner of the facility will be given 72 hours from the time of the inspection to have a licensed contract hauler pump out and properly dispose of the contents. The owner shall then contact the designee for a reinspection. If the owner is found to be in noncompliance with these maintenance and inspection requirements, the Building Inspector shall issue and serve an appearance ticket to the owner and pursue remedy.
- H. Recordkeeping. The owner of each facility responsible for the installation and maintenance of grease and oil traps and interceptors shall maintain a pump-out log which will include the proper recording of pump-out dates. It shall also include receipts indicating service dates and pump-out volumes from the hauler. This information shall be made available to the Superintendent at the time of inspection.

§ 118-39. Limits on discharge of certain water and waste; preliminary treatment.

- A. The admission into the public sewers of any waters or wastes having a five-day biochemical oxygen demand greater than 300 parts per million by weight or containing more than 350 parts per million by weight of suspended solids or containing more than 15 parts per million of chlorine demand or containing any quantity of substances having the characteristics above the previously described limits or having an average daily flow greater than 2% of the average daily sewage flow of the town shall be subject to the review and approval of the Town Engineer.
- B. Where necessary, in the opinion of the Town Engineer, the owner shall provide, at his expense, such preliminary treatment as may be necessary to reduce the biochemical

oxygen demand to 300 parts per million and the suspended solids to 350 parts per million by weight or reduce the chlorine demand to 15 parts per million or reduce objectionable characteristics or constituents to within the maximum limits provided for or control the quantities and rates of discharge of such waters or wastes.

§ 118-40. Preliminary treatment facilities.

- A. Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Town Engineer, the Water Resources Commission of the State of New York and the New York State Department of Environmental Conservation, and no construction of such facilities shall be commenced until said approvals are obtained, in writing.
- B. Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

§ 118-41. Control manhole.

When required by the Town Engineer, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located and shall be constructed in accordance with the plans approved by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

§ 118-42. Standards of measurement; sampling.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made shall be determined in accordance with the Ulster County Health Department Methods of Examination of Water and Sewage and using Standard Methods for the Examination of Water and Wastewater as a correct laboratory reference upon suitable samples taken at control manholes provided for above. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

§ 118-43. Special agreements.

No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment, subject to payment therefor by the industrial concern.

ARTICLE VII, Protection From Damage

§ 118-44. Damage prohibited; violators subject to arrest.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the improvement sewerage works. Any person violating this provision shall be subject to immediate arrest under charge of criminal mischief.

ARTICLE VIII, Inspectors; Management and Operation

§ 118-45. Powers and authority of inspectors.

The Town Engineer, employees of the United States Environmental Protection Agency and the New York State Department of Environmental Conservation and duly authorized employees of the town, bearing proper credentials and identification and having a reason for inspection, shall be permitted to enter upon all properties for the purposes of inspection, observation, measurements, sampling and testing, in accordance with the provisions of this chapter. The town shall have the authority to enforce industrial pretreatment standards promulgated by the United States Environmental Protection Agency pursuant to Section 307 of P.L. 92-500.

§ 118-46. Superintendent.

The Town Board shall appoint a Superintendent for the improvement who shall have such duties and responsibilities for the management and operation of the improvement as the Town Board may from time to time establish.

ARTICLE IX, Penalties

§ 118-47. Penalties for offenses.

- A. Any person found to be violating any provision of this chapter shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.
- B. Any person who shall continue any violation beyond the above time limit shall, upon conviction thereof, be fined in an amount not exceeding \$500 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense, except that penalties assessed under § 118-5 shall not be limited by this section. [Amended 8-22-1994 by L.L. No. 2-1994; 7-24-2000 by L.L. No. 2-2000]
- C. Any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss or damage occasioned the town by reason of such violation.

ARTICLE X, Sewer Charges

§ 118-48. Use of sewer charges.

Sewer charges shall be used for deriving revenues for financing and maintaining sewage collection and treatment facilities. The funds derived from these charges shall be used for all municipal expenses associated with constructing, improving or maintaining a sewerage system, including engineering, planning, construction, reconstruction of sewers and the cost of the wastewater treatment works and all necessary appurtenances thereto, including pumping stations, extensions, enlargement, replacement or additions to the sanitary sewer systems or the preliminary or other studies and surveys relative thereto and for the acquisition of land or rights-of-way for any of the capital improvements.

§ 118-49. Sewer use charge; capital cost amortization charge.

Sewer charges shall include a sewer user charge, which shall be levied on owners of properties located within or without the district boundaries who contribute sewage to the public sewers, and a capital cost amortization charge to be levied on all owners of property within the improvement boundaries.

A. The following items will be funded by the sewer user charge:

- (1) The cost of operation and maintenance of the entire sewer collection system, including pump stations.
- (2) The improvement's share of the cost of operation and maintenance of the sewage treatment plant.

B. The following items will be funded by the capital cost amortization charge:

- (1) The cost of the retirement of the capital bonds of the improvement.

§ 118-50. Review of user charges.

The Town Board of the Town of Marlborough shall review the user charges annually and revise them periodically to reflect the actual sewage works, operation and maintenance cost.

§ 118-51. Billing. [Amended 7-24-2000 by L.L. No. 2-2000]

Sewer user charges shall be billed semiannually at the same time that the Marlborough Water District bills for water usage charges. Capital cost amortization charges shall be billed at the same time and included in the tax statement that is sent out by the town for county charges and general town taxes.

§ 118-52. Levy of user charges.

A. Sewer user charges shall be levied on the basis of the amount of water from a Sewer Improvement Area used by each sewer user at such per-gallon rates as the Town Board may from time to time establish, but in no way shall there be less than a

minimum charge of \$10 for the first 5,000 gallons or less per semiannual billing period. [Amended 12-19-1988 by L.L. No. 4-1988; 7-24-2000 by L.L. No. 2-2000]

- B. (Reserved)^{71EN}
- C. This user charge is based on domestic flows or properly pretreated large or industrial flows. It is based on the following formula:
 - D. The strength of large or industrial uses shall be measured by the district, and the semiannual charges will be based on the above formula.
 - E. In the event of a defective water meter, the average of its last two semiannual billings for sewer user charges during which the meter was operating properly will be charged. If the property has its own water supply or is served by an unmetered independent water company, the owner shall install a water meter at his expense. Commercial or nonresident users must install a water meter at their own expense. The capital cost amortization charges shall be levied on the basis of the assessed valuation of each parcel of property within the improvement boundaries for general town and county tax purposes at such rates that may from time to time be set by the Town Board.
 - F. In the event that an entity becomes a user of the public sewer system but is not part of the Marlborough Water District or does not use Marlborough Water District services, the sewer usage charge shall be estimated in accordance with typical usage charges for similar entities as established by the Superintendent of Sewers or contractor for sewer operations as designated by the Town Board. [Added 7-24-2000 by L.L. No. 2-2000]

§ 118-53. Interest and penalties; statements. [Amended 5-20-1985 by L.L. No. 1-1985]

- A. The bills for sewer user charges shall become due and payable to the Marlboro Sewer Improvement or Milton Sewer Improvement Area, and such payments shall be made to the Town Clerk, at the Clerk's office, semiannually. If such bills are not paid by the due date listed on the bill or within 30 days, whichever the latter, a penalty of 10% of the amount of such bill will be added thereto. [Amended 3-9-1992; 8-22-1994 by L.L. No. 2-1994; 7-24-2000 by L.L. No. 2-2000]
- B. Sewer user charges and capital cost amortization charges and the interest and penalties thereon shall be a lien upon the real property which is using the public sewer or which is located within the improvement boundaries, and on or before the day when, under Town Law, preliminary estimates of expenditures are required to be submitted, the Town Clerk shall prepare and file with the Town Board a statement showing all sewer user charges, with penalties and interest thereon, which remain unpaid, which said statement shall contain a brief description of the property to which sewer services were supplied or which is within the improvement boundaries, the name of the owner liable to pay the same, so far as may be known, and the amount chargeable.

§ 118-54. Connection charges.

- A. Connection charges. A charge in an amount as set by resolution of the Town Board will be levied against all property owners who tap in on the collection main imbedded in the street. The minimum sewer size shall be four inches in diameter. Any sewers in excess of four inches in diameter will pay additional charges; connection charges, interest and penalties shall be a lien upon the real property which is connecting to the public sewer and shall be levied on the property if not paid at the time the bill for connection charges is offered.^{72EN} [Amended 8-22-1994 by L.L. No. 2-1994; 7-24-2000 by L.L. No. 2-2000]
- B. The cost of constructing the lateral from the public sewer to the property line will be covered by the above connection charge, and the work will be performed by the town.
- C. The property owner shall pay all costs of constructing the building sewer from the property line to the building drain or the Town Board may, if it deems it advisable and feasible, contract for the cost of constructing said building sewer from the property line to the building drain and charge the property owner an installation charge therefor, at a rate to be established by the Town Board, but the property owner shall pay all costs of preparing an opening through the building wall permitting the passage of said building main through the wall to the building drain. If the Town Board decides to contract for said connections, then all necessary connections will be made under that contract.

Chapter 123, SMOKING

[HISTORY: Adopted by the Town Board of the Town of Marlborough 1-22-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Personnel policies -- See Ch. 29.
Town-owned vehicles -- See Ch. 47.

§ 123-1. Policy established.

The following smoking policy is adopted for places of employment for the employees of the Town of Marlborough, to be effective on April 1, 1990.

§ 123-2. Smoking prohibited; exceptions.

Smoking is prohibited in all indoor places of employment of town employees under the jurisdiction and control of the Town of Marlborough except in areas specifically designated for smoking.

§ 123-3. Enclosed offices.

Smoking is permitted in an enclosed office occupied by a person who smokes or if it is occupied by more than one (1) person, provided that all persons in that office consent to smoking.

§ 123-4. Conference and meeting rooms.

Smoking is not permitted in any conference room or meeting room or any enclosed private office unless all persons in such place consent to smoke.

§ 123-5. Common areas.

- A. No person shall carry a lighted cigarette, cigar or pipe or other smoking material in any indoor hallway, passage or other common area while walking through such area.
- B. Smoking shall be prohibited in auditoriums, gymnasiums, rest rooms, elevators, classrooms, hallways, employee medical facilities and rooms or areas which contain photocopying equipment or other office equipment used in common, and in company vehicles the occupants shall agree that smoking may be permitted (any other area may be added to this prohibition, i.e., waiting or reception areas).
- C. Employee cafeterias, lunchrooms and lounges will contain nonsmoking areas as designated by the Town Board to meet employee demand.

§ 123-6. Designation of smoking areas.

- A. Smoking areas will be designated by the Town Board for employees who wish to smoke. Such smoking areas will be clearly marked by a sign, "Smoking Permitted."
- B. The Superintendent of Highways shall designate in the highway garage or other building in which town highway employees work a specific enclosed smoking area (if one is required) clearly marked by a sign, "Smoking Permitted."

§ 123-7. Town courts.

The smoking policy in town courts shall be as promulgated by the office of Court Administration.

§ 123-8. Concerns and complaints.

Employees are encouraged to present any concerns to their supervisor and may register a complaint with the county enforcement officer.

§ 123-9. Posting.

The copy of this policy shall be posted upon the town bulletin board and in each separate building in which town employees work.

§ 123-10. Penalties for offenses.

Employees found smoking outside of designated smoking areas will be considered in violation of this policy and may be subject to penalty prescribed by the State Commissioner of Health.

§ 123-11. Enforcement.

The Town of Marlborough Police shall be designated an agent to assist in the enforcement of this policy by notifying employees who are in violation.

Chapter 126, SOLID WASTE

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

ARTICLE I, Transfer Station and Recycling Center [Adopted at time of adoption of Code^{73EN}]

§ 126-1. Title.

This Article shall be designated as the "Local Law Governing Regulations for the Operation of the Town of Marlborough Transfer Station and Recycling Center."

§ 126-2. Location.

The town transfer station and recycling center is located on the tract of land owned by the Town of Marlborough located on the south side of Bailey's Gap Road less than two-tenths (0.2) mile west of the intersection of Milton Cross Road coming from the south, Orchard Road coming from the north and Mahoney Road winding from the east, as more particularly described as the premises conveyed by Rose Perilli to the Town of Marlborough by deed dated April 6, 1973, and recorded in the Ulster County Clerk's office in Liber 1296, page 813.

§ 126-3. Definitions.

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

BIOHAZARDOUS WASTES -- Wastes originating from hospitals, laboratories, nursing homes, clinics or offices of private doctors and dentists.

BULK WASTES -- Large items of disposable wastes, such as appliances, furniture, tires, hot-water storage tanks, bathroom fixtures, trees, branches and stumps.

BUSINESS, BONA FIDE -- A business conducted within the Town of Marlborough.

CONSTRUCTION WASTES/PRODUCTS OF MANUFACTURING -- Waste materials produced by the demolition of, renovation of or construction of homes or buildings, to include in-plant waste or waste created in any manufacturing process.

DISPOSABLE WASTE -- Those materials that become waste after their use or consumption in the Town of Marlborough shall be considered eligible to be deposited at the transfer station. These include bulk materials, construction waste/products of manufacturing, household waste, waste materials and yard waste.

ENVIRONMENT -- The air, the water and the earth, sometimes called the "biosphere."

OTHER WASTES -- Those wastes not specifically defined in this Article and shall be

governed by the New York State and Ulster County Sanitary Codes.

PERSON -- Any individual(s), society, club, firm, partnership, corporation or association of persons.

RECYCLING -- A resource-recovery method involving the collection, separation and treatment of a disposable waste product for use as a raw material in the manufacture of the same or a similar product.

RESIDENT, BONA FIDE -- Includes every person who resides in the Town of Marlborough.

SCAVENGE -- The handing over, moving or removal of any material which has been placed at the transfer station and recycling center, except in cases where town employees are directed to rehandle and arrange material deposited upon the landfill.

SEPARATION -- To divide waste into groups of similar materials.

SOURCE SEPARATION -- The separation for collection of individual recyclable components before they become mixed into the solid waste management stream at the point which they become disposable wastes.

TOXIC WASTE -- Any waste that is or has the potential to be harmful, destructive, poisonous or deadly to animal or human life.

WASTE MATERIALS -- Solids or liquids which are discarded or rejected wastes.

YARD WASTE -- Wood chips, shavings, straw, leaves, shrubs, grass clippings, logs, residential scrap lumber, tree prunings and other vegetable matter from yards or gardens.

§ 126-4. License or permit required to deposit waste.

Only businesses and residents of the Town of Marlborough having permits shall be allowed to deposit disposable waste materials or garbage at the transfer station or recycling center.

§ 126-5. Hours of operation.

- A. The town transfer station and recycling center shall be opened the following hours:
 - (1) Friday and Saturday: 8:30 a.m. to 4:30 p.m.
 - (2) Sunday: 8:30 a.m. to 12:30 p.m.
- B. Town-observed holidays and Monday, Tuesday, Wednesday and Thursday the town transfer station and recycling center shall be closed.
- C. The above operating days and hours may be amended at any time by resolution of the Town Board.

§ 126-6. Restrictions on deposit and accumulation of waste.

- A. No person shall deposit or leave or cause to be deposited or left any garbage, tires, appliances or other wastes or disposable wastes upon any public highway, street or private property, including his own, in the Town of Marlborough, except at the town transfer station and recycling center as designated, legally organized and/or maintained by the Town of Marlborough.
- B. No person shall deposit or leave or cause to be deposited or left any wastes from outside the Town of Marlborough at the transfer station and recycling center so designated by the Town of Marlborough.

- C. No person shall throw or deposit or cause to be thrown or deposited garbage or disposable wastes at the transfer station and recycling center in the Town of Marlborough during the hours when said transfer station and recycling center is closed.
- D. No person shall deposit or cause to be deposited or left any garbage or any materials which contain chemical waste, biohazardous waste, toxic waste, asbestos or poisonous, noxious or noisome waste of any kind in the Town of Marlborough.
- E. No person shall operate, accumulate, deposit, store or manage garbage or disposable waste materials, as defined herein, for personal and/or business purposes on his own private property.
- F. Garbage and disposable waste shall be deposited in the manner directed by the person in charge of the transfer station and recycling center under the authority of the Town Board.
- G. No person, firm or corporations shall deposit or leave or cause to be deposited or left at the transfer station and recycling center any automobile, motor vehicle or any parts thereof, unless the same shall be fully dismantled and flattened to permit the same to occupy a minimum of space.
- H. No private landowner shall accumulate, deposit, store or manage materials from demolition or by-products of manufacturing, construction or renovation or any garbage or other waste materials and/or use such materials as fill, other than clean fill, unless said material is classified as exempt and allowed to be deposited on private property by the New York State Department of Environmental Conservation. Any person accepting the delivery and deposit of said materials into the Town of Marlborough onto his own property will be held liable for reclamation and compensation for damages resulting from the acceptance of said materials and shall be subject to each state, federal and local law.

§ 126-7. Transportation of waste materials.

The operator of any and all vehicles used for the collection and/or transportation of garbage and other waste materials or articles, while traveling on the public highway of the Town of Marlborough, shall be responsible so as to prevent any of the materials thereon from falling upon the road or blowing from the vehicle in which it is being carried.

§ 126-8. Speed limit.

No vehicle shall be operated at the transfer station and recycling center at a rate of speed in excess of ten (10) miles per hour.

§ 126-9. Entry to transfer station and recycling center restricted.

The entering upon any part of the transfer station and recycling center, except at the gate provided for that purpose and at hours designated by signs, is prohibited.

§ 126-10. Fires; burning waste.

No person, except the persons employed by the town and placed in charge of the town transfer station and recycling center, shall kindle, light or cause to be kindled or lighted or set any fire upon the lands or the town landfill. No such waste shall be accepted which contains burning or smoldering materials, and no such waste shall be deposited at the transfer station and recycling center.

§ 126-11. Scavenging prohibited.

No person shall scavenge upon any part of the lands of the town transfer station and recycling center.

§ 126-12. Permit required; term; nontransferability; exemption from fees.

- A. As a requirement of this Article, bona fide residents of the Town of Marlborough who dispose of their own garbage must obtain a resident's permit for dumping. Permits may be paid for and obtained at the office of the Town Clerk along with a permit sticker. Only vehicles having said sticker affixed to the drivers side vent window shall be permitted to deposit items at the transfer station and recycling center.
- B. Permits must be renewed annually and are valid from January 1 until December 31 of the year issued.
- C. Permits are nontransferable from person to person or vehicle to vehicle.
- D. Residents who have reached the age of sixty-two (62) before January 1 will be exempt from the permit fee; however, they will not be exempted from paying the punch card fee.

§ 126-13. Punch card required.

As a requirement of this Article, bona fide residents of the Town of Marlborough who use the transfer station must obtain a punch card at the office of the Town Clerk, which will be used in lieu of cash at all times at the transfer station and recycling center. There is to be no cash offered or accepted at the transfer station and recycling center, with no exceptions.

§ 126-14. Fees.

All fees are to be set at the annual reorganizational meeting of the Town Board of the Town of Marlborough. Fees may be amended at any time by formal resolution of the Town Board.

§ 126-15. Household waste to be contained in plastic bags.

All household waste deposited at the transfer station and recycling center shall be in plastic bags which are securely fastened. The unit charge will be per each plastic bag weighing not more than thirty (30) pounds.

§ 126-16. Construction and demolition debris.

Debris from residential construction and demolition will be accepted in units not to exceed one (1) cubic yard. The weight of this debris will be estimated by the attendant, and the resident will be charged accordingly. Any amount in excess of one (1) yard must be delivered to the Ulster County landfill.

§ 126-17. Items accepted at transfer station and recycling center.

All household waste and recyclables are accepted at the transfer station and recycling center. Any item deemed unacceptable by the attendant will not be accepted.

§ 126-18. Mandatory separation and recycling.

- A. The following items are mandated for recycling and will be accepted free of charge at the town transfer station and recycling center.
 - (1) Newspapers.
 - (2) Corrugated cardboard.
 - (3) Glass: green, brown and clear.
 - (4) Cans: tin and aluminum.
 - (5) Plastics: four (4) types.
- B. Preparation of recyclable materials.
 - (1) Newspapers.
 - (a) Bundle with string or place in paper grocery bags.
 - (b) Keep dry.
 - (c) Leave inserts in newspapers.
 - (2) Corrugated cardboard.
 - (a) Tear off shipping labels, tape and staples.
 - (b) Cut or fold into bundles no larger than forty by forty (40 x 40) inches in length and width, nor more than thirty (30) pounds in weight, tied with string.
 - (3) Glass, bottles and jars only.
 - (a) Remove and discard lids and caps.
 - (b) Rinse out.
 - (c) Labels may remain on.
 - (d) Separate by color (green, brown and clear).
 - (e) No glassware, cookware, dishware, ceramics, window glass or light bulbs.
 - (4) Cans, tin and aluminum; all metal food or beverage cans.
 - (a) Remove all labels.
 - (b) Rinse out.
 - (c) Remove both ends, flatten if possible.
 - (d) No aerosol cans.
 - (5) Plastic bottles. Milk and water bottles, cider jugs and other plastic bottles containing the recycling numbers 1, 2, 3 or 5 are acceptable.
 - (a) Remove and discard caps.
 - (b) Rinse out.
 - (c) Flatten if possible.
 - (d) No medicine bottles, bags or lids.

§ 126-19. Penalties for offenses.

Any person violating any of the provisions of this Article shall be deemed to have committed an offense against this Article and shall be liable for such violation on the penalty therefor and, upon conviction thereof, shall be punishable by a fine not exceeding two hundred fifty dollars (\$250.) for each offense or by imprisonment in the county jail for not more than fifteen (15) days, or by both such fine and imprisonment.

§ 126-20. Revocation of privileges.

Any person who or whose servants, agents, employees or officers shall be convicted of a violation hereof may thereafter be denied the use of the transfer station, either temporarily or permanently, by the office or employee in charge thereof or by resolution of the Town Board.

Chapter 130, STREETS AND SIDEWALKS

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

GENERAL REFERENCES

- Planning Board -- See Ch. 33.**
- Peddling and soliciting -- See Ch. 111.**
- Sewers -- See Ch. 118.**
- Subdivision of land -- See Ch. 134.**
- Tow trucks -- See Ch. 140.**
- Vehicles and traffic -- See Ch. 145.**
- Water -- See Ch. 149.**

ARTICLE I, Road Specifications [Adopted 2-9-2004 by L.L. No. 5-2003^{74EN}]

§ 130-1. Determination; repealer; title.

- A. The Town Board of the Town of Marlborough has determined that the existing street specifications are outdated in light of the current accepted construction standards and the need to provide better roads for the Marlborough community. To that end, the Town Board has caused this article to be prepared in an effort to upgrade the requirements for the construction of roads within the Town of Marlborough. This article recognizes the need for greater engineering involvement in the design and construction of roads, the need for flexibility in performance and maintenance security and the importance of clear and updated cross sections details, catch basin details and sidewalk and curb details.
- B. In furtherance of the article, the Town Board does hereby repeal existing Chapter 130, entitled "Streets and Sidewalks," Article I, as set forth in this article to be known as "Road Specifications for Town Roads."

§ 130-2. Purposes; certification.

- A. It is the purpose of these specifications to establish minimum acceptable standards for roads and road construction within the Town of Marlborough to conform to legal requirements in the State of New York, which requirements and standards must be met and paid for by the offeror proposing that the Town take over such road as a Town road. Herein, wherever reference is made to the term "offeror," the same shall be understood to mean the person, persons, developer, firm or other entity proposing that the Town take over such road as a Town road. These specifications include but are not limited to width, design, drainage, construction of base and pavement, curbs, sidewalks and monuments.
- B. Dedication of the right-of-way will not be accepted until the offeror's professional engineer and/or licensed land surveyor shall have certified to the Town Board, in writing, that the construction of the road has been completed in accordance with the approved plans and specifications that follow and that the total right-of-way area has been cleared of all debris and all construction has been completed in a workmanlike manner; and the Town Highway Superintendent and the Town Engineer shall have reviewed the completed work and recommended acceptance of such dedication in writing to the Town Board. When new road rights-of-way are offered to the Town for dedication, four copies of the final as-built plan and deed description of the right-of-way shall be submitted to the Town Highway Superintendent for approval.
- C. In his written certification as required above, the offeror's professional engineer or qualified licensed land surveyor shall state clearly that he or his authorized representative has inspected all phases of the road construction and that all work has been completed in accordance with the approved plans and these specifications.

§ 130-3. Road plan for Town roads.

- A. A plan of the proposed road shall be prepared by a qualified professional engineer and/or qualified land surveyor licensed by the State of New York for such design functions. The plan shall clearly define the limits of the proposed right-of-way by metes and bounds and shall include the location, widths, profiles and grades of the proposed roadway, storm drainage, including culverts, and other drainage structures and the location of all easements and utilities.
- B. The plan shall also indicate the owner of the property and the name of the developer, if other than the owner. One copy each of the plan shall be submitted to the Town Highway Superintendent and the Town Engineer at the time of application to make such road a Town road and the County Commissioner of Public Works or his designated representative when said proposed street drains toward, intersects with or may otherwise affect a county highway. If applicable, it will concurrently be submitted to the Town Planning Board for review and approval under the applicable subdivision regulations^{75EN} of the Town. Such roadway must not be subject to any right or easement to others which will in any way interfere with its use as a road at all times. Such road must be conveyed to the Town by a deed in recordable form acceptable to the Town Attorney, containing a metes and bounds description, together with recording fees payable to the Ulster County Clerk accompanied by such evidence of title indicating that title is vested in the Town free and clear of any liens

- and encumbrances, including a policy of title insurance in favor of the Town.
- C. Permanent and temporary easements must be furnished in said deed granting to the Town the right to maintain all outlets for surface water or natural stream drainage which will run from such roadway over private property to a point where a natural watercourse exists and to which such outlet and easement will carry such water. A minimum width of 20 feet of easement shall be required for the maintenance of said easements.
 - D. The proposed roadway must be constructed to conform to the minimum requirements and standards set forth below. The minimum width to be cleared shall include all trees, rock formations, buildings, walls and any such things that would endanger those using such roadway. The removal of such obstructions shall be borne by the offeror proposing such road.
 - E. In general, all materials and methods of construction required for construction of Town roads shall be in accordance with Standard Specifications, Construction and Materials, published by the New York State Department of Transportation (NYSDOT), Design and Construction Division, latest revision.

§ 130-4. Alteration of approved plans.

- A. Plans submitted shall not be altered or amended after having been approved by the Town Highway Superintendent and Town Engineer unless amended plans are resubmitted and approved. However, the offeror, at his own expense, shall provide additional storm drainage facilities, utilities and/or other miscellaneous work as may be ordered by the Town Highway Superintendent and/or Town Engineer if, during the course of construction, in the opinion of the Town Highway Superintendent, the Town Engineer and/or the County Commissioner of Public Works, such additional structures or facilities are necessary to prevent any need for future installations of utilities or culverts within the pavement area and to assure the durability of pavement future maintenance of the right-of-way or welfare and safety of the public.
- B. Plans approved by the Planning Board shall not be altered without resubmittal and approval of the Planning Board.

§ 130-5. Bonds; fees.

- A. Performance security. Unless the offeror shall construct the entire road and related improvements in accordance with this article before offering the same to the Town, prior to the start of construction of any road or at the time designated in the subdivision regulations,^{76EN} if applicable, the offeror shall post performance security with the Town either in the form of a bond of an acceptable surety, an irrevocable letter of credit, negotiable government bonds, cash or bank or certified funds drawn on a national or state bank to guarantee construction of the improvements in compliance with the approved plans and these specifications. The form of the performance security shall be reviewed and approved by the Town Attorney. Where such proposed road is subject to the subdivision regulations of the Town, procedures for posting the performance security shall also comply with those regulations. The amount of the performance security shall be based on current municipal construction

costs and shall be reviewed and approved by the Town Engineer and approved by the Town Board.

- B. Maintenance security. The offeror shall post maintenance security with the Town either in the form of a bond of an acceptable surety, an irrevocable letter of credit, negotiable government bonds, cash or bank or certified funds drawn on a national or state bank to guarantee that for a period of one year from the date of acceptance of the dedication of the road by the Town Board, the developer will maintain the road to the standard of construction set by these specifications, normal wear and tear excepted. This shall mean that the offeror will, at its own expense, repair and make good any defects or damage which may develop during this maintenance period as result of faulty construction within the right-of-way or as a result of other construction, by the offeror or others. During the maintenance period, the Town shall be responsible for snow and ice control, street cleaning, cleaning of culverts and catch basins and other work of similar routine nature, provided that such work has in no way been caused by the operations of others. The amount of the maintenance security shall be determined by the Town Engineer and shall be equal to 10% of the original amount of the performance security. The provisions of this article concerning review and acceptance of the form of the performance security shall be applicable to the form of the maintenance security.
- C. Inspection fees. Upon the completion of the design for the Town road and determination of the amount of the performance security as set forth above, the offeror shall pay to the Town an inspection fee in the amount of 4% of the performance security. Road construction shall not commence until the four-percent inspection fee has been paid. The inspection fee must be paid whether or not the offeror elects to construct the road without the posting of performance security; in that event, the inspection fee shall be placed upon 4% of what the performance security would have been had the offeror availed itself of the option of posting performance security.

§ 130-6. Classification of roads.

- A. Determination of classification.
- (1) For roads in subdivisions, the Town Planning Board shall, pursuant to a recommendation by the Planning Board Engineer and/or Town Engineer, determine and designate into which of the three following classifications each proposed road falls on the basis of one or more of the criteria hereinafter set forth. For any other roads, the Town Engineer shall make a recommendation to the Town Board.
 - (a) Major road.
 - (b) Secondary road.
 - (c) Minor road.
 - (2) Final plans shall be drawn to show and the offeror shall construct each road in accordance with the particular specifications for its designated classification as hereinafter set forth, as well as in accordance with the specifications common to all classifications.
 - (3) Determining criteria.
 - (a) Major road: a road which serves or is designed to be used primarily as a route

for traffic between communities or large areas.

(b) Secondary road: a road which serves or is designed to carry traffic from local residential roads to the system of major roads.

(c) Minor road: a road intended to serve primarily as access to abutting residential properties.

B. Construction specifications.

(1) Figures 1, 2, and 3^{77EN} annexed to this article show the cross sections of each of the classifications for Town roads. Figures 5 and 6^{78EN} annexed to this article show typical details for construction of Town roads. These give the minimum required design, dimensions and construction details which are applicable to each classification.

(2) The general and more detailed specifications follow for design, construction, materials and other requirements which are applicable to all classifications of roads.

(3) The offeror shall design and construct roads which shall conform to both the general and specific specifications.

NOTE

: The subbase and foundation course shall lay a minimum of three months to allow complete settlement before pavement is laid.

§ 130-7. Rights-of-way; monuments.

A. The offeror shall establish and clearly mark the limits of road rights-of-way and

easements with permanent monuments. Temporary center lines, grades of the finished road pavement, and the location and elevations of drainage structures as shown on the approved plans shall be delineated with construction stakes. Such construction stakes shall be maintained at the offeror's expense until the construction of road pavement, drainage structures, underground utilities, curbs, sidewalks and shoulders has been completed, inspected and approved by the Town Highway Superintendent and the Town Engineer.

- B. During the course of construction, the developer shall provide the Town Engineer with stakeout information, cut sheets or any other pertinent information requested with respect to the proposed construction.
- C. Permanent monuments shall be set on right-of-way lines of roads at all intersections, angle points, points of curvature and the beginnings and ends of streets. There shall be a clear view of adjacent monuments on the right-of-way line. All monuments shall exist on completion of the construction of the roads.
- D. The permanent markers shall be made of concrete or granite with minimum dimensions of 30 inches long, a four-inch square top and six-inch square bottom with a one-half-inch drilled hole in the top. As an alternate, 3/4 inches in diameter steel rods, with a welded copper coating and bronze tops, 30 inches long, may be used as monuments. If a monument should be located in a rock ledge, the surface shall be stripped and a one-half-inch steel rod drilled into the ledge to a depth of six inches. Monuments shall protrude a maximum of two inches above the final graded surface. The offeror's licensed surveyor shall certify that the location of all monuments is accurate before acceptance of the road by the Town Board. A certified reproducible map showing the locations and reference ties to each monument shall be provided. Reference ties shall be permanent items, such as building foundations, and a minimum of three shall be provided for each monument.

§ 130-8. Easements.

Where surface water from roads must lead through other than gutters and storm drains or existing stream channels outside the right-of-way, permanent drainage easements having a minimum width of 20 feet shall be provided to a point where a natural watercourse exists. In some cases this may include easements over property outside the boundaries of the subdivision involved. Natural stream or ditch channels shall have a minimum of twenty-foot-wide permanent easements and be shown on the proposed plans of the subdivision. All permanent easement lines shall be monumented as a right-of-way.

§ 130-9. Clearing; subbase construction; rolling; stabilization fabrics; blasting.

- A. The offeror shall clear and grub the entire area within the limits of the road right-of-way, drainage channels and easement areas where required by the Town Highway Superintendent and/or the Town Engineer. The offeror shall properly dispose of all waste materials (stumps, roots, etc.) off site.
- B. The offeror shall complete the shaping of the road right-of-way, streams and ditches and easement areas to the line and grade as shown on the approved plans and as otherwise may be required by the Town Highway Superintendent and/or Town Engineer. In the construction of the roadway, all topsoil, loam, rocks and organic

material shall be removed until a satisfactory subbase is established. In fills of less than three feet, all topsoil shall be excavated and removed. All fills under roadways shall be made with foundation course material meeting or exceeding the requirements of Gradation Type No. 3 subbase material as specified under Section 3 of New York State Department of Transportation Standard Specifications-Construction and Materials (latest revision), or other acceptable material as approved by the Town Highway Superintendent and the Town Engineer. Such fills shall be made in layers of not more than 12 inches each and properly compacted with a ten-ton roller or equivalent.

- C. All hollows and depressions which develop under rolling shall be filled with acceptable granular material and again rolled, this process to be continued until no depressions develop. The subgrade shall not be muddy or otherwise unsatisfactory when the foundation course is laid upon it. Any soft spot or unstable portion of the subgrade which develops under the roller shall be completely excavated and removed from the right-of-way and shall be replaced with acceptable granular material and the area regraded and compacted as above.
- D. If, in the opinion of the Town Highway Superintendent and/or the Town Engineer, it is prudent that stabilization fabrics be installed under the Town road in those areas observed as unstable or soft or in other areas deemed appropriate by the Superintendent and/or the Engineer, the offeror, at his own expense, shall provide such fabric for those areas and for the length of roadway as determined by the Town Highway Superintendent and/or the Town Engineer. Stabilization fabric shall meet the requirements as called for under § 130-14.4 of these specifications.
- E. The subgrade shall be shaped to line and grade with no depressions. The subgrade shall be stable in all respects to the satisfaction of the Town Highway Superintendent and the Town Engineer before the foundation course is laid. No large stones or rock ledges shall protrude into the foundation course.
- F. Should it become necessary, as part of the construction work, to perform blasting, the same shall only be done following notification to the Town Highway Superintendent and the Town Engineer. Any required permits shall be obtained by the owner prior to blasting. The Town shall assume no responsibility or liability pertaining to any blasting work. Prior to any blasting, the contractor shall submit an insurance certificate for the type work, in an amount no less than \$1,000,000, for the work to be performed. All work shall be done taking all possible precautions and shall, at minimum, comply with all applicable federal, state and local regulations. Blasts shall be covered with suitable mats or heavy timber, at minimum, to prevent damage. Blasting shall only be performed between 8:00 a.m. and 5:00 p.m. on weekdays unless otherwise approved. Blasting shall not be performed on legal holidays.
- G. Also, before the foundation course is laid, all storm and sanitary sewers and all utilities, including house connections for existing and future homes, and hydrants shall have been installed to the satisfaction of the Town Highway Superintendent, the Town Engineer and the Water Superintendent. All slopes and sidewalk areas shall be graded before the foundation course is made, and all loose and exposed stones will be removed. Fine grade shall conform to the prescribed width of pavement and shall extend equidistant from the center line of the road right-of way and shall conform to the typical cross section of the road pavement and to the approved line and grade.

§ 130-10. Drainage system.

A. General requirements.

- (1) The drainage system and/or culverts shall be designed in accordance with established engineering principles and approved by the Town Highway Superintendent and the Town Engineer. Standards for design of the system shall be based on the drainage area tributary to the proposed system and structures, as follows:

**Drain Design
age Occur
Area rence
(acres)**

Less 25-
than year
320 storm

320 to 50-
640 year
storm

100-
Greater year
than storm
640

- (2) Plans for any drainage structure, including pipe culverts, when existing or proposed, shall be submitted in detail by the offeror's professional engineer to the Town Highway Superintendent and the Town Engineer for approval. The submittal shall include calculations and a drainage area evaluation map, bearing the seal and signature of the offeror's professional engineer.
- (3) The minimum grade of any drainage pipe or culvert shall not be less than 1%. The approved plans shall show invert elevations of all inlets and outlets for all drainage structures. All pipes shall be provided with a minimum eighteen-inch cover unless otherwise approved. Any deviation from the approved plans shall be on approval of the Town Highway Superintendent and/or the Town Engineer, in writing. No culvert pipe shall be less than 15 inches in diameter unless by approval of the Town Highway Superintendent and/or the Town Engineer. Pipe for culverts may be reinforced concrete, corrugated metal pipe, or where approved, polyethylene pipe maybe permitted, all of which shall conform to the following specifications for materials.
- (4) Prior to the delivery of any materials or the construction of any work, the offeror shall submit to the Town Engineer four copies of manufacturer's detailed literature for all materials proposed to be used. No materials shall be delivered or placed until the proposed materials have been accepted.

B. Corrugated polyethylene pipe. Where permitted for use, corrugated polyethylene pipe

shall be smooth interior lined type for maximum strength. Pipe shall be manufactured using high-density polyethylene (HDPE) resins meeting applicable ASTM and AASHTO standards. Pipe shall be suitable for H2O and E8O live loads for burial depths up to 50 feet.

- C. Reinforced concrete pipe. All concrete pipe utilized in the work shall be reinforced and shall conform to the requirements referenced in the New York State Department of Transportation Standard Specifications -- Construction and Materials (latest edition), as stated in Section 706, except that the tongue and groove pipe is preferred for all sizes. Each piece of pipe shall be stamped as such and the conditions of pipe shall be approved by the Town Highway Superintendent and the Town Engineer. Rejected specimens will be immediately removed from the site.
- D. Corrugated metal pipe.
 - (1) All corrugated metal pipe shall conform to the requirements referenced in the New York State Department of Transportations Standard Specifications -- Construction and Materials (latest edition), as stated in Section 707.
 - (2) Corrugated metal pipe shall conform to the requirements of AASHO Designations M190 and M36. All pipes shall be fully bituminous coated with paved invert. The gauge of the pipe shall be in accordance with the New York State Standard Specifications for Corrugated Metal Pipe for the intended use, and in all cases shall be a minimum of 16-gauge.
- E. Alternate materials. Where approved by the Town Highway Superintendent and the Town Engineer, in writing, use of alternate materials will be considered. Decision for the use of such alternate materials shall be based on the specific cases of the installation, as interpreted by the Town Highway Superintendent and the Town Engineer.
- F. Installation.
 - (1) The width of the trench in which the pipe is laid shall be sufficient to permit thorough tamping of the backfill around the pipe. A cushion of at least six inches of roadway subbase material shall be laid in line with grade prior to laying the pipe. No stones over three inches maximum dimension shall protrude or lay in this cushion. The soil below the cushion shall be stable enough that there will be no settlement of pipe after backfilling the trench.
 - (2) The pipe shall be laid to true line and grade on the prepared bed of the trench. All connections for corrugated metal pipe shall consist of twelve-inch corrugated metal bands lapping on equal portions of the sections to be connected . Backfilling of the trench shall be done with suitable roadway subbase material approved by the Town Highway Superintendent and/or the Town Engineer. The backfill shall be made in layers of no more than 12 inches, which shall be tamped to a minimum 90% modified proctor.
 - (3) All drainage pipes and structures shall be of a size sufficient to carry natural water runoff and stormwater and also which, in the opinion of the Town Highway Superintendent and/or the Town Engineer, are acceptable based on the design criteria in Subsection A of this section and which may be reasonably anticipated from future construction, both from within the development and from adjoining properties which normally drain across the area of the proposed development. Additional or larger culvert pipes and drainage structures shall be

installed and paid for by the offeror, if in the opinion of the Town Highway Superintendent and Town Engineer, the same is deemed appropriate and in the best interest of the Town.

- G. Groundwater. If, in the opinion of the Town Highway Superintendent and/or the Town Engineer, it is necessary to intercept and carry away groundwater within the limits of the right-of-way to protect the stability of the road bed, curb or sidewalk areas, such subdrainage shall be required and shall be installed by the offeror. Porous wall concrete pipe or perforated PVC pipe having a minimum diameter of four inches, encased in 12 inches of three-fourths-inch clean crushed stone or crushed gravel and covered with a porous fabric material, shall be used for such purpose for a length as deemed necessary by the Town Highway Superintendent and/or the Town Engineer.
- H. Catch basins and curb inlets.
- (1) Catch basins and curb inlets shall be constructed in order that surface water be intercepted. All catch basins shall be precast reinforced concrete, spaced as noted herein below, unless otherwise approved by the Town Highway Superintendent and/or the Town Engineer. Concrete shall meet the requirements as called for in § 130-14.6 of this specification. Such structures shall be placed at 400 feet or less. On grades in excess of 6%, the distance apart shall not exceed 250 feet. Figures 4 and 5^{79EN} outline the minimum details of construction for catch basins and curb inlets. Whenever, in the opinion of the Town Highway Superintendent and/or the Town Engineer, ground conditions or other circumstances require it, larger or heavier materials, additional materials, reinforcing or other modifications and improvements in design and construction shall be made as required by the Town Superintendent and/or the Town Engineer at any time prior to construction of pavement.
 - (2) For purposes of standardization and proper, timely and safe replacement, the following curb inlet casting shall be considered standard for supply on Town roads:
 - (a) Curbed roadways: Campbell No. 2633.
 - (b) Noncurbed roadways:
 - [1] Campbell No. 3490 (gutter type).
 - [2] Campbell No. 3087 (straight type).
 - (c) Substitution of or-equal castings shall be only when approved, in writing, by the Town Highway Superintendent.
- I. Headwalls.
- (1) Headwalls of reinforced concrete shall be constructed at the outlet and inlet ends of culvert pipes. Culverts shall extend to the toe of embankment. Concrete shall conform to the minimum requirements noted in § 130-14.6 of this specification. The bearing of all headwalls shall have a solid base. If soft material is encountered, it shall be removed and backfilled with acceptable fill material as specified under § 130-9 of this specification. It shall be the responsibility of the offeror that no headwalls shall crack or become tipped from settlement.
 - (2) Prior to construction, the offeror's professional engineer shall submit to the Town Engineer details of construction for the proposed headwall specific for the proposed installation.

- (3) Flared end sections may be permitted with authorization by the Town Highway Superintendent and/or Town Engineer.

§ 130-11. Groundwater and house drains.

- A. If, in the opinion of the Town Superintendent of Highways and/or Town Engineer, it is necessary to intercept and carry away groundwater within the limits of the right-of-way to protect the stability of the roadbed, curb or sidewalk areas, the subdrainage required by the Town Superintendent of Highways and/or Town Engineer shall be installed. Perforated pipe or porous wall pipe having a minimum diameter of four inches encased in six inches of three-fourths-inch clean crushed stone or crushed gravel shall be used for each purpose in an amount deemed necessary by the Town Superintendent of Highways and/or Town Engineer. No leaching basin shall be used without authorization of the Town Highway Superintendent and Town Engineer.
- B. Roof and cellar drains shall in no case be allowed to flow onto the street right-of way. With the approval of the Town Superintendent of Highways and Town Engineer, in writing, these drains may be piped to existing stormwater pipe drains, if any, to which they will be connected on top only. Such drains must be installed prior to the start of the application of the foundation course.

§ 130-12. Roadway design requirements.

- A. Grades and vertical curves. The grade of the street shall not be in excess of 10% nor less than 1%. By permission of the Town Superintendent of Highways and/or Town Engineer only shall the grade of more than 10% be allowed due to topographic conditions, and in no case shall a grade higher than 10% exceed 500 feet in length. In no case shall the grade exceed 12% without a special exception by resolution of the Town Board. Differences in grade will be effected with a vertical curve of sufficient length to allow a vertical sight distance in compliance with Subsection B of this section. The maximum grade of intersecting roads shall not exceed 2% for a distance of 50 feet from the intersection.
- B. Sight distance.
 - (1) In all cases, design of intersections shall always maximize sight distance and comply with the minimum recommended safe sight distances as referenced in the Institute of Traffic Engineers (ITE) Guidelines for Driveway Design and Location (latest revision), and as referenced in the New York State Department of Transportation Policies and Standards. When such minimum recommended safe sight distances cannot be obtained due to specific site conditions, the offeror's professional engineer shall submit sufficient documentation to show the maximum available and the specific reasons why the recommended values cannot be obtained. For roads proposed in subdivision, such information shall also be submitted to the Planning Board, and the road location shall be subject to its approval.
 - (2) "Sight distance" shall be defined as the distance where an object remains visible to an observer, said observer (driver) waiting to enter from an intersecting road or driveway at a point 12 feet in advance of the nearest travel lane, which measurement shall be taken from a level of 44 inches above the road/driveway

- pavement, observing a vehicle at a point 24 inches above the pavement at the point being observed. A similar method shall be utilized in the determination of stopping sight distance and turning sight distance.
- C. Entrances onto Town roads. All entrances onto Town roads shall be subject to the review and approval of the Town Highway Superintendent. Such entrances include but are not limited to private residential driveways, commercial or business entrances, private roads and the like. The offeror shall design and construct all entrances within the limits of the right-of-way with sufficient sight distance and with a grade no more than one inch per foot from the curb to the right-of-way line.
- (1) Driveways. The minimum width of the driveway pavement at the curb or road pavement line shall be 15 feet, tapering to a minimum of 10 feet at the right-of-way line. All driveways shall have a minimum six-inch run-of-bank gravel foundation course from the curb to the right-of-way line or 15 feet, whichever is greater, and no less than a two-inch hot-mix asphalt concrete wearing course from the curb or street pavement line to the right-of-way line or 15 feet, whichever is greater, which shall be applied during or after the laying of the road pavement. All driveways shall be graded to the satisfaction of the Town Highway Superintendent and the Town Engineer prior to the surfacing of such driveways.
 - (2) Other entrances. Commercial, business and other entrances shall be a maximum of 30 feet in width, unless otherwise approved by the Town Highway Superintendent and/or Town Engineer. Construction details of the pavement for the entrance roadway/drive within the Town right-of-way shall, at minimum, meet the minimum requirements for the type of road being intersected. All intersections shall be provided with drainage facilities acceptable to the Town Superintendent of Highways and/or the Town Engineer. Roadway/drives shall be a negative 2% grade from the edge of existing Town road pavement for a minimum of 30 feet, unless otherwise approved. The intersection angle of the roadway/drive shall be as close to 90° as possible.
- D. Curbs. On all roads in the C-1, C-2 and R Zones, portland cement concrete curbs shall be constructed on both sides of the street, as shown in Figures 1, 2 and 3,^{80EN} prior to laying road pavement to the dimensions and specification shown in Figure 6.^{81EN} A base course of four inches of suitable roadway subbase material compacted and free of stone over two inches in thickness shall be laid under all curbing. Concrete shall be used and shall be finished and cured to the satisfaction of the Town Highway Superintendent and the Town Engineer. The offeror, at his own expense, shall replace any sidewalks that have settled, cracked, scaled or become damaged in any way before and within the one-year maintenance period after dedication. Curbs shall be depressed five inches at all driveways. Stone curbs or precast curbs may be substituted only upon the written approval of the Town Highway Superintendent. Curbs may be required as part of a subdivision or site plan in the HD, I, R-1 or R-Ag-1 Zones at the discretion of the Planning Board.
- E. Sidewalks. On all roads in the C-1, C-2 and R Zones, unless otherwise approved by the Town Board, portland cement concrete sidewalks shall be constructed on one side of the street (or both, if so required by the Town Board), as shown in Figure 6.^{82EN} Concrete shall conform to § 130-14.6 of these specifications and shall be finished and

cured to the satisfaction of the Town Highway Superintendent and the Town Engineer. The offeror, at his own expense, shall replace any sidewalks that have settled, cracked, scaled or become damaged in any way by the offeror before and within the one-year maintenance period after dedication. Sidewalks shall be depressed at all driveways. Sidewalks may be required as part of a subdivision or site plan in the HD, I, R-1 or R-Ag-1 Zones at the discretion of the Planning Board.

F. Intersections.

- (1) All intersections with existing Town roads shall be constructed with the edge of pavement having a radius of 25 feet. Intersections within a development shall be constructed with the edge of pavement having a radius of 25 feet. All intersection roads shall have a horizontal sight distance of no less than 250 feet in each direction and shall comply with § 130-12B of this specification.
- (2) All intersections with existing county roads shall conform to the Policy and Standards-Permit Work within County Right-of-Way (latest edition), and shall be subject to the approval of the Ulster County Commissioner of Highways and Bridges, in accordance with Article V, § 102, and Article VI, § 136, of the Consolidated Laws of New York.^{83EN}
- (3) Where a proposed road intersects a Town or county road, the approved plans will show the proposed type, length and diameter of pipe and drainage flow along said road. The pipe will be installed and paid for by the offeror under the review of the Town Highway Superintendent, the Town Engineer and the County Commissioner of Public Works or his representative, as applicable. The County Commissioner of Public Works shall be notified of all intersections with county roads for approval of location, grade and drainage structures prior to any construction of the proposed street.

§ 130-13. Paved gutters on roads.

At their discretion, the Planning Board may require that paved gutters be constructed the entire length of the proposed street on both sides. Such paved gutters shall be considered as part of the construction of shoulders after the street pavement has been laid. Grading of shoulders and paved gutters shall be simultaneous, being shaped and rolled just prior to the application of the bituminous concrete (asphalt) for shoulders and paved gutters. The grades on paved gutters shall be maintained relative to the center line elevation to ensure positive runoff of surface water. It would be noted that the foundation course of the street pavement extends to the outer edge of the paved gutters.

§ 130-14. Roadway structure materials.

All materials used as part of the road structure are subject to the approval of the Town Highway Superintendent and the Town Engineer. Prior to the delivery of any materials or the construction of any work, the offeror shall submit to the Town Engineer data and testing results, and samples if requested, for all materials proposed to be used. No material shall be delivered or placed until the proposed materials have been accepted.

§ 130-14.1. Foundation course.

- A. Foundation course (subbase), select granular material.
- (1) Description. As part of the construction of all Town roads or in the preparation of a road for offering to the Town, the offeror shall furnish and place a select granular material foundation course of gravel, blast furnace slag, broken stone or other acceptable granular material in the places designated on the plans and in such other locations as field conditions require. The thickness and locations of the foundation course will be as shown on the typical cross sections, as shown in the figures attached to these specifications.^{84EN}
 - (2) Materials.
 - (a) All granular material acceptable for this item shall be of sound, hard, durable stone, gravel or blast furnace slag, well graded from coarse to fine, and shall meet the approval of the Town Highway Superintendent and the Town Engineer. The particles shall not exceed such size as will pass through a two-inch square hole; 30% to 65%, by weight, shall pass the one-fourth-inch square sieve; 5% to 40%, by weight, shall pass the No. 40 mesh sieve; and not more than 10%, the No. 200 mesh sieve in accordance with ASTM Designation D422 (latest revision). The particles passing the No. 40 mesh sieve shall have a maximum plasticity index of 5. Of the particles retained on the one-half-inch square sieve, not more than 30%, by weight, shall consist of flat or elongated pieces. A "flat or elongated piece" is defined herein as one the greatest dimension of which is more than three times the least dimensions.
 - (b) The quality of the gravel, stone or slag particles shall be determined by the magnesium sulphate soundness test. The maximum percent loss at four cycles, by weight, shall be 20.
 - (c) The source of the material shall be stripped of all sod, topsoil, overburden and other objectionable material before the excavation operations for the material are started and shall be kept stripped at minimum of 30 feet from the top of the working face of the source at all times.
 - (d) The material shall be stockpiled on site or otherwise be made available for inspection by the Town Highway Superintendent and/or the Town Engineer prior to placement. Prior to material being delivered to the site, the developer/offeror shall furnish the Town with certified laboratory test results for the material to be utilized.
 - (e) Should, at any time during work and for any reason, in the opinion of the Town Highway Superintendent or the Town Engineer, the material fail to conform to the specified quality and gradation requirements, the offeror shall, by the addition of selected acceptable material and/or satisfactory manipulation, produce a material meeting the above requirements, and he shall retest the material to demonstrate compliance to the satisfaction of the Town Highway Superintendent and the Town Engineer.
 - (f) It is the intent of this specification to provide a foundation course material meeting or exceeding the requirements of Gradation Type No. 4 subbase material, as specified under Section 304 of the New York State Department of Transportation Standard Specifications -- Construction and Materials (latest revision).

- (3) Construction details.
- (a) After excavation from the source and processing and blending, if necessary, the material shall be stockpiled. Stockpile shall be located at a distance of not less than 50 feet from the outside bottom edge of the conical stockpile built up under the processing plan conveyor or not less than 50 feet from the toe of the working face of the source. Unless otherwise approved, in writing, these stockpiles shall be formed in layers having a maximum thickness of two feet and to a height not exceeding 12 feet and shall contain not less than 1,000 cubic yards or the amount needed for the job, whichever is smaller. Removal of material from stockpiles for placement on the grade shall be by side excavation along nearly vertical faces for the full depth of the stockpile. The use of a clamshell-type bucket for loading the removal trucks or the use of pan-type scrapers for moving the stockpile material to its final position as subbase course will not be permitted.
 - (b) No material shall be added to a stockpile after the stockpile has been sampled for approval. Only material from approved stockpiles shall be placed on the grade for this item. The presence of any oversize particles in the stockpile will be cause for refection of the entire stockpile.
 - (c) No material shall be removed for use from any stockpile until the stockpile has been sampled, tested and approved by the Town Highway Superintendent and the Town Engineer for placement on the grade. Approval of a stockpile for placement on the grade shall not relieve, in any degree, the full responsibility of the offeror to furnish, in its compacted position, a subbase course of select granular materials, the final condition of which conforms to all requirements of the specifications for this item.
 - (d) The spreading of any layer of this material shall be done with spreader equipment acceptable to the Town Highway Superintendent and shall be spread to such thickness that the maximum depth of the layer, after compaction, will be six inches. Spreading from piles dumped on the roadway will not be permitted. No segregation of large or fine particles will be allowed, but the material, as spread, shall be well graded, with no pockets of fine material. Water shall only be added and in such amounts as acceptable to the Town Highway Superintendent and Town Engineer and only as necessary to obtain satisfactory compaction.
 - (e) When the moisture content of the layer is within the limits for proper compaction, the entire surface shall be rolled with a smooth steel wheel roller having a minimum weight of 10 tons. Each portion of the layer shall be covered by a minimum of eight passes of the roller.
 - (f) For heavier, vibratory or more efficient types of approved compaction equipment, the minimum number of passes required on all portions of each layer shall be acceptable to the Town Highway Superintendent. In limited areas, where the use of a roller is impractical, approved vibrating plate compactors or impact rammers shall be used to compact the material.
 - (g) After compaction, the top surface of this course shall not extend above nor more than 1/2 inch below true grade and surface at any location. The foundation course, at any location, shall be compacted, finished and

completed to the above tolerance and approved by the Town Highway Superintendent before any succeeding course is placed at that location. Any depressions or holes shall be filled with approved material conforming to specification and the surface rerolled.

- (h) In all cases, this subbase course must be so thoroughly compacted that it will not weave under the roller.
 - (i) The width of the layer of this subbase course shall be restricted to that required for placement of the lane being paved and shall not be laid in excess of 500 linear feet without being compacted. No traffic or hauling other than that necessary for bringing material for the next course shall be permitted over this course. Should the subgrade or any other material become churned up into or mixed with this foundation course through any reason whatsoever, the offeror shall, at his own expense, remove such mixtures and repave with select granular material acceptable for this item.
- B. The offeror shall assume full responsibility for any contamination and/or degradation of any part of this course during construction and shall, at his own expense, remove any and all portions this course which do not conform to the requirements of these specifications and replace these portions with specified material.

§ 130-14.2. Pavement; base course.

After the foundation course has been inspected, proof rolled, and accepted by the Town Highway Superintendent and the Town Engineer, and found to be at a grade allowing the proper depth of finished pavement, the following shall be laid:

- A. Hot-mix asphalt concrete pavement.
- (1) Material.
 - (a) The base course shall consist of a hot-mix asphalt concrete, conforming in all respects to the requirements for base course, Type 1, as stated in the New York State Department of Transportation Standard Specifications - Construction and Materials, Section 401 (latest edition). A hot-mix base course shall be constructed on a prepared base in accordance with these specifications and in conformance with the lines, grades, thicknesses and detail shown on the typical cross sections for the type of road involved, as shown on the figures provided with this specification.^{85EN}
 - (b) A hot-mix base course shall consist of aggregates, filler, if required, and bituminous material proportioned in accordance with Table 401-1 of the New York State Department of Transportation Standard Specification for a Type I dense base course.
 - (2) Placement.
 - (a) Pavement shall not be placed on any wet surface, any soft surfaces or when the surface temperature is less than 45° F. Temperature shall be measured on the surface where the paving is to be placed and the controlling temperature shall be the average of three temperature readings taken at locations 25 feet, plus or minus, apart.
 - (b) The roadway surface to be covered shall be free from holes, depressions, bumps, waves and corrugations. Any unsuitable surface areas shall be

repaired by replacement of the unstable materials or by patching with a material to produce a tight surface having the same elevation as the surrounding surface.

- (c) All equipment and the condition of the equipment shall meet the approval of the Town Highway Superintendent.

§ 130-14.3. Pavement; finish course.

After the base course has been placed, inspected and approved by the Town Highway Superintendent, one of the following two top courses shall be laid (selection in accordance with road classification):

A. Hot-mix asphalt concrete pavement.

(1) Material.

- (a) The finish course shall consist of a hot-mix asphalt concrete, conforming in all respects to the requirements for top course, Type 6F, as stated in the New York Department of Transportation Standard Specification -- Construction and Materials (latest edition).
- (b) A hot-mix finish course shall be constructed in accordance with these specifications and in conformance with the lines, grades, thicknesses and detail shown on the typical cross sections for the type road involved, as shown on the figures provided with this specification.^{86EN}
- (c) A hot-mix finish course shall consist of aggregate, filler, if required, and bituminous material proportioned in accordance with Table 014-1 of the State Specification for a Type 6F dense granular top course.

- (2) Placement. Pavement shall not be placed on any wet surface or when the surface temperature is less than 45° F. Temperature shall be measured as noted in § 130-14.2A(2) of this specification.

B. Double bituminous surface treatment (alternate finish course).

(1) Material.

- (a) Only when approved by the Town Highway Superintendent and the Town Engineer and only for minor roads, an alternate finish course consisting of a double bituminous surface treatment wearing course shall be permitted. Such alternate finish course will only be permitted when the base course has been constructed at the thickness associated with this alternate pavement structure. All work shall be performed per the detail shown on the typical cross sections, as shown on the figures provided with this specification.^{87EN}
- (b) The bituminous material required for the surface treatment shall meet the requirements of New York State Department of Transportation Section 702, Bituminous Materials, and shall be an asphalt emulsion.
- (c) The aggregate for surface treatments shall be crushed stone, meeting the requirements of New York State Department of Transportation Section 703-02, Coarse Aggregates. In addition, any aggregate used for surface treatments on pavement shall not contain more than 5% Chert. The aggregate size for the first course shall be No. 1 and the second course shall contain aggregate size No. 1A.

- (2) Placement.

- (a) Bituminous material shall not be applied on a wet surface, when the air temperature is below 50° F. or greater than 95° F., unless otherwise permitted, or when weather conditions would prevent the proper construction of the surface treatment. The following equipment shall be required:
 - [1] Bituminous material distributor.
 - [2] Pneumatic rubber tire roller.
 - [3] Aggregate spreader.
 - [4] Rotary power broom.
 - [5] Drag broom.
- (b) The bituminous material distributor shall be so designed, equipped, maintained and operated that the bituminous material at even heat can be applied uniformly on variable widths of surface up to 15 feet at readily determined and controlled rates from 0.05 to 2.0 gallons per square yard, with uniform pressure, and with an allowable variation from any specified rate not to exceed 0.02 gallon per square yard. Distributor equipment shall include a tachometer, accurate volume measuring devices or a calibrated tank and a thermometer for measuring temperatures of tank contents. Distributors shall be equipped with a power unit for the pump and full circulation spray bars adjustable laterally and vertically.
- (c) The distributor and/or transport shall be equipped with a sampling valve so designed and installed as to be nonclogging and safe. When samples are taken through such valves, they shall be considered representative of all material in the tank.
- (d) The pneumatic rubber tire roller shall be self-propelled and have oscillating wheels with smooth-tread tires. The tire or contact pressure shall be as acceptable to the Town Highway Superintendent. The roller shall be operated at a maximum speed of five miles per hour.
- (e) The bituminous material distributor and aggregate spreader shall be subject to the acceptance of the Town Highway Superintendent.
- (f) The surface shall be free from irregularities to provide a reasonably smooth and uniform surface to receive the treatment. Areas which are stable and firm and require one inch or less in thickness to patch or shape the surface may be patched with surface treatment materials. Unstable and/or corrugated areas shall be removed and replaced. Areas requiring replacing, patching or shaping in excess of one inch in thickness shall be constructed with materials acceptable to the Town Highway Superintendent and the Town Engineer.
- (g) A power broom shall be used to clean any loose material from the pavement surface before the bituminous material is applied. Manhole covers, drop inlets, catch basins and any other structures within the roadway area shall be protected against the application of the surface treatment materials.
- (h) Bituminous material shall be applied by means of a pressure distributor in a uniform, continuous spread over the section to be treated and within the temperature range specified. The quantity of bituminous material to be used shall be 0.5 gallon per square yard for the first course and 0.4 gallon per square yard for the second course for the indicated aggregate gradation, unless otherwise approved. A strip of building paper at least three feet in

width and with a length equal to that of the spray bar of the distributor, plus one foot, shall be used at the beginning of each spread. If the cutoff is not positive, the use of paper may be required at the end of each spread. The paper shall be removed and disposed of in a satisfactory manner. The distributor shall be moving forward at proper application speed at the time the spray bar is opened. Any skipped areas or deficiencies shall be corrected. Junctions of spreads shall be carefully made to assure a smooth riding surface.

- (i) The length of spread of bituminous material shall not be in excess of that which trucks loaded with cover coat material can immediately cover.
- (j) The spread of bituminous material shall not be more than six inches wider than the width covered by the cover coat material from the spreading device. Under no circumstances shall operations proceed in such a manner that bituminous material will be allowed to chill, set up, dry or otherwise impair retention of the cover aggregate.
- (k) The distributor, when not spreading, shall be parked so that the spray bar or mechanism will not drip bituminous material on the surface of the traveled way.
- (l) Immediately following the application of the bituminous material, cover aggregate shall be spread in the range of 15 to 25 pounds per square yard for the indicated aggregate, unless otherwise approved. Spreading shall be accomplished in such a manner that the tires of the trucks or aggregate spreader at no time contact the uncovered and newly applied bituminous material.
- (m) Immediately after the cover aggregate is spread, any deficient areas shall be covered by additional material. If the application of the aggregate cover by the spreader is not uniform, the Town Highway Superintendent may require the contractor to use a drag broom before rolling. Pneumatic tire rolling shall begin immediately and shall be continued until three complete coverages are obtained.
- (n) Any free bituminous material on the surface caused by a deficient amount of cover aggregate shall be covered in such a manner so as not to displace imbedded material. Excess material shall be swept from the entire surface by means of brooms. The surface shall be swept at the time determined by the Town Highway Superintendent.
- (o) Traffic shall be discontinued on the lane being surface treated, and as soon as the final layer is applied and rolled, controlled traffic may be permitted thereon. Traffic shall be maintained at a speed not to exceed 15 miles per hour for two to four hours after rolling. The time and minimum requirements of traffic control shall be as acceptable to the Town Highway Superintendent.
- (p) Sufficient time shall elapse between the completion of the first course and the placing of the surface course so that the bituminous material in the first course has time to set or cure.

§ 130-14.4. Miscellaneous materials.

A. Stabilization fabric. Where called for in the design or required by the Town Highway

Superintendent and/or the Town Engineer, the offeror shall, at his own expense, provide and install a high-tensile-strength, high modulus (low deformation under load) woven-type stabilization fabric under the pavement subbase.

- B. Fabric shall meet the following minimum properties in accordance with American Society for Testing and Materials test methods:

Item Value

Grab 300
tensile pounds
strength

Grab 35
tensile maximum
elongation

140
Modulus pounds
per square
inch (at
10%
elongation)

Burst 600
strength pounds
per
square
inch

120
Trapezoidal
tear
strength

130
Puncture pounds
per
resistance

§ 130-14.5. Approval of materials.

All materials used as part of the road shall be subject to the approval of the Town Highway Superintendent and the Town Engineer. Prior to the delivery of any materials or

the construction of any work, the offeror shall submit to the Town Engineer data, test results, manufacturer's literature and/or samples for all materials proposed to be used. No material shall be delivered or placed until the proposed materials have been accepted.

§ 130-14.6. Reinforced concrete.

A. General.

- (1) All concrete used in the construction of concrete curbs, sidewalks, headwalls, catch basins and other miscellaneous items shall be plant mix portland cement concrete, complete with reinforcing as called for in the details provided with these specifications. All concrete provided shall have a minimum compressive strength of 3,500 pounds per square inch at 28 days, with the exception of headwalls and any other structural elements, which shall have a minimum compressive strength of 4,000 pounds per square inch at 28 days.
- (2) The quality of all types of finished concrete surfaces shall be that which can be truly classified as good standard practice in the trade for each respective type or kind of surface.
- (3) The portland cement concrete shall consist of a homogeneous mixture of cement, water, fine aggregate, coarse aggregate and admixtures proportional and mixed according to the American Concrete Institute Code of latest edition and these specifications.

B. Reinforcement.

- (1) Reinforcing bars shall conform to the requirements of ASTM A615 (latest revision), Grade 40.
- (2) Welded plain wire fabric for concrete reinforcement shall conform to Specifications for Welded Steel Wire Fabric for Concrete Reinforcement (ASTM A185), except that welded intersections shall be spaced not farther apart than 12 inches in the direction of the principal reinforcement.
- (3) All bar accessories for support, holding and spacing of reinforcement shall be in accordance with the recommendations of the Manual of Standard Practice for Detailing Reinforced Concrete Structures of the American Concrete Institute except as specifically modified by details on the design drawings as approved.
- (4) Welding of reinforcement shall conform to AWS D12.1. Plastic-tipped chairs are required for all concrete except for slabs on ground.

C. Concrete mix.

- (1) Cement shall be portland cement, Type 2, conforming to ASTM C160. Fine aggregate shall meet the following gradation requirements, unless otherwise approved:

Sieve Size	Passing by Weight
3/8 inch	100%

No. 4	90%
	to
	100%
No. 8	75%
	to
	100%
No. 16	50%
	to 85%
No. 30	25%
	to 60%
No. 50	10%
	to 30%
No. 100	1% to
	10%
No. 200	0% to
	3%

- (2) Coarse aggregate shall be crushed stone, crushed gravel or crushed slag. This aggregate shall be clear and uncoated and meet the following gradation requirements, unless otherwise approved:

Sieve Size (inches)	Passing Weight (percent)
2 1/2	--
2	--
1 1/2	100%
1	93% to 100%
1/2	27% to 58%
1/4	0%

- (3) Air-entraining agents shall conform in all respects to the requirements of ASTM C260, except that nonliquid agents will not be permitted. The testing to determine if the agent yields the required properties shall be performed in accordance with ASTM C233.
- (4) All concrete shall contain an air content between 4% and 8%. The air content shall be determined in accordance with ASTM C173.
- (5) Admixtures shall be added in the amounts necessary to achieve the required air content and/or set retardation. These materials shall not be considered as part of the solid volume. Other admixtures shall not be used without acceptance by the Town Engineer.
- (6) Water shall be added in the amounts required to produce a slump between 2 1/2 inches and 3 1/2 inches while maintaining a water/cement ratio of approximately 0.65 by weight.

D. Installation.

- (1) A record of each concrete delivery shall be produced and provided to the representatives of the Town. This record shall contain the quantities of each aggregate component, cement, water and admixture(s) for each batch. Additionally, the hatching record shall show the batch number, day, month, year and time of day.
- (2) The offeror shall, at his own expense, provide representatives for the taking of concrete cylinders and making slump tests in the field, as well as retain the services of a concrete testing laboratory to make all such necessary tests and provide acceptable written reports to the Town Engineer.
- (3) The personnel taking the concrete cylinders and making slump tests in the field shall be provided by the offeror or the testing laboratory and shall be qualified field technicians completely familiar with the required tests. All personnel are subject to acceptance of the Town.
- (4) The type and capacity of all equipment used for mixing, transporting, placing and finishing concrete shall be subject to the acceptance to the Town Engineer.
- (5) Before depositing concrete, the excavations shall be free of water, frost or loose or softened earth; the forms shall be cleaned of all debris, ice or snow.
- (6) No concrete shall be placed when the atmospheric temperature is below 40° F. unless permission to do so is granted, in writing, by the Town Highway Superintendent and the Town Engineer. When cold weather concreting is approved, the same shall conform to ACI 306 (latest revision), Standard Recommended Practice for Cold Weather Concreting.
- (7) During periods of abnormally hot and dry weather, the contractor shall take all such appropriate actions and means to place the concrete immediately upon arrival at the site, finishing the work as soon as possible and immediately curing so as to retain moisture in the concrete and reduce temperature buildup. All concreting in hot weather shall conform to ACI 305 (latest revision), Standard Recommendation Practice for Hot Weather Conditions.
- (8) All curing shall comply to the requirement of ACI Standard 308 (latest revision), Standard Recommended Practice for Curing Concrete.
- (9) Expansion joints for concrete sidewalks and curbs shall be one-half-inch premolded expansion joint material meeting the specifications of ASTM D-1751.

- (10) All porous or defective concrete of any kind occurring prior to final acceptance of the work shall be remedied by the offeror at his expense and to the satisfaction of the Town Engineer and the Town Highway Superintendent.

§ 130-14.7. Manhole cover castings.

For purposes of standardization and proper, timely and safe replacement, all manhole cover castings shall be Campbell No. 1007C and shall be considered standard for supply on Marlborough Town roads. Substitution of or-equal castings shall be only when approved, in writing, by the Town Highway Superintendent.

§ 130-14.8. Guardrails.

- A. Where called for in the design or required by the Town Highway Superintendent and/or the Town Engineer, the offeror shall, at his own expense, provide and install galvanized steel guide rail or box beam guide rails.
- B. Galvanized steel guide rails shall be corrugated type, W-beam type, typically with W 6 by 9 posts, terminal sections, anchors and details of construction as acceptable to the Town Highway Superintendent and the Town Engineer. Rail shall have a minimum weight per foot of 6.8 pounds. Rail shall be mounted to the galvanized posts with galvanized bolts and plate washers. Where the top of rail height is over 27 inches, a cold-formed channel rub rail shall be provided. All materials for installation for guide rails shall be in compliance with NYSDOT Specifications Section 606 year of latest revision, and material shall be in compliance with Section 710-20.
- C. Where box beam guide rails are proposed, guide rails shall meet NYSDOT Specification 606, year of latest revision. Materials shall meet NYSDOT 710-21 complete compliance with NYSDOT and ASTM. Specifications for guide rails will be required including materials and installation for either type utilized.

§ 130-14.9. Street identification signs.

- A. Signs shall be double-faced, assembled with engineer-grade reflective sheeting on extruded aluminum blades. Signs shall be white characters on a green background, six inches in height, by length as necessary for specific installation. Letters shall be three inches, uppercase FHWA Series C of reflective sheeting. All signs shall be manufactured per United States Bureau of Public Roads standards and shall be chemically treated to meet ASTM B449 (latest revision) for pretreatment for paint or reflective sheeting.
- B. Sign posts shall be 2 3/8 inches outside diameter, sixty-five-hundredths-inch wall thickness, hot-dipped galvanized steel painted green, 10 feet in length, set three feet into solid ground.
- C. Identification signs for private roads shall be of identical configuration, mounted below the private road's street name identification sign. The sign shall bear the characters "PRIVATE ROAD" or "P.V.T."
- D. All street names, including those for private roads, are subject to the approval of the Town Board, and no name created shall be identical or undesirably similar to any existing street name. Any name created shall be registered with the Town Clerk.

- E. Street names are also required to be submitted for approval to the Ulster County Real Property Tax Agency.

§ 130-14.10. Traffic control devices; pavement markings.

- A. Traffic control devices shall only be installed where approved by the Town Board and Town Highway Superintendent and, if applicable, the other governmental agency having jurisdiction for the intersecting roadway involved. All signs and pavement markings shall be of the type, size, color, shape and general construction and placement, in accordance with the criteria called for in the Manual of Uniform Traffic Control Devices (latest revision), as promulgated by the New York State Department of Transportation, Traffic and Safety Division.
- B. Signs shall be constructed of stock aluminum, manufactured in accordance with United States Bureau of Public Roads standards and treated to meet ASTM B449 for pretreatment for paint or reflective sheeting.
- C. Signs shall be mounted to heavy-weight rib-back channel posts finished with a green baked-enamel coating. Posts shall be three pounds per foot weight, manufactured from high tensile steel. Posts shall be set a minimum of three feet into solid ground.

§ 130-14.11. Encroachments.

- A. Encroachments into Town right-of-way. It shall be considered unlawful for any person, persons, developer, firm or other entity to construct or cause to have constructed or place or otherwise create encroachments which are located within the Town right-of-way unless the specific item has been submitted to the Town and approved in accordance with this specification or other applicable laws.
- B. Should any signs, landscaping elements, shrubs or other plants, improperly placed mailbox or any other obstruction or encroachment so exist and be deemed a hazard or otherwise an unsafe or unacceptable condition by the Town Highway Superintendent, the person, persons, developer, firm or other entity responsible for such item shall cause the encroachment to be immediately removed. Should this fail to occur within a time deemed reasonable by the Superintendent, the Town reserves the right to correct the encroachment, with the cost for the same to be borne by the responsible party.

§ 130-14.12. Mail- and delivery boxes.

- A. No mailbox or newspaper delivery box, hereafter referred to as "mailbox," will be allowed to exist within a Town right-of-way if it interferes with the safety of the traveling public or the function, maintenance or operation of the roadway or pedestrian system. A mailbox installation that does not conform to the provisions of this regulation will be considered an unauthorized encroachment.
- B. The location and construction of mailboxes shall conform to the rules and regulations of the United States Postal Service, as well as to standards established by this specification.
- C. No mailbox will be permitted where access is obtained from the lanes of a major road or where access is otherwise prohibited by law or regulation.
- D. In general, mailboxes shall be located on the right-hand side of the roadway in the

direction of the delivery route except on one-way streets where they may be placed on the left-hand side. The bottom of the box shall be set at an elevation established by the United States Postal Service, usually between three feet six inches and four feet zero inches above the roadway surface. The roadside face of the box shall be offset from the edge of the traveled way a minimum distance of the greater of the following: eight feet, where no paved shoulder exists; the width of the all-weather shoulder present, plus eight to 12 inches; or the width of an all-weather turnout, plus eight to 12 inches.

- E. On curbed streets, the roadside face of the mailbox shall be set back from the face of the curb a distance between six and 12 inches. On residential streets without curbs or all-weather shoulders and that carry low traffic volumes operating at low speeds, the roadside face of a mailbox shall be offset between eight and 12 inches behind the edge of pavement. Mailboxes shall not be placed so as to obstruct any sidewalk or established pedestrian way.
- F. It shall be the responsibility of the owner to coordinate these requirements with the requirements of the United States Postal Service.

§ 130-14.13. Stabilization seeding.

- A. After all construction within the right-of-way has been completed, all nonpaved areas shall be finish graded and seeded. Seeding mix shall be as follows:

**Comp Applic
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(poun
ds per
1,000
square
feet)
10**

Perenn
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ryegra
ss
(Loliu
m
perenn
e)

14

Fertiliz
er (10-
20-10)

135

Limest
one

Mulch 70
(unrott
ed
straw
or salt
hay)

- B. All seeding shall be performed on a ground surface consisting of a minimum of four inches of topsoil. This work may be performed at any season of the year when a mulch is used unless otherwise specified. When conditions of high winds, excessive moisture or ice are such that satisfactory results are not likely to be obtained, the work shall be stopped and will be resumed only when the desired results are likely to be obtained or when acceptable corrective measures and procedures are adopted.
- C. Areas to be seeded shall be maintained at acceptable grades. Irregularities which will form low places and hold water shall be eliminated. The offeror shall care for the seeded and mulched areas until the end of the maintenance bond term. Such care shall consist of repairing any areas damaged following the seeding or mulching operations due to wind, water, fire or other causes. Such damaged areas shall be repaired to reestablish the condition and grade of the area prior to seeding and shall then be refertilized, reseeded and remulched as specified herein.

§ 130-14.14. Sidewalks.

No owner or occupant or other person shall place, keep, permit or cause to be placed or kept on any sidewalk in front of, adjoining or adjacent to such premises any goods, wares, merchandise, boxes, barrels, display signs or material things of any kind or description nor shall they in any manner obstruct any such sidewalk or in any manner obstruct or interfere with the use of any such sidewalk. Nothing contained in this article shall prevent such persons from placing foods, wares or merchandise on the sidewalk temporarily while loading or unloading the same, provided that it be done without unnecessary delay and provided that such goods, wares or merchandise are not allowed or permitted to remain on such sidewalks within the prohibited area for a period longer than one hour.

§ 130-14.15. Work in existing Town streets.

- A. All work to be performed within an existing Town street shall be subject to the approval of the Town Highway Superintendent. The contractor, developer or other such person performing the work shall be required to obtain a road opening permit and pay any and all such fees that may apply relation to the same.
- B. The contractor or person performing the work shall be required to submit to the Town a certificate of insurance listing the Town of Marlborough as additional insured

(providing primary coverage), providing liability and property damage insurance with a limit of liability not less than \$1,000,000.

- C. All work shall be subject to the review of Town representatives, and the contractor or person performing the work shall schedule such work as to permit the necessary reviews and inspections. Where applicable, a fee shall be paid to the Town for such reviews and inspection.
- D. All work shall be in accordance with generally accepted and recognized guidelines and the specifications for road opening permit guidelines in effect at the time of the work.

§ 130-14.16. Private roads.

- A. A "private road" shall be defined as a road privately owned and maintained as an access way for between two to four lots, connecting to a public street. Up to two additional lots may use the private road, if a private agreement so allows, provided that those two additional lots have the minimum required frontage on a public road. For purposes of the private road use count, no distinction shall be made between developed or undeveloped lots having the right to utilize said private road. However, the private road use count as addressed under this subsection must be considered prior to any building permit being issued for any lot.
- B. Private roads shall only be permitted to serve residential lots for single-family and two-family residential uses. If a two-family dwelling exists or is proposed on a private road, it shall be considered to be the equivalent of two single-family lots for purposes of the private road use count as described in this subsection. For purposes of the private road use count as described in Subsection A above, caretaker dwellings shall be counted as the equivalent of an additional single-family lot. Accessory dwelling units, as defined in this chapter, shall be permitted on private roads, and the same shall not in any way affect the private road use count described in Subsection A above.
- C. In general, no subdivision shall contain more than one private road. If the Planning Board determines that more than one private road is required to serve a given property due to particular circumstances such as its shape or slope, and if the Planning Board determines that the provision of more than one private road is not being done to avoid the construction of a public road where a subdivision would exceed the lot count described in Subsection A above, the Planning Board may have the option of approving more than one private road. In the event that more than one private road is proposed, such road shall have adequate separation and shall not be interconnected. In no case shall any lot have legal access and/or frontage on more than one private road.
- D. In no case shall a private road connecting solely to another private road be created. However, this language shall not prohibit the extension of an existing private road in compliance with the provisions of Subsection A above, in the event that the provisions of the original maintenance agreement for said existing private road do not prohibit the same.
- E. In order to create in excess of four lots other than the two additional lots specified in Subsection A above on an existing private road, said private road shall first have been improved to the current applicable street specifications in the Town of Marlborough dedicated to and accepted by the Town of Marlborough or other applicable

governmental body as a public road, in which case the same shall cease to be a private road.

- F. The Planning Board shall not approve the use of a private road in any subdivision if it is determined that the use of said private road is not consistent with the health, safety, welfare and convenience of the proposed users of the road and the people of the Town of Marlborough in general.
- G. To the extent practicable, the owner of any lot having access only to an approved private road shall be the owner of the portion of the private road adjacent to his lot to the center line of said private road, unless other ownership provisions have been shown on the filed subdivision plat as approved by the Planning Board.
- H. In all cases, dimensions used in determining compliance with zoning bulk, frontage and setback regulations shall be measured from or along the right-of-way lines indicated for the private road.
- I. Responsibility for maintenance.
 - (1) Where a subdivision plat containing a private road is approved and filed with the Ulster County Clerk, such subdivision plat shall contain a note clearly stating that the subdivision contains a private road which the Town of Marlborough has no responsibility to maintain, nor provide services for, nor make any improvements to; that all such costs shall be borne by the property owners approved to use said road in accordance with the terms of maintenance declaration or agreement, as referenced herein below.
 - (2) All private roads will have provisions for the maintenance of said private road, pertinent drainage facilities and other improvements incorporated in a maintenance declaration or agreement which shall be recorded in the Ulster County Clerk's office at the time of filing of the subdivision plat and prior to the transfer in ownership of any subdivision lot.
 - (3) A private road may not be offered for dedication to the Town of Marlborough unless the owners of the private road shall first have caused it to meet the current applicable street specifications in the Town of Marlborough, identified in Article I of this chapter.
- J. Private road construction specification. If the Planning Board shall authorize the construction of a private road in accordance with the standards set forth in this chapter, said private shall at a minimum conform to the standards set forth below.
 - (1) No private road shall exceed six times the minimum required lot width; except that the Planning Board may waive this provision upon finding that the same would not be detrimental to the public health, safety, welfare and general convenience.
 - (2) The private road will have the subbase prepared and compacted to the maximum density. Where grade alteration is required, the same shall be by use of run-of-bank or other no-frost-susceptible material, compacted to maximum density.
 - (3) Said private road will have a base course which shall consist of at least eight inches of roadway subbase material meeting or exceeding the requirements of gradation Type Number 4 subbase material (Type 1), specified under Section 304 of the New York State Department of Transportation Standard Specifications -- Construction and Materials (latest revision). This subbase material will be compacted to maximum density. After the subbase course is

placed, a base course shall be placed conforming to the requirements for Base Course, Type 1, as stated in the NYSDOT Standard Specifications -- Construction and Materials, Section 401 (latest addition).

- (4) A private road shall not be less than 18 feet in width and shall have, in addition, shoulders three feet in width on both sides of the road, which shoulders shall be compacted to maximum density, and shall also have a three-foot-wide drainage swale adjacent to each shoulder.
- (5) The right-of-way reserved for all private roads shall not be less than 50 feet in width; rights-of-way for culs-de-sac shall not be less than 80 feet in diameter.
- (6) Dead end private roads shall end in a cul-de-sac; said cul-de-sac shall have a finished surface being not less than 60 feet in roadway diameter.
- (7) No portion of any private road shall have a grade exceeding 14% except that all work within the public road rights-of-way shall conform to the appropriate standards of the agency having jurisdiction over the same. Where the slope of a private road exceeds 10%, the Planning Board may set reasonable requirements, including but not limited to the provision of temporary parking areas, in order to protect the public health, safety and welfare.
- (8) All side slopes of lands adjacent to the private road within the private road right-of-way shall not be steeper than a slope of 2:1. Alternate side slopes using alternate methods of stabilization and control may be approved by the Planning Board on a case-by-case basis.
- (9) If a private road is constructed over a place where water runs regularly or intermittently underneath said road or will be caused to do so as part of the proposed subdivision, coated corrugated metal pipe (CMP) culvert or any alternative pipe materials approved by the Planning Board shall be installed underneath the road to permit the passage of water under said road. The size of such pipe shall be as determined to be acceptable by the Town Engineer.
- (10) All private road names shall be approved by the Town Board. Such road name shall be posted by street sign which is identical in construction, character and manner of posting as those currently installed by the Town of Marlborough for public roadways, except that the sign shall also be equipped with a separate additional sign of similar construction which identifies the road as a private road.

§ 130-14.17. Interpretation.

Final decision as to the interpretation of any part of these road specifications shall rest with the Town Highway Superintendent. He shall have the authority to modify the requirements of these specification when, in his opinion, conditions make it impracticable to follow the strict letter of these specifications, when conditions make in unnecessary to do so and when it is in the best interest of the Town of Marlborough.

§ 130-14.18. Applicability.

Provisions of Chapter 130, Article I, shall only apply to applications submitted to the Town of Marlborough Planning Board, Town Board, Zoning Board of Appeals or any other Town agency or department after the effective date of this article.

ARTICLE II, Notice of Highway Defects [Adopted 5-10-2004 by L.L. No. 2-2004^{88EN}]

§ 130-15. Civil action prohibited; exceptions.

- A. No civil action shall be maintained against the Town or Town Superintendent of Highways, nor other employees or officers thereof, acting in such capacity for damages or injuries to person or property sustained by reason of any highway, bridge, street, sidewalk, crosswalk, culvert, park, recreational facility, grating, opening, drain, sewer, pier or dock being defective, out of repair, unsafe, dangerous or obstructed unless, prior to the occurrence resulting in such damage or injuries, written notice of the defective, unsafe, dangerous or obstructed condition of such highway, bridge, street, sidewalk, crosswalk, culvert, grating, opening, drain, sewer, pier or dock was actually given to the Town Clerk or Town Superintendent of Highways, and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of.
- B. No such action shall be maintained for damages or injuries to personal property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, street, sidewalk, crosswalk, culvert, park, recreational facility, grating, opening, drain, sewer, pier, or dock, unless written notice thereof, specifying the particular place, was actually given to the Town Clerk or Town Superintendent of Highways and there was failure or neglect to cause such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.^{89EN}

§ 130-16. Written notice requirements.

The written notice hereunder shall contain at least the following information:

- A. Name and mailing address of the person giving the notice.
- B. A precise statement as to the nature and extent of any defective, unsafe, dangerous or obstructed condition or the existence of snow or ice upon any highway, bridge, street, sidewalk, crosswalk, culvert, grating, opening, drain, sewer, pier or dock within the Town of Marlborough.
- C. The approximate date that such condition first became known to the person giving the notice.
- D. The exact location of such condition, giving wherever possible reference to a street address, utility pole number or such other geographic reference as will aid the Town in properly locating such condition.

§ 130-17. Transmittal and presentation of written notices.

The Town Superintendent of Highways shall transmit in writing to the Town Clerk within five days after receipt thereof all written notices received pursuant to this article and Subdivision 2 of § 65-a of the Town Law. The Town Clerk shall cause all written notices received pursuant to this article and Subdivision 2 of § 65-a of the Town Law to be presented to the Town Board within five days of the receipt thereof or at the next

succeeding Town Board meeting, whichever shall be sooner.

§ 130-17.1. Record of notices.

The Town Clerk shall keep an index record in a separate book of all written notices which he or she shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice and snow upon, any Town highway, bridge, street, sidewalk, culvert, park, recreational facility, grating, opening, drain, sewer, pier or dock, which record shall state the date of receipt of the notice, the nature and location of the condition stated to exist and the name and address of the person from whom the notice was received. The record of such notice shall be preserved for a period of five years from the date it is received.

§ 130-17.2. Terminology.

For the purpose of this article, the terms "streets," "highway," "sidewalk," "crosswalk," "pier," and "dock" shall include every path, step, or stairway and any other means of access of every kind, nature and description whatsoever leading thereto or therefrom, and which is owned, controlled and maintained by the Town of Marlborough.

ARTICLE III, Snow and Ice Removal [Adopted 8-22-1994 by L.L. No. 2-1994]

§ 130-18. Purpose.

The purpose of this article shall be to preserve the public peace and good order in the Town, to contribute to the public welfare, safety and good order of its people and to contribute to the safe conveyance of its people over the streets and sidewalks of the Town by establishing certain regulations for the removal of snow and ice from the streets and sidewalks of the Town that are consistent with the rights and privileges of other residents of the Town.

§ 130-19. Deposits on streets prohibited.

No person, firm or corporation shall deposit, throw, place or strew, nor shall any person, firm or corporation cause to be deposited, thrown, placed or strewn, any snow or ice upon any Town street, avenue, roadway or highway.

§ 130-20. Deposit or accumulation on streets or private property.

- A. No person, firm or corporation shall pile, gather up, plow up or in any way force any snow or ice upon any Town street, avenue, roadway or highway.
- B. No person, firm or corporation shall pile, gather up, plow up or in any way force any snow or ice upon any terrace or parcel of land within six feet of any Town street, avenue, roadway or highway in such a manner as to cause the height of the snow and ice so piled, gathered, plowed or forced to exceed three feet six inches in height

- above the existing natural grade of said terrace or parcel of land within six feet of said Town street, except that it shall be unlawful to cover a fire hydrant with snow or ice.
- C. No person, firm, corporation, property owner or occupant shall remove snow or ice from any parcel of real estate and place it upon another parcel of real estate without the express permission of the owner of the parcel of real estate upon which the snow or ice is to be placed.
 - D. Any person, firm or corporation piling, gathering or plowing up snow or ice on any Town street, avenue, roadway or highway or to an excess height, as indicated in Subsection B, shall forthwith remove the same at his or its expense, upon the request of the Superintendent of Highways of the Town of Marlborough.
 - E. Whenever any person, firm or corporation neglects or refuses to remove any snow or ice piled, gathered or plowed up by him or it in violation of this article within four hours after a request to do so by the Superintendent of Highways of the Town of Marlborough, the Town may remove or cause to be removed such accumulation at the expense of the owner or occupant of said property, and, upon the failure to pay the charge, the Town shall cause the expense thereof to be assessed against the property and become a lien thereon, collectible in the same manner as delinquent Town taxes.

§ 130-21. Duty to keep sidewalks clear.

It shall be the duty of the owner and occupant, jointly, of every parcel of real estate adjoining a Town sidewalk, whether the parcel of real estate is occupied by a structure or not, to keep such sidewalks adjoining such a property free from snow and ice for the full paved width of such sidewalk.

§ 130-22. Time for removal.

Snow and ice shall be removed within 24 hours after the end of a snowfall. Sidewalks in front of commercial establishments and commercial parking lots shall be kept free of snow and ice at all times.

§ 130-23. Icing of sidewalk.

In case snow and ice on any Town sidewalk shall be frozen so hard that it cannot be removed without injury to the sidewalk, it shall, within the time specified in § 130-22, be strewn and kept strewn with ashes, sand, sawdust or other suitable material so as to be no longer dangerous to life and limb. As soon as practical thereafter, the Town sidewalks shall be completely cleared of snow, ice and other material strewn thereon, as provided in this article.

§ 130-24. Removal by Town.

Whenever the owner or occupant of every parcel of real estate adjoining a Town sidewalk fails to remove the snow and ice from such sidewalk adjoining such property within the time specified in this article or within four hours after notice of the Superintendent of Highways of the Town of Marlborough to remove the same, the Town may remove or cause to be removed such accumulation at the expense of the owner or occupant of said

real property, and, upon a failure to pay the charge, the Town shall cause the expenses thereof to be assessed against the property and become a lien thereon, collectible in the same manner as delinquent Town taxes.

§ 130-25. Fall from building.

The owners or occupants of buildings adjacent to Town sidewalks shall prevent the falling of snow, ice or water from such building upon said Town sidewalks.

§ 130-26. Penalties for offenses.

Any person who shall violate any provision of this article shall, upon conviction, be guilty of a violation which shall be punishable by a maximum fine of \$250 or by imprisonment for not more than 15 days, or both.

ROAD SPECIFICATIONS FIGURES 1-6

FIGURE 1

Typical Cross Section, Major Road

ROAD SPECIFICATIONS FOR TOWN ROADS

FIGURE 2

Typical Cross Section, Secondary Road

ROAD SPECIFICATIONS FOR TOWN ROADS

FIGURE 3

Typical Cross Section, Minor Road

ROAD SPECIFICATIONS FOR TOWN ROADS

**FIGURE 4
Catch Basin Detail**

ROAD SPECIFICATIONS FOR TOWN ROADS

**FIGURE 5
Catch Basin Detail**

ROAD SPECIFICATIONS FOR TOWN ROADS

**FIGURE 6
Sidewalk and Curb Detail**

Chapter 134, SUBDIVISION OF LAND

[HISTORY: Adopted by the Town Board of Town of Marlborough 10-24-1994 as L.L. No. 3-1994. Amendments noted where applicable.]

GENERAL REFERENCES

- Planning Board -- See Ch. 33.**
- Building construction -- See Ch. 67.**
- Flood damage prevention -- See Ch. 97.**
- Mobile homes -- See Ch. 102.**
- Sewers -- See Ch. 118.**
- Streets and sidewalks -- See Ch. 130.**

Water -- See Ch. 149.
Zoning -- See Ch. 155.

ARTICLE I, Definitions and Word Usage

§ 134-1. Word usage.

As used in this chapter:

- A. Words in the singular include the plural and those in the plural include the singular.
- B. The word "person" includes a corporation, unincorporated association and partnerships, as well as an individual.
- C. The word "building" includes a structure and shall be construed as if followed by the phrase "or part thereof."
- D. The word "street" includes avenue, boulevard, court, expressway, highway, lane, arterial and road.
- E. The word "watercourse" includes channel, creek, ditch, drain, dry run, spring and stream.
- F. The word "may" is permissive; the words "shall" and "will" are mandatory, subject, however, to the provisions of § 134-24A hereof.

§ 134-2. Definitions.

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

AGRICULTURAL DATA STATEMENT -- An identification of farm operations within an agricultural district located within 500 feet of the boundary of property upon which occurs an action requiring municipal review and approval by the Planning Board, Zoning Board of Appeals or Town Board pursuant to Article 16 of the Town Law.

ALLEY -- A minor right-of-way providing secondary vehicular access to the side or rear of two or more properties.

BLOCK -- An area bounded by streets.

BOARD -- The Planning Board of the Town of Marlborough.

BOARD ENGINEER -- The person duly designated as engineer of the Planning Board on a permanent or consulting basis.

BUILDING -- A structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.

DEDICATION -- The deliberate appropriation of land by its owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

DRIVEWAY -- A private right-of-way providing access for vehicles to a parking space, garage, dwelling or other structure.

EASEMENT -- A grant by the property owner of one or more of the property rights to and/or for the use by the public, a corporation or another person or entity.

FARM OPERATION -- The land used in agricultural production, farm buildings and farm residential buildings.

LAND USE REGULATION -- An ordinance or local law enacted by a municipality for

the regulation of any aspect of land use and community resource protection and includes zoning, subdivision, special use permit or site plan regulation or any other regulations which prescribe the appropriate use of property or the scale, location and intensity of development.

LOT -- A designated parcel, tract or area of land established by a plat or otherwise as permitted by law to be used, developed or built upon as a unit.

LOT LINE CHANGE -- A reconfiguration of two adjoining lots which will result in the same number of lots with a different geometric configuration. [Added 3-8-1999 by L.L. No. 2-1999]

MUNICIPALITY -- A city, town or village.

PERFORMANCE BOND -- A security which may be accepted by the municipality in lieu of a requirement that certain improvements be made before the Board gives final approval to a subdivision plan. Such security shall be sufficient to cover the full cost of all uncompleted improvements in the subdivision as estimated by the Board or agency designated by the Board. Securities shall include such collateral or agreements acceptable to the Town Board or a bond issued by a surety company and to run for a term not to exceed three years; provided, however, that the terms may be extended by the Board with the consent of the parties thereto.

PLAT -- A map or maps of a subdivision.

PLAT, FINAL -- A drawing prepared in a manner prescribed by this chapter which shows a proposed subdivision, containing in such additional detail as may be required by this chapter all information required to be shown on a preliminary plat and the modifications, if any, required by the Planning Board at the time of the approval of the preliminary plat if such preliminary plat has been so approved.

PLAT, PRELIMINARY -- A drawing prepared in a manner prescribed in this chapter showing the layout of a proposed subdivision, including but not restricted to road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as required by this chapter.

PLAT, SKETCH -- A freehand sketch showing the general features of a proposed subdivision in accordance with § 134-21 of this chapter.

PREMISES -- A lot, parcel, tract or plot of lands, together with the buildings and structures thereon.

RESERVE STRIP -- A privately owned strip of land of a width less than the lot depth permitted by the applicable regulations, bounded on one side by a proposed street and on the other by the boundary of a subdivision containing said proposed street.

REVERSE FRONTAGE LOT -- A lot extending between and having frontage on a major traffic street and a minor street and with vehicle access solely from the latter.

RIGHT-OF-WAY:

- A. A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and occupied or intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, waterline, sanitary or storm sewer and other similar uses; in general, the right of one to pass over the property of another.
- B. Measurement for the width of a "right-of-way" used as a road shall be made from the property lines of the abutting properties. Such designated width may not be used for setback requirements of the abutting properties.

SETBACK OR BUILDING LINE -- The line within a property defining the required minimum distance between any enclosed structure and the adjacent right-of-way.

SIGHT DISTANCE -- The maximum extent of unobstructed vision in a horizontal plane along a street from a lot egress onto a street to any given point on that street.

SIGN -- Any structure or part thereof or device attached thereto or painted or represented thereon which shall, of itself or by display or inclusion of any letter, word, device or representation, be used as or which is in the nature of an announcement, direction or advertisement.

STREET -- A right-of-way for vehicular traffic, including road, avenue, lane, highway or other way which is an existing public way, or a way shown upon a subdivision plat approved by the Town Planning Board as provided by law or on a plat duly filed and recorded in the office of the County Clerk. Classes of "streets" are as follows:

A. **MAJOR STREETS** -- Those which serve or are designed to be used primarily for fast-moving traffic volumes and are used primarily as routes for traffic between communities.

B. **COLLECTOR STREETS** -- Those which, in addition to giving access to abutting properties, are designed to connect minor streets to the major street system.

C. **MINOR STREETS** -- Those used primarily to provide access to abutting property.

STRUCTURE -- A combination of materials constructed, assembled or erected at a fixed location, including, for example, a building, mobile home or carport, the use of which requires location on the ground or attachment to something having location on the ground.

SUBDIVIDER -- The owner of a subdivision, or an agent of the owner as authorized in writing.

SUBDIVISION -- The division of any parcel of land into a number of lots, blocks or sites as specified in this chapter, with or without streets or highways, for the purpose of sale, transfer of ownership or development. The term "subdivision" may include any alteration of lot lines or dimensions of any lots or sites shown on a plat previously approved and filed in the office of the County Clerk or register of the county in which such plat is located. Subdivisions may be defined and delineated by local regulation as either "major" or "minor," with the review procedures and criteria for each set forth in this chapter.

SUBMISSION, OFFICIAL DATE OF -- The date when a sketch plat, complete preliminary or subdivision plat is submitted to the Clerk of the Planning Board.

Completeness shall be determined by submission of all required surveys, plans, data and fees as specified in the checklist available from the Planning Board Clerk and, if necessary, by Planning Board review at its monthly work session.

TOWN BOARD -- The Town Board of the Town of Marlborough.

TOWN COMPREHENSIVE PLAN -- The materials, written or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town. The "Comprehensive Plan," as herein defined, shall, among other things, serve as a basis for land use regulation, infrastructure development, public and private investment and any plans which may detail one or more topics of a comprehensive plan.

TOWN ENGINEER -- The person duly designated as engineer of the town on a permanent or consulting basis.

WATERCOURSE -- Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

YARD -- An open space, as may be required by this chapter, of uniform width or depth, on the same lot with a building or group of buildings, which open space lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward.

- A. **YARD, FRONT** -- An open space extending the full width of the lot between a building and the front lot line, unoccupied and unobstructed from the ground upward.
- B. **YARD, REAR** -- An open space extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward.
- C. **YARD, SIDE** -- An open space 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.

ARTICLE II, General Provisions

§ 134-3. Authority of Planning Board.

- A. By the authority of the resolution of the Town Board of the Town of Marlborough, Ulster County, New York, adopted on June 11, 1973, pursuant to the provisions of the Town Law, Chapter 16 of the Consolidated Laws of the State of New York, the Planning Board of the Town of Marlborough is authorized and empowered to approve, approve with modifications and disapprove plats showing lots, blocks or sites, with or without streets or highways, to approve the development of entirely or partially undeveloped plats already filed in the office of the Clerk of the county and to conditionally approve preliminary plats. All subdivision plats hereinafter submitted to the Planning Board for approval shall be governed by the provisions of this chapter.
- B. This amendment to the land subdivision regulations was recommended by the Town of Marlborough Planning Board on August 23, 1994. It is based on revisions to Town Law § 271, Subdivision 13, Chapter 663, Laws of 1992, effective July 1, 1993, and supersedes a previous comprehensive amendment of these regulations adopted by the Town Board on March 14, 1988, and all earlier amendments.
- C. Town Law § 271, Subdivision 13, Chapter 663, Laws of 1992, effective July 1, 1993, provides that adoption of land subdivision regulations shall henceforth be by local law, as opposed to a resolution. This amendment to the land subdivision regulations was therefore enacted by the Town Board of the Town of Marlborough as Local Law No. 3 of 1994 on October 24, 1994. It became effective upon filing with the Secretary of State of the State of New York on November 7, 1994.

§ 134-4. Policy; adoption of regulations.

- A. It is declared to be the policy of the Planning Board to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of the town. This means, among other things:
- (1) That land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.
 - (2) That proper provisions shall be made for drainage, water supply, sewerage and other needed improvements.
 - (3) That all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties.
 - (4) That the proposed streets shall compose a convenient system conforming to the proposals shown in the Comprehensive Plan and shall be of such width, grade and location as to accommodate prospective traffic, facilitate fire protection and provide access for fire-fighting equipment to buildings.
 - (5) That proper provision shall be made for open spaces for parks and playgrounds.
- B. In order that land subdivision may be accomplished in accordance with this policy, these regulations, which shall be known as the "Town of Marlborough Land Subdivision Regulations," have been adopted.

§ 134-5. Applicability; recording of plats.

- A. No subdivision of any lot, tract or parcel of land shall be effected; no erection of any structure in such proposed subdivision shall commence; no street, sanitary sewer, storm sewer, water main or other facilities in connection therewith shall be laid out, constructed, opened or dedicated for public use and travel or the common use of occupants of buildings abutting thereon except in strict accordance with the provisions of this chapter.
- B. Recording. All plans for subdivisions shall be submitted to the Planning Board and approved by it before they shall be recorded by the County Clerk in accordance with Chapter 257 of the Town Law.
- C. Extent. The provisions contained herein shall apply to all land within the limits of the Town of Marlborough.

§ 134-6. Undeveloped subdivisions.

Where a subdivision plat filed in the office of the County Clerk is entirely or substantially undeveloped, the Planning Board may require those portions which are entirely or substantially undeveloped to be replatted and improved to the standards and requirements of these subdivision regulations and in accordance with § 265-a of the Town Law after a period of two years subsequent to the adoption and approval of these regulations.

ARTICLE III, Application Procedure

§ 134-7. General procedure.

Whenever any subdivision of land is proposed to be made in the Town of Marlborough and before any lots are sold and before any permit for erection of a structure in such proposed subdivision shall be granted, the subdivider or his authorized agent shall apply for approval of such proposed subdivision in accordance with the following procedure:

- A. Preapplication meeting with Planning Board.
- B. Sketch plat showing general concept.
- C. Preliminary plat showing proposal in detail.
- D. Public hearing on preliminary plat.
- E. Final subdivision plat or finalized proposal.
- F. Public hearing on final plat waivable at Planning Board's discretion.
- G. Planning Board approval by resolution.
- H. Improvements completed or posting of bonds or certified checks.
- I. Planning Board signs plat.
- J. Plat is filed in County Clerk's office.

§ 134-8. Preapplication procedure.

- A. General procedure. Before preparing a detailed proposal, the subdivider should make an appointment at a regular meeting of the Planning Board to become familiar with the requirements of these and other regulations, the policies and plans of the Planning Board and other information that may be pertinent to the subdivision. The proposal should also be discussed with the County Health Department, which is responsible for the adequacy of lot sizes and facilities for water supply and sewage disposal. Under certain conditions, the subdivider may also need the approval of the state, county or local highway agencies and others. This initial conference is intended to save the subdivider time and unnecessary expense.
- B. Sketch plat. Prior to filing a preliminary plat, the subdivider should submit a sketch plat showing a basic proposed layout and other information required in Article IV of this chapter. At least 10 copies of this sketch plat shall be delivered to the Chairman or other authorized official of the Planning Board at least 10 days before the next scheduled Board meeting. After review of the sketch plat, but within 62 days of its official date of submission, the Planning Board shall tentatively approve the sketch plat or recommend notification, in writing. Where a single parcel is to be subdivided into not more than four lots, contains no new streets and is not subject to limiting physical conditions, such as shallow depth to bedrock or extreme wetness, the Planning Board may waive the requirements of § 134-22 and permit the subdivider to furnish the information specified in § 134-23C(1). In the event that the requirements of § 134-22 are waived and the application approved, no lot in the approved subdivision shall be considered by the Board for resubdivision for a period of three years from the date of approval. [Amended 3-8-1999 by L.L. No. 2-1999]

§ 134-9. Preliminary plat.

- A. Procedure. Subsequent to approval of the sketch plat, a preliminary plat shall be prepared showing in detail the design of the subdivision, details of construction,

proposed covenants and other items required in Article IV. Such preliminary plat shall be clearly marked "preliminary plat" and shall conform to the definition provided in this chapter.

- B. Study of the preliminary plat. The Planning Board shall study the practicability of the preliminary plat, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets; the relation to the topography of the land; water supply, sewage disposal and drainage; lot sizes, shape and arrangement; the future development of adjoining lands as yet unsubdivided; and the requirements of the Town Comprehensive Plan, zoning regulations^{90EN} and other matters enumerated in § 277 of the Town Law.
- C. Public hearing. A public hearing shall be held by the Planning Board within 62 days after the receipt of a complete preliminary plat by the Clerk of the Planning Board. Completeness shall include compliance with all requirements of the State Environmental Quality Review Act.^{91EN} Such hearing shall be advertised at least once in a newspaper of general circulation at least five days prior to such hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems appropriate for full public consideration of such preliminary plat.
- D. Approval of preliminary plat. Within 62 days after the public hearing, the Planning Board shall approve, with or without modification, or disapprove the preliminary plat. The ground for a modification, if any, or the ground for a disapproval shall be stated upon the records of the Planning Board. Notwithstanding the foregoing provisions of this section, the period in which a Planning Board must take action may be extended by mutual consent of the owner and the Planning Board. When approving a preliminary plat, the Planning Board shall state, in writing, any modifications it deems necessary for submission of the plat in final form. Approval of the preliminary plat shall not constitute approval of the final subdivision plat, but general agreement on which the final subdivision plat may be submitted.
- E. Filing of preliminary plat. Within five days of the approval of such preliminary plat, it shall be certified by the Clerk of the Planning Board as having been granted preliminary approval. A copy shall be filed in the Clerk's office and a certified copy mailed to the owner.
- F. Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat, the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the Planning Board.
- G. Default approval of preliminary plat. In the event that a Planning Board fails to take action on a preliminary plat within the time prescribed therefor, such preliminary plat shall be deemed granted preliminary approval. The certificate of the Clerk of the town as to the date of submission and the failure of the Planning Board to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval herein required.

§ 134-10. Final plat.

- A. Procedure. Within six months of approval of the preliminary plat, the subdivider shall

file with the Planning Board an application for approval of the subdivision plat in final form, accompanied by required fees and information.

- B. Agency review. Where review of subdivisions is required by other agencies (e.g., the County Health Department, State Department of Environmental Conservation, State Water Resources Commission, County and State Highway Departments and the County Planning Board), written recommendations of these agencies, subject to modification due to local conditions which may be brought forth at the public hearing, shall be filed by the subdivider with the Planning Board prior to final approval.
- C. Final plats which are in substantial agreement with approved preliminary plats. When a final plat is submitted which the Planning Board deems to be in substantial agreement with an approved preliminary plat, the Planning Board shall, by resolution, conditionally approve with or without modification, disapprove or grant final approval and authorize the signing of such plat within 62 days of its receipt by the Clerk of the Planning Board.
- D. Final plats which are not in substantial agreement with approved preliminary plats. When a final plat is submitted which the Planning Board deems not to be in substantial agreement with a preliminary plat approved pursuant to this section, the following shall apply:
 - (1) Final plats not in substantial agreement with approved preliminary plats may require further review under the State Environmental Quality Review Act.^{92EN}
 - (2) The Planning Board shall hold a public hearing on such final plat not later than 62 days after the receipt of the final plat. The hearing shall be advertised at least once in a newspaper of general circulation in the town at least five days before such hearing.
 - (3) The Planning Board shall, by resolution, conditionally approve, with or without modification, disapprove or grant final approval and authorize the signing of such plat within 62 days after the date of the public hearing. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. Notwithstanding the foregoing provisions of this section, the period in which the Planning Board must take action on such final plat may be extended by mutual consent of the owner and the Planning Board.
- E. Approval of subdivision plat in sections. The Planning Board may permit the subdivision plat to be divided into two or more sections, subject to such conditions as it deems necessary to assure the orderly development of the subdivision. Any section shall encompass at least 10% of the total number of lots shown on the plat.
- F. Extensions of time. Notwithstanding other provisions of this chapter, the period within which the Planning Board must take action on such final plats may be extended, by mutual consent of the applicant and the Planning Board, a maximum of two times for 90 days each.

§ 134-11. Required improvements and installations procedure.

- A. Improvements or performance bond. Where a subdivision entails new streets or other improvements, before the Planning Board Chairman or other authorized person may sign the subdivision plat, the subdivider shall either post a bond or certified check in

an amount sufficient to construct the required improvements or shall complete the required improvements. A licensed professional engineer representing the subdivider shall certify, in writing, to the Town Engineer that these required improvements have been completed in accordance with the stipulations of the approved subdivision plat.

- (1) When bond or certified check is posted. In an amount determined by the Planning Board, the subdivider shall either file with the Town Clerk a certified check or a performance bond to cover the full cost of the required improvements. Any such bond shall comply with the requirements of § 277 of the Town Law and shall be satisfactory to the Town Board as to form, sufficiency, manner of execution and surety. A period of one year or for such other period as the Planning Board may determine appropriate, not to exceed three years, shall be set forth in the bond with which required improvements must be completed.
 - (2) When no bond is posted. The subdivider shall complete all required improvements to the satisfaction of the Town Engineer, who shall file with the Planning Board a letter from a licensed professional engineer representing the subdivider, attesting to the satisfactory completion of all improvements required by the Board.
 - (3) As-built drawings necessary. The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Town Engineer and a map satisfactory to the Planning Board has been submitted, indicating the actual location of all required improvements and monuments marking all underground utilities as actually installed. If the subdivider completes all required improvements according to Subsection A(2) above, then said map shall be submitted prior to endorsement of the plat by the appropriate Planning Board Officer. If, however, the subdivider elects to provide a bond or certified check for all required improvements as specified above, such bond shall not be released until such map is submitted.
- B. Modification of design of improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of Town Engineer or other authorized person that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Town Engineer may, upon approval by a previously delegated member of the Planning Board, authorize modifications, provided that these modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Town Engineer shall issue any authorization under this subsection in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.
- C. Inspection of improvements and fee. At least five days prior to commencing construction of required improvements, the subdivider shall pay to the Town Clerk an inspection fee of 5% of the required improvements and shall notify the Town Board, in writing, of the time when he proposes to commence construction of such improvements so that the Town Board may cause inspection to be made to assure that all town specifications and requirements shall be met during the construction of required improvements and to assure the satisfactory completion of improvements and utilities required by the Planning Board. Required improvements shall include

new streets, new sidewalks, waterline extensions, sewer line extensions or any other capital improvement to be dedicated and maintained by the Town of Marlborough after installation by the developer. The improvements will not include buried telephone lines, electric lines, gas lines or cable television lines.

- D. Proper installation of improvements. If the Town Engineer shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the Town Board and Planning Board. The Town Board then shall notify the subdivider and, if necessary, the bonding company and take all necessary steps to preserve the town's rights under the bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.

§ 134-12. Filing of approved final plat.

- A. Signing and filing. Upon completion of the requirements specified herein, the subdivision plat shall be signed by the Chairman of the Planning Board or Secretary in the Chairman's absence and shall be filed by the subdivider in the office of the County Clerk. Any subdivision plat not so filed or recorded within 62 days of the date upon which such plat is approved or considered approved by reason of the failure of the Planning Board to act shall become null and void unless the particular circumstances of said subdivider warrant the Planning Board to grant an extension, which shall not exceed two additional periods of 90 days.
- B. Plat void if revised after approval. No changes, erasures, modification or revisions shall be made in any subdivision plat after approval had been given by the Planning Board and endorsed in writing on the plat, unless said plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

§ 134-13. Status of streets, parks and easements.

- A. Offers of cession. In accordance with § 278 of the Town Law, the subdivider may add a notation on the subdivision plat that no offer of streets, parks or easements shown on the plat is made to the public. Failure to make such notation will constitute a continuing offer of cession to the town, which may be accepted by the Town Board at any time prior to revocation of said offer by the owner of the land or his agent. Formal offers of cession to the public of all streets, parks and easements not marked with such notations on the plat shall be filed with the Planning Board prior to approval of the plat.
- B. Acceptance by town.
- (1) Acceptance of any such offer of cession shall rest with the Town Board. In the event that the applicant shall elect not to file the subdivision plat in the office of the County Clerk, such offer of cession shall be deemed to be void.
 - (2) The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or imply the acceptance by the Town Board of any street, park,

easement or open space shown on said plat. The Planning Board may require said plat to be endorsed with an appropriate note to this effect.

- C. Maintenance of roads. In those cases where no offer of cession to the public is made for the roads, parks and required easements shown on the plat, there shall be submitted with the plat copies of agreements or other documents providing for and fixing responsibility for their suitable maintenance and statements of all rights which exist with respect to the use of such property or properties. Such documents shall be reviewed by the Town Attorney for legal adequacy and competency.

ARTICLE IV, Design Standards and Required Improvements

§ 134-14. Applicability of design standards.

The design standards listed in this Article shall be incorporated in all proposed plans.

§ 134-15. General requirements.

Land shall be suited to the purposes for which it is to be subdivided. In general, the Planning Board shall take the following factors into consideration prior to the approval of any subdivision plan.

- A. Circulation. Streets shall be of sufficient width and suitably located to accommodate the prospective traffic, to provide access for fire-fighting equipment to buildings and to be coordinated so as to compose a convenient system conforming to the town plan and relating properly to the existing street system.
- B. Safety. The tract shall be adequately drained, and all lots shown on the plans shall be adaptable for the intended purposes without danger to health or peril from flood, fire, erosion or other menace. Required improvements shall be designed and constructed to conform to specifications established by the Town Board.

§ 134-16. Streets.

- A. General. Streets shall be suitably located and of sufficient width and adequately improved to accommodate prospective traffic and to afford satisfactory access to police, fire-fighting, snow removal or other road maintenance equipment and shall be coordinated so as to compose a convenient system.
- B. Relation to topography. Streets shall be logically related and conform insofar as possible to the original topography. They shall be arranged so as to obtain as many building sites as possible at or above the grade of the street. Grades and curves shall be in conformity with Table 1 in Subsection I below.
- C. Continuation of streets into adjacent property. Streets shall be arranged to provide for the continuation of principal streets between adjacent properties where such continuation is necessary for convenient movement of traffic, effective fire protection and efficient provision of utilities and particularly where such continuation is in accordance with the town plan, as it may be adopted. Reserve strips, controlling access to streets, shall be prohibited except where their control is placed with the

town under conditions approved by the Planning Board. If adjacent property is undeveloped and the street must temporarily be a dead-end street, the right-of-way and improvements shall be extended to the property line. A temporary circular turnaround, with a traveled way radius of at least 50 feet, shall be provided on any temporary dead-end streets, with the notation on the plat that land outside the normal street right-of-way shall revert to abutting properties.

D. Treatment of major streets.

- (1) Residential areas. Where a subdivision abuts or contains an existing or proposed major street, the Planning Board may require marginal access streets, reverse frontage with screen planting contained in a nonaccess reservation along the realty property line or such other treatment as may be necessary for adequate protection of residential properties and afford separation of through and local traffic.
- (2) Business areas. In areas zoned or designed for commercial use or where a change of zoning is contemplated for commercial use, the Planning Board may require that the street width be increased or that a service road be constructed to assure the free flow of through traffic without interference by parked or parking vehicles and to provide adequate and safe parking space for such commercial area.

E. Dead-end streets. Permanent dead-end streets shall not exceed 2,000 feet in length, measured from the intersection with the center line of the connecting public road, in order to provide for convenience of traffic movement and facilitate more effective police and fire protection. A depth suitable for an adequate building lot shall be retained between the terminus of the road and adjoining property. A circular turnaround with a minimum right-of-way radius of 66 feet and a pavement radius of 50 feet shall be provided at the end of permanent dead-end street. [Amended 3-8-1999 by L.L. No. 2-1999]

F. Street names. All streets shall be named and such names shall be sufficiently different in sound and spelling from other street names in the town to avoid confusion. A street which is a continuation of an existing street shall bear the same name.

G. (Reserved)^{93EN}

H. Provision for future resubdivision. Where a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged, where possible, to allow the provision of future streets and logical further subdivision.

I. Streets shall be designed and constructed in accordance with the Code of the Town of Marlborough as established in Chapter of 130 of said Code. [Amended 2-9-2004 by L.L. No. 6-2003]

§ 134-17. Blocks.

Block dimensions shall be at least twice the minimum lot depth and/or at least 400 feet in length. In long blocks, the Planning Board may require the establishment of easements or public ways through the block to accommodate utilities or pedestrian access.

§ 134-18. Lots.

- A. General. The lot size, width, depth, shape and arrangement shall be appropriate for the type of development and use contemplated and shall be such that there will be no foreseeable difficulties for reasons of topography or other conditions in securing building permits to build on all lots in compliance with the Zoning Ordinance^{94EN} or in providing access to buildings on such lots from an approved street. In cases where the Planning Board determines that due to topography, soil type, drainage patterns, easements or any other physical limiting condition is evident, the Planning Board may require lot sizes greater than the minimum called for in the Zoning Ordinance for that district. Dimensions of corner lots shall be large enough to allow for erection of buildings, observing the minimum front yard setback from both streets.
- B. Side lot lines. Side lot lines shall be at right angles to street lines unless a variation from this rule will, in the opinion of the Planning Board, give a better street or lot plan. Lot lines shall coincide with municipal boundaries rather than cross them. Where extra width has been dedicated for widening an existing street, lot lines shall begin at such extra width line.
- C. Driveways. Lots shall generally not have their vehicular access from a major street. Where driveway access from a major street may be necessary for several adjoining lots, the Planning Board may require that such lots be served by a combined driveway in order to limit possible traffic hazards on such street. Driveways serving individual lots shall have a minimum right-of-way of 25 feet in width and a travel way of at least 15 feet in width.
- D. Access across a watercourse. Where a watercourse separates the buildable area of a lot from the access street, provision shall be made for the installation of a culvert or other structure of a design approved by the Town Highway Superintendent.
- E. Water bodies. If a tract being subdivided contains a water body or portion thereof, lot lines shall be so drawn as to distribute the ownership of the water body among the fees of the adjacent lots. The Planning Board may approve an alternate plan whereby the ownership of and responsibility for safe maintenance of the water body is so placed that it will not become a town responsibility. No more than 25% of the minimum lot area required under zoning regulations may be satisfied by land under water.

§ 134-19. Reservations and easements.

- A. Parks and open space.
 - (1) General. In accordance with § 277 of the Town Law, the Planning Board may require either the reservation of land for park or recreational purposes or payment of a fee to a trust fund to be used for purchase and development of recreational sites within the town.
 - (2) Reservation of land. The Planning Board may require the reservation of land for a park or recreational purposes to be reserved on the plat, but in no case to be more than 10% of the gross area of the subdivision. The location of such reservation shall be in accordance with the Comprehensive Plan or otherwise where the Planning Board shall deem such reservations to be appropriate. In general, such reservations should have an area of not less than two acres.
 - (3) Payment of fee. Where the Planning Board deems that the reservation of land

would be inappropriate, it may waive the requirement of land reservation on the condition that the subdivider deposit a cash payment in lieu of land reservation with the Town Clerk. Such payment shall be placed in a trust fund to be used exclusively for the purchase and development of neighborhood site for parks, playgrounds or other recreational purposes. Final approval is contingent on payment of this fee.

- B. Widening or realignment of existing streets. Where the subdivision borders an existing street and additional land is required for realignment or widening of such street as indicated on the Comprehensive Plan or where the Planning Board deems such reservations necessary, the Planning Board may require that such areas be indicated on the plat and marked "Reserved for Street Realignment (or Widening) Purposes."
- C. Easements for utilities and drainage. Where topography or other conditions are such as to make impractical the inclusion of utilities or drainage facilities within street rights-of-way, perpetual unobstructed easements at least 20 feet in width for such utilities shall be provided across property, outside the street line and with satisfactory access to the street. Such easements shall be centered on rear or side lot lines.
- D. Easements for pedestrian access. The Planning Board may require, in order to facilitate pedestrian access from streets to schools, parks, playgrounds or other nearby streets, perpetual unobstructed easements at least 20 feet in width.
- E. Responsibility for ownership of reservations. Title to all reservations, if vested in interests other than the subdivider, shall be clearly indicated on the plat.

§ 134-20. Improvements.

- A. Monuments and markers.
 - (1) Permanent monuments shall be placed at all block corners, angle points, points of curvature and points of tangency in streets and at intermediate points as required by the Town Engineer. In no case shall there be fewer than four permanent monuments per block. Monuments shall be set so as to prevent movement by frost upheaval and other pressures.
 - (2) Markers of a material, size and length suitable to the Town Engineer shall be placed at all points where road lines intersect plat boundaries at all lot corners.
- B. Water and sewerage facilities. Facilities for water and sewerage shall be provided in each new subdivision, in accordance with the requirements of the appropriate agency having jurisdiction over their planning and installation.
- C. Storm drainage facilities. Storm drainage facilities shall provide a clear and protected channel fully adequate to handle runoff from a ten-year storm and designed so that heavy runoffs which exceed the capacity of the channels can be handled with the least possible damage to improvements and structures.
- D. Public utilities. The Board may accept assurance from each public utility company whose facilities are proposed to be installed. Such assurance shall be in writing, addressed to the Board, stating that such public utility company will make the installations necessary for the furnishing of its services within a specified time, in accordance with the approved subdivision plat.

ARTICLE V, Documents to be Submitted

§ 134-21. Sketch plat.

- A. Number of copies. At least seven copies of the sketch plat shall be delivered to the Planning Board.
- B. Details required.
 - (1) The sketch shall be at a convenient scale of no more than 100 feet to the inch, shall be submitted on uniform size sheets not larger than thirty-six by forty-eight (36 x 48) inches and shall contain the date of preparation, approximate true North point, title "Sketch Plat" and a graphic scale. Where more than one sheet is required, a scaled map showing the entire subdivision on one sheet shall be prepared.
 - (2) The name and address of the owner or owners of the land to be subdivided, the name and address of the subdivider, if other than the owner, the name of the land surveyor or licensed professional engineer, if any, who proposed the sketch plat, the proposed name of the subdivision, the Town of Marlborough and Ulster County.
 - (3) A map of the location of the tract with respect to surrounding properties and major roads, such map to be at a scale of 2,000 feet to the inch. It shall identify all property in the vicinity of the subdivision held by the subdivider.
 - (4) All existing restrictions on the use of land, if any, including easements, covenants, zoning lines or street lines.
 - (5) Significant natural features, such as but not limited to watercourses, wetlands, steep slopes, rock outcroppings and unusual flora and fauna.

§ 134-22. Preliminary plat.

- A. Number of copies. At least seven copies shall be delivered to the Planning Board.
- B. Details required. The preliminary plat shall show or be accompanied by the following information, except where requirements have been waived through sketch plat review:
 - (1) All data required as in § 134-21B, except that drawings shall be clearly labeled "Preliminary Plat."
 - (2) The location, bearings and distances of the tract's boundaries, prepared by a licensed surveyor, including seal and number.
 - (3) Contours shall be indicated at intervals of two feet for slopes in excess of 10%.
 - (4) The names of all adjoining property owners of record and the names of adjacent developments.
 - (5) The location and dimensions of all public properties, street lines, easements, zoning boundaries or restrictions on the property.
 - (6) Location of existing and proposed sewers and water drains, including pipe size and type, grades, direction of flow and ownership. Calculations shall be provided when, in the opinion of the Town Engineer, these are necessary for review.
 - (7) The location, width and approximate grade of all proposed streets, with the approximate elevations shown at the beginning and end of each street, at street

intersection and at all points where there is a decided change in slope or direction.

- (8) The area of all land included in the subdivision and the approximate location, dimensions and area of all proposed or existing lots and land to be set aside for recreation and public purposes.
- (9) Proposed provision of water supply, fire protection, sanitary waste disposal, stormwater drainage, wooded areas and easements.
- (10) The location of all existing structures, such as buildings and stone walls, and all pertinent natural features that influence the design of the subdivision, such as watercourses and swamps.
- (11) The location, dimensions and status of all covenants, deed restrictions or easements proposed by the applicants.
- (12) Certification by subdivider's engineer that all improvements comply with requirements of the agencies having jurisdiction and will adequately meet the needs of the subdivisions.
- (13) A completed environmental assessment form to allow the Planning Board to comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as set forth in Chapter 89 of the Code of the Town of Marlborough.
- (14) Where applicable due to proximity to or location in an agricultural district, an agricultural data statement.

§ 134-23. Final subdivision plat.

- A. General specifications. All subdivision plats shall be clearly drawn on linen with black, waterproof ink or, if originally drawn on paper using pencil, be reproduced by the applicant on a transparent, stable material suitable for reproduction, such as Mylar or Cronaflex. Such plat shall be at a convenient scale of no more than 100 feet to the inch and shall be submitted on uniform sheets not larger than thirty-six by forty-eight (36 x 48) inches. Where more than one sheet is required, a scaled map showing the entire subdivision on one sheet shall be submitted.
- B. Copies required. The subdivider shall submit to the Planning Board two transparencies and three prints of the final subdivision plat. One transparency, which will be filed with the County Clerk, shall be as required in Subsection A above; the other, for the records of the Planning Board, may be a sepia copy.
- C. Details required.
 - (1) Subdivision with four lots or fewer. For those subdivisions with four lots or fewer and meeting the other criteria in § 134-8B which permit the waiving of certain requirements of information:
 - (a) Name of subdivision, address and signature of the owner and subdivider, seal and number of the licensed professional engineer or land surveyor who prepared the plat and the names Town of Marlborough and Ulster County.
 - (b) An insert map of the location of the tract with respect to surrounding properties, roads and schools, at a scale of 2,000 feet to the inch.
 - (c) Date of preparation, graphic scale, approximate true North point, bearings and distances of tract's boundaries.
 - (d) The names of all adjoining property owners of record shall be indicated on

- the plat.
- (e) The location and dimensions of all public properties, streets, easements, building lines or restrictions on the tract.
 - (f) The location of existing and proposed sewers, water mains, culverts and storm drains, including pipe size and type, grades, direction of flow and ownership.
- (2) Subdivisions with more than four lots:
- (a) Name of subdivision, name, address and signature of the owner and subdivider, seal and number of the licensed professional engineer or land surveyor who prepared the plat and the names Town of Marlborough and Ulster County.
 - (b) A map of the location of the tract with respect to surrounding properties, roads and schools, at a scale of 2,000 feet to the inch.
 - (c) Date of preparation, graphic scale, approximate true North point, bearings and distances of the tract's boundaries.
 - (d) The names of all adjoining property owners of record shall be indicated on the plat. Stamped envelopes, addressed to each of the owners of record of property abutting or across the street from the tract, shall be submitted to the Planning Board.
 - (e) The location and dimensions of all public properties, streets, easements, buildings lines or restrictions on the tract.
 - (f) The location of existing and proposed sewers, water mains, culverts and storm drains, including pipe size and type, grades, direction of flow and ownership.
 - (g) The location, width, grade and names of all proposed streets, with elevations shown at the beginning and end of each street, at street intersections and at all points where there is a decided change in slope or direction shown on the plat.
 - (h) Statement from subdivider's engineer, giving estimated cost of construction of roads and other improvements to meet the requirements of this chapter.
 - (i) Radii of all curves and lengths of arcs.
 - (j) Profiles showing existing and proposed elevations along the center lines of all streets. Where a proposed street intersects an existing street or streets, the elevation along the center line of the existing street or streets within 100 feet of the intersection shall be shown.
 - (k) Plans and profiles showing the location and a typical cross section of street pavements, including curbs and gutters, sidewalks, manholes and catch basins; the location, size and invert elevation of existing and proposed sanitary sewers, stormwater drains and fire hydrants; and the exact location and size of all water, gas or other underground utilities or structures.
 - (l) The area of the land included in the subdivision and the location, dimensions and area (in square feet) of all existing or proposed lots and land to be set aside for recreation or public purposes. All lots shall be numbered for identification.
 - (m) The location of all existing water bodies, swamps or streams that will be retained or relocated or intended to be developed. Existing buildings to be

retained or removed shall be so identified.

- (n) Sufficient data, acceptable to the Town Engineer, to readily determine the location, bearings and length of all lines and to reproduce such lines on the grounds.
- (o) The location of existing and proposed monuments and markers.
- (p) Offers of cession, in a form satisfactory to the Town Board, of all land offered or to be offered for dedication for streets, highways, easements, parks or other public facilities.
- (q) Proposed covenants, deed restrictions and easements proposed by the applicant.
- (r) The following notations shall be shown on the plat:
[1] Explanation of drainage easements as follows:

"The
drainage
easements
(or the
drainage
discharge
points)
shown
hereon
establish the
perpetual
right to
discharge
storm
water
runoff
from
the
highway and
from
the
surrounding
area
onto

and
over
the
affecte
d
premis
es by
means
of
pipes,
culvert
s or
ditches
, or a
combi
nation
thereof
,
togeth
er with
the
right
of the
holder
of fee
title to
the
highw
ay or
his
authori
zed
represe
ntative
s to
enter
said
premis
es for
purpos
es of
makin
g such
installa
tions
and

doing
such
mainte
nance
work
as said
holder
of fee
title
may
deem
necess
ary to
adequa
tely
drain
the
highw
ay and
surrou
nding
area."

[2] Explanation of sight easements as follows:

"The
sight
easem
ents
shown
hereon
establi
sh the
perpet
ual
right
of the
holder
of fee
title of
the
highw
ay or
his
authori
zed

representative
sites to
clear,
regrade and
maintain
in the
area
within
these
easements
at
such
elevation
that
there is
a clear
line of
sight
anywhere
across
the
area
between
an
observer's
eye at
an
elevation
of
3.5
feet
above
the
road
surface
at the
newest
edge
of the
road
and an
object

one
foot
above
the
nearest
edge
of
pavem
ent on
the
interse
cting
road."

[3] Explanation of reservations as follows:

"Reser
ved for
highw
ay
purpos
es (or
recreat
ion
purpos
es or
other
approv
ed
purpos
e)."

[4] Endorsement of owner as follows:

"I hereby grant my approval
to this plat and consent to the
filing of it in the office of the
County Clerk."

Owner Date

ARTICLE VI, Modifications and Variances

§ 134-24. Waiver of requirements; variances.

- A. Waiver of requirements. The Planning Board may waive, when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event that any such requirements or improvements are found requisite in the interest of the public health, safety and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.
- B. Conditions. In granting such waivers, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the standard or requirements so waived.
- C. Area variance. Notwithstanding any provision of the law to the contrary, when a plat contains one or more lots which do not comply with the minimum Zoning Ordinance regulations,^{95EN} application may be made to the Zoning Board of Appeals for an area variance pursuant to § 267-b of the Town Law, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application, the Zoning Board of Appeals shall request the Planning Board to provide a written recommendation.

§ 134-25. Reconsideration.

Any subdivider aggrieved by a finding, decision or recommendation of the Planning Board may request opportunity to appeal before the Board, present additional relevant information and request consideration of the original finding, decision or recommendation.

§ 134-26. Application procedure.

- A. Application to be submitted in writing. Applications for modification and variances shall be submitted in writing by the subdivider at the time the preliminary plat is filed with the Board. The application shall state fully the grounds and all the facts relied upon by the applicant.
- B. Time of submission. Applications for consideration shall be submitted, in writing, by the subdivider not less than 10 days in advance of the meeting at which reconsideration is desired.

§ 134-27. Recording; date to be affixed to subdivision plat.

In granting a modification or variance, the Board shall record its actions and the grounds for granting the modification or variance in its minutes. A statement showing the date

that such modification or variance was granted shall be affixed to the subdivision plat.

ARTICLE VII, Fees

§ 134-28. Fees.

- A. This section authorizes the Town Board to amend and adjust by resolution at their annual reorganization meeting the fees levied to meet the rising costs of administration and enforcement. Fees required by this Article shall be in accordance with the schedule of fees established by the Town Board or as hereinafter amended.
- B. Subdivision application fees shall be paid to the Town Clerk.
- C. Road improvement fees.
 - (1) All road improvements fees are maintained in a Highway Improvement Trust Fund reserved for upgrading of town roadways to minimum standards and specifications of Chapter 130 of the Town of Marlborough Code.
 - (2) Where improvements are performed or property dedicated by the developer pursuant to a permit of the Highway Superintendent on the public road providing access, the value of the improvement or land dedicated shall be deducted from the road improvements fee in the amount not to exceed 60% of the required fee. The value of the improvements or land dedicated shall be determined by presentations of certified contract receipts for improvements or, in the case of land dedicated, two independent appraisals.
- D. Fire services fee. After examination of the Comprehensive Plan for the Town of Marlborough by the Town Board, it has been determined that development in the town will require additional public fire-fighting facilities to adequately protect the health and safety of future residents of the town.
 - (1) The Planning Board is hereby authorized by the Town Board, pursuant to § 277 of the Town Law, to condition subdivision approval:
 - (a) In the case of highway development, industrial or commercial, upon the developer's contribution toward the cost of needed fire-protection equipment and/or facilities directly due to the development proposed; or
 - (b) Upon contribution to a Fire Services Trust Fund based upon a fee per lot or dwelling unit as established by the Town Board. The Fire Services Trust Fund will be established for each fire district in the town with the contribution being made based upon the location of the lands in which the subdivision or development lies or any portion thereof.
 - (2) Distribution of funds will be made upon application by the Board of Fire Commissioners to the Town Supervisor for a specific capital improvement, purchase of land, building or equipment. Said distribution will be made by passage of a resolution by the Town Board and payment made upon receipt of proper application.
 - (3) It is the intention of the Town Board by the adoption of this section to place conditions of approval for subdivision in excess of those provided under § 277 of the Town Law.

- E. Water and sewer impact fees. For subdivisions, lots or multifamily construction within the water or sewer districts upon the receipt of final approval for site plan review or subdivision, the applicant shall pay to the Town Clerk a fee as established by the Town Board. All fees will be deposited into a capital improvement trust fund and will be appropriated to upgrade and improve the district.

§ 134-29. Inspection fee.

As specified in § 134-11C of this chapter, the inspection fee shall be in the amount of 5% of the cost of required improvements as approved by the Town Engineer. Such payment shall be made to the Town Clerk at least five days prior to commencing construction.

§ 134-30. Recreation fee.

As specified in § 134-19A(3) of this chapter, a recreation fee may be required. Payment shall be made to the Town Clerk, and receipt for said fee shall be stamped on the original final subdivision plat or site plan prior to the final signature by the Planning Board Chairman.

ARTICLE VIII, Amendments

§ 134-31. Authority of Planning Board.

The Planning Board may from time to time, on its own notion, on petition or on recommendation of the Town Board, amend, supplement or repeal the regulations and provisions of this chapter, after public notice and hearing.

§ 134-32. Approval of Town Board required.

Every such proposed amendment or change, when adopted by resolution of the Planning Board, shall be referred to the Town Board for approval.

§ 134-33. Public notice and hearing.

The Planning Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as follows:

- A. Public notice. By publishing a notice at least 10 days in advance of such hearing in at least one newspaper of general circulation in the Town of Marlborough; such notice shall state the date, time and place of such hearing and the general nature of the proposed amendments in such reasonable detail as will give adequate notice of its contents and shall name the place or places where copies of the proposed amendment may be examined.
- B. Opportunity to be heard at hearing. At the public hearing, full opportunity to be heard shall be given to any resident of the town and all parties in interest.

Chapter 135, STORMWATER MANAGEMENT

[HISTORY: Adopted by the Town Board of the Town of Marlborough 6-14-2004 by L.L. No. 3-2004. Amendments noted where applicable.]

GENERAL REFERENCES

- Building construction -- See Ch. 67.
- Clearing and grading -- See Ch. 75.
- Environmental quality review -- See Ch. 89.
- Flood damage prevention -- See Ch. 97.
- Sewers -- See Ch. 118.
- Subdivision of land -- See Ch. 134.
- Water -- See Ch. 149.
- Zoning -- See Ch. 155.

§ 135-1. Purpose.

The New York State Department of Environmental Conservation has promulgated regulations requiring municipal separate storm sewer systems (MS4) to obtain coverage under NYSDEC General Permit 02-02. The Town of Marlborough has implemented a stormwater management plan which requires the development and enactment of a local law requiring stormwater management for various activities within the Town. It is the purpose of this regulation to adopt minimal acceptable standards, which must be met for subdivisions, site plans and construction projects which impact, disturb or alter surface coverage greater than one acre of property within the municipal boundaries. The Town has noted that changes in watershed hydrology can occur due to land development, site grading, roadway construction and other construction activities. The Town wishes to protect the general public from impacts associated with increase runoff from developed properties as well as protecting the water quality of receiving stream waters within the Town. The purpose of this chapter is to set forth standards for development of property within the Town in order to obtain compliance with regulatory stormwater management requirements and sound engineering practices.

§ 135-2. Objectives.

The Town adopted these regulations in an effort to minimize problems regarding stormwater management from development, as uncontrolled runoff can increase the amount of flooding and sediment pollution as well as adversely effect water quality which can impact human life, water quality, receiving stream biodiversity and the general health and safety of the public. Based on the above the Town wishes to:

- A. Enact regulations which comply with the requirements of the NYSDEC general permit for stormwater discharges;
- B. Protect the public and prevent damage from flooding;
- C. Implement a program to detect, enforce and eliminate illicit discharges to the Town stormwater collection system;
- D. Encourage the protection of natural drainage systems such as stream, lakes, state wetlands and federal wetlands in order to preserve the beneficial function and values

- of those resources;
- E. Require the implementation of sound stormwater management and soil erosion and sediment control practices to be implemented on subdivisions, site plans and construction sites; and
 - F. Provide for the introfitting of current engineering practices on redevelopment sites.

§ 135-3. Word usage and definitions.

Unless specifically defined below, words and phrases shall be interpreted so as to give them the meaning they have in common language and to give these regulations their most effective application. Words used in the singular shall include the plural, and words used in the plural shall include the singular. Words used in the present tense shall include the first future tense. The word "shall" denotes mandatory and is not discretionary. The word "may" is permissive.

ADVERSE IMPACTS -- Any modifications, alterations or effects on a feature or characteristics of public waters, wetlands or adjacent land, including their quality, quantity, hydrology, surface area, species composition, living resources, aesthetics, or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

DETENTION STRUCTURE -- A permanent structure for the temporary storage of runoff, designed so as not to create a permanent pool of water, which gradually releases water over 24 hours at a rate not exceeding the predevelopment rate of runoff. This structure is used to control the peak discharge rates of stormwater and provide gravity settling of pollutants.

DEVELOPER -- Any person who engages in development either as the owner or the agent of the owner of property.

DEVELOPMENT OR DEVELOPMENT ACTIVITY

- A. Construction, installation, alteration, demolition or removal of a structure, impervious surface or drainage facility; or
- B. Clearing, scraping, grubbing, or otherwise removing or killing the vegetation of a site; or
- C. Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise significantly disturbing the soil, mud, sand or rock of a site.

DRAINAGE FACILITY -- Any component of the drainage system.

DRAINAGE SYSTEM -- The system through which the water flows from the land. It includes stormwater, watercourses, water bodies, groundwater and wetlands.

EROSION -- The wearing away or washing away of soil by the action of wind or water.

EXTREME FLOOD CONTROL CRITERIA -- Requires storage to attenuate the postdevelopment one-hundred-year twenty-four-hour peak discharge to predevelopment rates (7.8 inches of rainfall in 24 hours).

FIRST FLUSH -- The first 1/2 inch of runoff or the runoff generated from a one-year storm event, whichever is greater, from all land areas that have been made more impervious than predevelopment conditions through land clearing, grading, construction and/or development activities.

FLOOD -- The temporary rise in the level of any water body, watercourse, or wetland which results in the inundation of areas not ordinarily covered by water.

ILLICIT DISCHARGES -- Any discharge to the storm system other than naturally occurring surface water runoff or runoff which is exempted by NYSDEC MS4 regulations. Illicit discharges can also include stormwater with any admixtures including regulated chemicals and substances. Illicit discharges shall include discharges from sanitary sewer systems and floor drains, with the exception of uncontaminated condensate water.

IMPERVIOUS SURFACE -- A surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes semiimpervious areas such as compacted clay, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots, and other similar structures.

INFILTRATION BASIN -- A permanent structure designed to recharge stormwater runoff to groundwater.

MS4 MUNICIPAL STORM SEWER SYSTEMS -- As defined by NYSDEC construction activity, any process or technique which involves the regrading or altering of existing topography, installation of pipes, bridges, structures, water systems, and sewer systems.

NATURAL SYSTEMS -- Systems which predominantly consist of or use those communities of plants, animals, bacteria and other flora and fauna which occur indigenously on the land, in the soil or in the water.

ONE-YEAR DESIGN STORM -- The one-year twenty-four-hour design storm event (three inches of rainfall in 24 hours for the Town of Marlborough).

OVERBANK FLOOD CONTROL CRITERIA -- Overbank flood control criteria requires storage to attenuate the postdevelopment ten-year twenty-four-hour peak discharge rate to predevelopment flow rates (ten-year design storm five inches for 24 hours).

OWNER -- The person in whom is vested the fee ownership, dominion or title of property, i.e., the proprietor. This term may also include a tenant, if chargeable under his lease for the maintenance of the property, and any agent of the owner of tenant, including a developer.

PERSON -- Any and all persons, natural or artificial, and includes any individual, firm, corporation, government agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or any other legal entity.

RECEIVING BODIES OF WATER -- Any water bodies, watercourse or wetlands into which surface waters flow either naturally, in man-made ditches or in closed conduit systems.

RETENTION STRUCTURE -- A permanent structure which provides for the storage of runoff by means of a permanent pool of water without release except by means of evaporation, infiltration or attenuated release when runoff volume exceeds the permanent storage capacity.

SEDIMENT -- The fine particulate material, whether mineral or organic, that is in suspension or has settled in a water body.

SEDIMENT FACILITY -- Any structure or area which is designed to hold runoff water until suspended particles have settled.

SITE -- Any tract, lot or parcel of land or combination of tracts, lots or parcels of land of

combination of tracts or parcels of land which are in one ownership or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision or project.

STORMWATER HOT SPOTS -- A land, use or activity that generates higher concentrations of hydrocarbons, trace metals, or toxicants than are found in typical stormwater runoff. NYSDEC has published a list of activities that are considered stormwater hotspots and are required to receive additional operational practices.

STORMWATER MANAGEMENT PLAN -- The detailed analysis of stormwater and drainage as described in and required by these regulations.

STREAM CHANNEL PROTECTION CRITERIA -- The volume of water calculated in a one-year twenty-four-hour storm event.

STRUCTURE -- That which is built or constructed an edifice or building or any piece of work artificially built or composed of parts joined together in some definite manner but shall not include fences or signs.

TWO-YEAR DESIGN STORM -- 3.75 inches twenty-four-hour rainfall.

TYPE THREE STORM DISTRIBUTION -- The theoretical storm distribution simulating a North Atlantic hurricane to be used in modeling storms in the Town of Marlborough.

VEGETATION -- All plant growth, including trees, shrubs, herbs, vines, ferns, mosses and grasses.

WATER BODY -- Any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

WATERCOURSE -- Any natural or artificial stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, street, roadway, swale, or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel or bed or banks.

WATER QUALITY VOLUMES -- The volume of water equating to 90% of the average annual stormwater runoff volume.

WATERSHED -- A drainage area or basin contributing to the flow of water in a receiving body of water.

WATERS or PUBLIC WATERS -- Any and all water on or beneath the surface of the ground. It includes the water in any watercourse, water body or drainage system. It also includes diffused surface water and water standing, percolating or flowing beneath the surface of the ground.

WETLANDS -- Any area meeting the requirements of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (latest edition) and/or any area identified by the NYSDEC as being a state-protected wetland.

§ 135-4. Applicability.

A stormwater management plan and stormwater pollution prevention plan developed in compliance with the New York State Stormwater Management Design Manual dated latest revision must be submitted for review and acceptability to the Town agency having jurisdiction over approval of a project including:

- A. A subdivision of land;
- B. Approval of a site plan;
- C. Issuance of a building permit where greater than one acre of property will be

impacted;

- D. Construction of extension of an existing Town or private roadway;
- E. Alteration of an existing drainage system or watercourse; and
- F. Redevelopment of existing sites.

§ 135-5. Exemption.

The following development activities are exempt from the stormwater management and stormwater pollution prevention plan requirements:

- A. Development which disturbs less than one acre of land.
- B. Agricultural land management activities.
- C. Alteration or maintenance of an existing structure which will not have an impact on the quantity of surface water discharged from the site.

§ 135-6. Contents of stormwater management plan.

The stormwater management and stormwater pollution prevention plan shall fully document compliance with the requirements of the NYSDEC construction SPDES permit and New York State Stormwater Management Plan, and/or a stormwater pollution prevention plan to be implemented must document no increase in peak discharge from the predevelopment versus postdevelopment conditions.

§ 135-7. Components of stormwater management plan.

Stormwater management plans shall be prepared by a professional licensed by the State of New York to prepare such documents. Plans shall consist of an analysis of the predevelopment runoff rates versus postdevelopment runoff rates with engineering controls implemented to assure that predevelopment peak discharge at property lines, streams or watercourses are not exceeded in the postdevelopment conditions for each design storm event and return frequency. Stormwater management reports shall take into account existing soils, vegetation and cover types and topography in the analysis. Reports shall identify engineering computations and variables utilized in all calculations. Any assumptions utilized in the calculations shall be clearly identified. Stormwater management reports shall comply with the requirements of the New York State Stormwater Management Design Manual (year of latest revision) and appropriate regulatory guidelines and standards. Additional information shall be provided as requested by the Planning Board, Building Inspector, or Town Engineer. Stormwater management reports will address both water quality control as well as water quantity control including storage requirements for water quality volume, stream, brook protection, ten-year peak runoff control and a one-hundred-year flood control; in addition, detention ponds shall also be analyzed for a twenty-five-year return frequency storm event for a pre- and postdevelopment runoff analysis. This chapter by reference will utilize the New York State Stormwater Management Design Manual (year of latest revision) as a basis for stormwater management and design guidelines for stormwater management practices.

§ 135-8. Designed standards.

- A. Stormwater management facilities shall be provided with the appropriate easements encompassing the stormwater management facilities and a reasonable area surrounding them for operation and maintenance of the stormwater management devices. Stormwater management appurtenances shall not be located within state or federally designed wetlands.
- B. Closed pipe systems or swales shall be designed to convey the calculated hydraulic flow rate from a twenty-five-year return frequency storm event in the turbidity area.
- C. Detention/retention ponds shall have a maximum interior slope of 4:1 with 10 to 15 beaches to provide a save zone in compliance with the NYSDEC design manual.
- D. Sediment forebays shall be provided to protect stormwater management facilities.

§ 135-9. Maintenance.

- A. Stormwater management and stormwater pollution prevention plans shall address maintenance of all stormwater-related improvements on subdivisions and site plans. Maintenance activity shall be the responsibility of the owner of the site. Erosion control plans, in compliance with NYSDEC standards and as approved by the Planning Board, shall be implemented prior to construction activities commencing on a site. Soil erosion control methods and techniques shown on the approved plans and any additional controls required by the Building Inspector and/or Town Engineer shall be implemented and maintained throughout the project construction phase. Erosion and sediment control devices shall remain properly maintained on the site until the site has been stabilized. Maintenance of stormwater management appurtenances on site plans shall continue to be the responsibility of the site owner. Periodic maintenance of stormwater management control is required to assure their functions. Maintenance shall be performed in accordance with the stormwater pollution prevention plan and sound environmental practices. Maintenance activities shall include, but not limited to, mowing of vegetation, removal of debris, removal of sediment, cleaning of catch basins and pipes, and repair and replacement of defective structures, equipment or devices.
- B. Postdevelopment maintenance of stormwater management facilities designed and constructed on a residential subdivision shall be performed by a homeowners' association or drainage district established by the Town Board in order to provide for maintenance activities. Appropriate easements shall be provided for access and maintenance to all stormwater management facilities. Costs for maintenance shall be borne either by a homeowners' association or a drainage district. Cost associated with maintenance within a district shall be assessed to each individual property annually on an advalorm basis.

§ 135-10. Maintenance bonds.

The Planning Board and/or Town Board shall require a maintenance bond to be posted to meet the maintenance obligations for stormwater management facilities. The bonds shall be posted prior to final approval of a plan before the Planning Board or the issuance of a building permit by the Building Inspector, whichever occurs first. Maintenance bonds

shall cover the estimated cost of maintaining the system for five years after issuance of the final certificates of occupancy on a site plan, subdivision or building permit. Ownership and operational maintenance of stormwater management appurtenances of residential subdivisions shall be determined by the Town Board. Owners/developers shall execute necessary agreements, deeds, restrictions, covenants or easements, and required documents shall be filed prior to final approval of a residential subdivision by the Town Planning Board.

§ 135-11. Prohibited discharges (illicit discharge).

- A. No person, owner, contractor, or site operator shall cause to be discharged to any stormwater collection or conveyance system natural watercourse or water body within the Town of Marlborough, any substance other than naturally occurring surface water discharges, melted snow, uncontaminated groundwater discharges from foundation footing drains, air condition condensate, irrigation waters, springs, water from crawl space and basement sump pumps, lawn watering, individual residential car washing, dechlorinated swimming pool discharges, street wash water and fire-fighting water.
- B. The above discharges must be free from any hazardous or toxic chemicals or substances, petroleum products, sanitary sewage, pesticides, herbicides or any other noxious chemicals.
- C. With the exception of the discharges identified above, no discharge piping from any floor drain, sanitary drains or process piping shall be connected to any Town-maintained stormwater collection and conveyance system. The Building Inspector/Code Enforcement Officer shall be authorized to enforce the provisions of this section.

§ 135-12. Postconstruction stormwater management.

- A. It is the intent to require the continued operation and maintenance of all stormwater management facilities on construction sites, site plans and subdivisions. The Town of Marlborough wishes to reduce impacts associated with construction activities including reducing impacts to receiving water quality as well as flood control from developed sites. All temporary soil erosion and sediment control devices and appurtenances required during the construction phase shall be maintained until sites become stabilized either through impervious surfaces or the establishment of vigorous vegetative growth. All areas disturbed during construction shall be revegetated sufficiently to control erosion from all disturbed areas. Prior to issuance of a certificate of occupancy for a site plan or the first residential structure on a subdivision, the owner's/applicant's engineer shall certify to the Town of Marlborough Building Department that all stormwater management facilities have been constructed in conformance with the site's stormwater pollution prevention plan. Elements of the stormwater pollution prevention plan shall become part of the approved site plan/subdivision and shall be enforceable by the Code Enforcement Officer. The Town of Marlborough recognizes that the stormwater management and soil erosion sediment control plans are an important part to the site development plans and therefore wishes to enforce the implementation of said plans as part of the site development building permit process.

- B. All site plans and subdivisions which are subject to this chapter shall contain appropriate notes requiring ongoing maintenance of all stormwater management facilities and devices during construction and require annual review and inspection of the stormwater management facilities by the owner, homeowners' association or district as applicable.

§ 135-13. Penalties for offenses.

Any person who commits any act in violation of any provisions of this chapter shall be deemed to have committed an offense against this chapter and shall be liable for penalties imposed herein for such violation. Each act committed in violation of any provision of this chapter shall constitute a separate offense. Each day a violation continues shall be deemed a separate act.

- A. For every violation of every provision of this chapter a person shall be subject to a fine of not less than \$200 but not more than \$1,000 or imprisonment not exceeding 15 days, or both.
- B. Any person violating this chapter shall be subject to a civil penalty enforceable and collectable by the Town in the amount of _____ for each such offense.
- C. In addition to the above provided penalties and punishment, the Town Board may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restraint by injunction the violation of this chapter of the New York State Department of Environmental Conservation Rules and Regulations, notwithstanding that a penalty or other punishment for such violation has otherwise been provided.

Chapter 137, TAXATION

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

GENERAL REFERENCES

Assessors -- See Ch. 4.

ARTICLE I, Tax Exemption for Senior Citizens [Adopted 3-28-1977 by L.L. No. 3-1977 as Ch. 96, Art. I, of the 1976 Code of the Town of Marlborough]

§ 137-1. Grant of partial real property tax exemption. [Amended 1-31-1983 by L.L. No. 2-1983; 2-5-1992 by L.L. No. 1-1992; 2-22-1993 by L.L. No. 1-1993; 2-13-1995 by L.L. No. 2-1995]

Real property located in the Town of Marlborough, County of Ulster and the State of New York, owned by one or more persons, each of whom is 65 years of age or over, or real property owned by husband or wife, one of whom is 65 years or over, shall be exempt from taxation, as provided in the sliding scale enumerated in § 137-2A, of the

assessed valuation thereof upon qualification.

§ 137-2. Qualifications for exemption.

No exemption shall be granted unless:

- A. The income of the owner or the combined income of the owners, excluding any income payable to either or both of them as veterans disability compensation (as defined in Title 38 of the United States Code), of the property for income tax purposes for the income tax year (meaning the twelve-month period for which the owner or owners filed a federal income tax return or, if no income tax return was filed, for the calendar year) does not exceed the maximum income and percentages granted as follows: [Last amended 9-26-2005 by L.L. No. 3-2005]

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50%

\$21,000 or less

More than \$21,001 but less than \$22,000 45%

*Town of Marlborough
PC/CodeBook for Windows*

More 40%
than
\$22,00
1 but
less
than
\$23,00
0

More 35%
than
\$23,00
1 but
less
than
\$24,00
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More 30%
than
\$24,00
1 but
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\$24,90
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More 25%
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\$24,90
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- B. The property shall meet those additional qualifications as provided by law. ^{96EN}
[Amended 2-13-1978 by L.L. No. 1-1978; 8-22-1994 by L.L. No. 2-1994]

§ 137-3. Application for exemption. [Amended 8-22-1994 by L.L. No. 2-1994]

Application for such exemption must be made annually by the owner or all the owners of the property, on forms to be furnished by the Board of Assessors of the Town of Marlborough, and shall furnish the information and be executed in the manner prescribed in said forms. Such application shall be filed with the office of the Board of Assessors on or before the appropriate taxable status date.

§ 137-4. Penalties for offenses.

Any conviction of having made any willful false statement in the application for such exemption shall be punishable by a fine of not more than \$100 and shall disqualify the applicant or applicants from further exemption for a period of five years.

ARTICLE II, Tax Exemption for Veterans [Adopted 12-17-1984 by L.L. No. 5-

1984; amended in its entirety 3-11-1991 by L.L. No. 1-1991]

§ 137-5. Purpose. [Amended 9-26-2005 by L.L. No. 4-2005]

The purpose of this article is to increase the maximum veterans exemption allowable pursuant to § 458-a of the Real Property Tax Law of the State of New York.

§ 137-6. Maximum exemption established. [Amended 4-28-1997 by L.L. No. 1-1997; 9-26-2005 by L.L. No. 4-2005]

- A. Qualifying residential 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 \$27,000, or the product of \$27,000 multiplied by the latest state equalization rate for the Town of Marlborough.
- B. In addition to the exemption provided for in Subsection A, where the veteran served in a combat theater or a combat zone of operations, as documented by the award of a United States campaign ribbon or service medal, qualifying residential real property also 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 \$18,000 or the product of \$18,000 multiplied by the latest state equalization rate for the Town of Marlborough.
- 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 \$90,000 or the product of \$90,000 multiplied by the latest state equalization rate for the Town of Marlborough.

§ 137-7. When effective. [Amended 9-26-2005 by L.L. No. 4-2005]

This article shall take effect immediately upon filing with the Secretary of State.

Chapter 140, TOW TRUCKS

[HISTORY: Adopted by the Town Board of the Town of Marlborough 1-22-1990 by L.L. No. 1-1990; amended in its entirety 6-9-2003 by L.L. No. 1-2003. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

- Police Department -- See Ch. 35.**
- Streets and sidewalks -- See Ch. 130.**
- All-terrain vehicles -- See Ch. 143.**
- Vehicles and traffic -- See Ch. 145.**

§ 140-1. Intent.

- A. It is the intention of this chapter of the Town Code to allow the Town of Marlborough, through its Police Department, to supervise and administer removal of vehicles from the public highways of the Town that are disabled, abandoned or junked via a tow truck operators list from which the Police Department will call and request services in a rotating basis. This Chapter only applies to tow trucks called into service by the Town of Marlborough as agent for any Town, county, state or federal police agency.
- B. It is recognized to be of vital importance to the traveling public that these vehicles be removed from the highways as promptly as possible, that delay in removal results in retarding the movement of traffic unnecessarily and that the towing of disabled motor vehicles in the Town of Marlborough is a matter affecting the public interest. It is further in the interest of the public to have guidelines and regulations in effect to guard against abuses and confusion at the scene of accidents.

§ 140-2. Permit required; exception.

It shall be unlawful for any person, firm, corporation, or other entity to be engaged in the business of towing within the Town without having obtained a valid permit issued hereunder or to operate a tow truck in the course of acting upon request by the Town of Marlborough without having displayed thereon a valid sticker issued hereunder. However, tow truck operators from outside the Town of Marlborough may enter the Town of Marlborough without a permit to remove a motor vehicle from a registered repair shop, garage, and salvage yard. Furthermore, those same tow trucks will be permitted to remove vehicle(s) from a public highway if the tow company notified can in fact respond to the location within the required twenty-minute time period. This provision shall not apply to impounded vehicles.

§ 140-3. Term; application.

- A. Every permit issued hereunder shall expire on the 31st day of December next succeeding the date of its issuance unless sooner revoked, as hereinafter provided (annually).
- B. Every person, firm, corporation, or other entity who desires to operate, except as herein otherwise provided, the business of automotive towing by a tow truck(s) or car carrier(s) owned, controlled or leased by him upon the public highways within the Town shall be duly licensed as a tow truck operator in the Town upon written application, made under oath, as follows:
 - (1) The name and address of the applicant and the address of the place from which tow trucks are proposed to be garaged or dispatched, specifying, in the case of any corporation, the names and addresses of each member thereof and, in the case of any unincorporated association or other entity, the names and addresses of each officer, director and stockholder.
 - (2) All crimes, if any, of which that applicant or any member thereof has been convicted and, if an unincorporated association, of which any officer or director has been convicted and, if a corporation, of which any officers, directors or stockholders thereof have been convicted, stating the name, if any, and location of the courts and the dates on which such convictions were had and the penalties

imposed therefor.

- (3) The number of vehicles proposed to be operated by the applicant and a description of each vehicle, including make, model, year of manufacture, New York State registration number and vehicle identification number.
- (4) The name, address and driver's license number of each driver employed by the applicant.
- (5) Proof of insurance in the minimum amount of \$500,000 personal liability and \$150,000 property damage liability. Additionally, all towing companies will name the Town of Marlborough as coinsured on their policies.
- (6) (Reserved)
- (7) Provide proof of valid New York State licensing.
- (8) Provide any additional information as requested by the Town Clerk or Police Department.

§ 140-4. Issuance of permit for vehicles.

The Town Board, through the Town Clerk, shall accept all applications for permits from persons desiring to engage in the business of towing on such forms as he will provide. Upon passage of a resolution by the Town Board approving the application, the Town Clerk shall issue a permit to the applicant.

§ 140-5. Nontransferability.

Each license shall not be transferred from one person to another or from vehicle to vehicle. Notification of vehicle replacement must be made within 30 days to the Police Chief.

§ 140-6. Fee; qualifications.

- A. The fee for a permit or sticker shall be in an amount set by resolution of the Town Board.
- B. The applicant must:
 - (1) Own or lease a licensed registered New York State repair shop in the Town of Marlborough or own or lease an impound or storage yard in the Town of Marlborough;
 - (2) Own a tow truck or car carrier which is registered to the firm's Town of Marlborough address;
 - (3) Have a valid tow truck operator's permit of the Town of Marlborough.

§ 140-7. General regulations.

- A. It shall be unlawful for any person, firm, corporation, or other entity to service or tow away any motor vehicle which has been involved in an accident without the prior consent of the owner or operator or the police officer at the scene of the accident. No motor vehicle shall be serviced or removed from the scene of an accident where the police officer requires or request that photographs and/or diagrams of the scene be made.

- B. All permittees engaged in towing and storing vehicles shall have a garagekeeper's legal liability policy to cover fire, theft, and property damage that will fully cover any vehicle towed, impounded or stored and will keep such policy in effect throughout their permit period.
- C. All firms called upon to impound a vehicle for the Town of Marlborough Police Department must store the vehicle within the limits of the Town of Marlborough unless otherwise directed by a member of the Police Department.
- D. The licensed firm shall be responsible for the collection of all fees for service, towing or storage of any vehicle. Neither the Town of Marlborough nor the Town of Marlborough Police Department shall act as agent for the collection of any fees, nor shall they be held responsible in the event of nonpayment of any moneys due to any permitted firm as a result of service performed in accordance with this chapter.
- E. When called to the scene of an accident, the permitted firm shall be responsible for removing debris from the roadway.

§ 140-8. Soliciting prohibited.

It shall be unlawful for any person, firm, corporation, or other entity to solicit towing or repair work at the scene of any motor vehicle accident on private property or on a public highway in the Town of Marlborough. Any participating tow company truck alleged to be in violation of this section will be subject to an investigation by the Chief of Police and possible penalties as decided by the Town Board following an administrative hearing.

§ 140-9. Permit list; calls for assistance to be in rotation.

- A. There shall be maintained a list of all licensed tow trucks establishments at the Clerk's office and in the Police Department. Calls for towing assistance shall be given on a rotational basis by the Police Department.
- B. A permittee who does not answer a call or is not available when called shall lose his turn on the towing roster and must wait for the roster to be called again in its entirety before he is eligible to be called again.
- C. In the event that the licensee responds and cannot handle the vehicles due to size of the vehicles, the vehicle is no longer in need of tow or the vehicle is no longer present at the site, he will not lose his turn on the roster.
- D. It shall be unlawful for a permittee to transfer or exchange his place on the roster to any other license on the roster. Additionally, participating tow companies may not send another company's tow truck in their place to handle a tow request they have in fact accepted.
- E. If more than one tow truck is needed at the scene of an accident, the dispatcher shall call the next licensee in rotation. In that event, the choice of disabled motor vehicles to be towed shall be determined by the officer in charge.
- F. A licensee shall have but one place on the towing roster although he maintains several licensed tow trucks in the Town of Marlborough.
- G. In the event that a firm called for towing or service assistance is unable or fails to arrive at the location within a twenty-minute time period, the next firm on rotation shall be called and the first firm shall lose its turn in rotation.
- H. Any permittee willfully refusing to tow away a motor vehicle shall loss his turn in

rotation.

- I. (Reserved)
- J. All participating tow companies will provide up to three telephone numbers to be called for tow assignments in priority order. Pager numbers will not be utilized.

§ 140-10. Denial or revocation of permit.

The Town Board may, in each case, after a public hearing, either deny a permit to any applicant whom the Board shall determine to be undesirable or incapable of properly conducting a road service or tow truck business or revoke the permit of any permittee that the Board shall determine has violated any provisions of this chapter.

§ 140-11. Equipment for tow trucks.

Required equipment. In addition to the required equipment specified in § 375 of the Vehicle and Traffic Law or as promulgated by the Commissioner of Motor Vehicles:

- A. A spotlight so mounted that the beam or the light can be shown in all directions.
- B. An amber rotating light mounted at the top of the cab or on a light bar so that the light is visible for not less than 500 feet under normal atmospheric conditions.
- C. At least two red flashing lights to show the width of the vehicle from the rear.

§ 140-12. (Reserved)

§ 140-13. Abandonment of vehicles.

- A. As per New York State Vehicle and Traffic Law § 1224(b), a motor vehicle shall be deemed to be abandoned if left unattended for more than 24 hours on any highway or other public place unless legally parked thereat. Vehicles considered to be abandoned shall be eligible to be towed. In addition, police officer(s) may determine that a vehicle left on a public roadway poses a public safety hazard. In such instances, officers are permitted to have the vehicle towed from that location immediately.
- B. Willful abandonment of vehicles, upon conviction, shall be punishable by a fine not to exceed \$250 or imprisonment for not more than 15 days, or both, with each day of violation to be considered a separate offense.

§ 140-14. Penalties for offenses.

Penalties are as follows:

- A. First offense: a revocation of permit or a one-month suspension from the rotation towing program. Permits which are revoked may be reapplied for one year from the date of revocation.
- B. Second offense: a revocation of permit or a maximum of a three-month suspension from the rotation towing program.
- C. Third offense: permanent revocation of towing permit. If revoked, the towing company will not be eligible to reapply for a towing permit.

Chapter 141, TREES

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

GENERAL REFERENCES

Clearing and grading -- See Ch. 75.

Subdivision of land -- See Ch. 134.

Zoning -- See Ch. 155.

ARTICLE I, Tree Harvesting [Adopted 6-9-2003 by L.L. No. 3-2003]

§ 141-1. Purpose.

The purpose of this article is to promote the general welfare of the residents of the Town of Marlborough by protecting the natural environment and public safety as may be affected by timber harvesting. The Town recognizes that the timber resource is of value to the landowner and may be harvested in appropriate circumstances. The Town also recognizes that if timber harvesting practices are improperly carried out, they can result in significant damage to the forest environment and to neighboring lands and waters. This article is intended to regulate timber harvesting, require land reclamation and utilize professional forest management expertise in the preparation and evaluation of timber harvest planning and work.

§ 141-2. Site plan required; public hearing.

No timber harvesting shall be permitted unless the landowner has first obtained a site plan approval from the Town of Marlborough Planning Board, under § 155-31 of the Code of the Town of Marlborough. "Timber harvesting" is defined as the cutting of trees having a twelve-inch or greater diameter measured four feet above the ground within an area larger than two acres during a single twelve-month period.

§ 141-3. Applicability.

This article shall not be construed to prohibit timber harvesting or to require a timber harvesting site plan for:

- A. Clearing of land for rights-of-way for approved public utilities, except that said clearing shall comply with accepted forest management practices.
- B. Harvesting of trees by the landowner for his or her personal and noncommercial use.
- C. Removal of trees to the extent required or necessary for site preparation for construction or land development pursuant to a building permit or approval granted by the Planning Board or Zoning Board of Appeals. Removal of trees in excess of that required or necessary to carry out the construction or land development authorized by such permit or approval is not exempt from the requirements of this

article.

- D. Removal of trees in the normal operation of an agricultural business operated under normal agricultural practices shall be exempt from this chapter.
- E. Harvesting of Christmas trees.

§ 141-4. Clear cutting.

Notwithstanding any other provision of law, clear-cutting may be permitted by the Planning Board only if specified clear-cutting is recommended by a forester, who holds a degree in forestry from an accredited college. "Clearcutting" is defined as the cutting or removal within any area of all trees having a diameter of two inches or more measured four feet above the ground.

§ 141-5. Application information required.

In addition to site plan requirements, the landowner shall submit the following information to the Planning Board before the Planning Board issues a timber harvesting approval:

- A. Written narrative, including:
 - (1) The total land area involved in cutting operations.
 - (2) The number of trees of each species to be cut.
 - (3) The range, in inches of diameter, of trees to be cut.
 - (4) The average number of trees per acre to be removed.
 - (5) The purpose and extent of earth moving, storage and reclamation.
 - (6) Boundaries of property, topography, soil types and all neighboring lands (and owners thereof) within 500 feet of property boundaries.
 - (7) Access roads to property.
 - (8) Haul roads or other internal roads, trails or ways.
 - (9) Area within the property where harvesting will occur.
 - (10) Location of product loading areas.
 - (11) Erosion control and stormwater management measures.
 - (12) Streams, wetlands, ponds and other water bodies.
 - (13) Name and address of the proposed logger.
- B. Name of logger(s). If a logger changes at any time prior to completion of work, the landowner must immediately notify the Planning Board in writing of the name of the replacement logger(s) and shall comply with requirements of § 141-7 if necessary.
- C. Property maintenance plan.
- D. The Planning Board may require submission of a report prepared by a qualified forester, who holds a degree in forestry from an accredited college, and may retain, at the applicant's expense, its own forester and/or other consultant(s) to review the application.
- E. Any other information deemed reasonably necessary by a professional forester.

§ 141-6. Standards.

- A. Approved erosion control and stormwater management measures shall be implemented at all times.

- B. The proposed operation shall not adversely affect drainage or growth of vegetation, contribute to soil erosion or adversely affect lands or waters of the applicant's or other properties.
- C. Only designated trees shall be cut within 50 feet of any property line or public right-of-way. Trees falling on an adjacent property shall immediately be removed to the permittee's property.
- D. If the access road from the public right-of-way is located within 200 feet of adjacent property, the access road shall have a dustless surface of sufficient length to mitigate impact on adjacent lands as determined by the Planning Board. For purpose of this subsection only, adjacent property shall not include property located on the opposite side of the public right-of-way.
- E. Loading areas shall be located on the applicant's property only and shall be smoothed to remove all ruts and debris. Nonorganic waste materials shall be properly removed and disposed. Organic waste materials within 100 feet of any property line or public right-of-way shall be cut and slashed into smaller pieces so as to settle close to the ground.
- F. The landowner shall be responsible to keep all public roads clear and clean at all times and to repair any damage caused, directly or indirectly, by the logging operation. If the landowner fails to clean, clear or repair any public highway after due notice, the Town may cause such cleaning, clearing or repair and bill the landowner for all costs. If such bill is not paid within 30 days, than the cost may be assessed and levied against the landowner's property and collected in the same manner as real property taxes.
- G. No harvesting, cutting, milling or removal of products or any other activity related to harvesting shall take place between the hours of 7:00 p.m. and 7:00 a.m. or at any time on Saturday, Sunday or legal holidays.
- H. Appropriate screening, access, dust and noise controls as determined by the Planning Board shall be implemented.
- I. Property maintenance plan. The property maintenance plan shall be prepared by a professional forester and shall provide, at a minimum, for adequate erosion and stormwater management control, after harvesting operations are completed.
- J. The Planning Board may impose additional requirements and conditions prior to approval governing harvesting operations and post-harvesting conditions if recommended by a professional forester.
- K. The Planning Board may waive or reduce any of the standards or requirements of this article. Any such waiver or reduction shall be affirmatively made and supported by a reason stated in the record.
- L. The term of a tree harvesting site plan shall be for one year. One one-year extension may be granted by the Planning Board upon written request made prior to expiration of the initial term. The Planning Board, after public hearing, may impose additional or revised requirements as conditions of a site plan extension.

§ 141-7. Performance/Maintenance bond.

Prior to approval, the Planning Board shall require the applicant or its agent to provide a bond at least in an amount of \$25,000 and in a form approved by the Planning Board and its attorney, sufficient to secure the performance of the forestry plan, requirements of this

article, permit conditions and the maintenance plan. The bond shall remain in effect until formally released by the Planning Board, except that the bond shall remain in effect no longer than two years after completion of the tree harvesting operation unless the applicant consents to a longer period of time. In the event that the applicant or agent does not fulfill the conditions of the bond or fails to comply with any requirement or permit condition, the Town may, after due notice to the applicant, agent or surety, proceed to perform the work necessary to cause compliance with the bond, requirements or permit conditions and shall charge the cost to the owner, agent and/or surety.

§ 141-8. Right of entry.

Town officials, employees and agents shall be authorized to enter upon the landowner's property for purposes of reviewing an application and of determining compliance with any permit issued pursuant to this chapter. Such entrance and inspection shall be initiated at reasonable times, but at any time whenever deemed necessary to protect the public interest. Owners, agents and operators shall be responsible for allowing access to the entire property.

§ 141-9. Monitoring of operation.

The Planning Board may retain a forester and other consultants, at the applicant's expense, to monitor harvesting and reclamation activities, make recommendations and advice regarding permit compliance. Such Board may require the applicant to deposit a specified sum of money with the Town to pay for the consultant(s).

§ 141-10. Limitation on number of permits issued.

The Town Board is authorized to limit the number of site plans for tree harvesting that may be issued and/or in effect during any period of time specified by the Town Board. The Town Board may establish such limitation and amend same from time to time, by resolution.

§ 141-11. Enforcement.

This article shall be enforced by the Building Inspector or Code Enforcement Officer. Enforcement officers are authorized to issue violation notices, orders to remedy appearance tickets and stop-work orders.

§ 141-12. Penalties for offenses.

- A. Any persons committing an offense against any provision of this article shall be guilty of a violation punishable by a fine not exceeding \$250, or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.
- B. Any person committing a second offense against any provision of this article within five years of the first offense shall be guilty of a misdemeanor punishable by a fine

not exceeding \$1,000, or by imprisonment for a term not exceeding one year, or both such fine and imprisonment. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is continued, a separate and distinct charge against the individual.

- C. In addition to the provisions of Subsections A and B above, the enforcement officer may suspend or revoke any permit issued under this article as well as call any bond that has been posted. In addition, the individual shall be subject to a civil penalty of \$100 per day for each day the offense is continued as well as a civil penalty of \$500 for reinstatement of any permit suspended by the enforcement officer. If a permit is revoked by the enforcement officer the permit holder must reapply for a new permit.
- D. In addition to and not in lieu of the above, the Planning Board may require any permittee to appear before the Planning Board at any meeting to address any matter related to the permit, and the Planning Board is authorized to revoke, suspend or modify such permit.

Chapter 143, VEHICLES, ALL-TERRAIN

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

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 130.

Vehicles and traffic -- See Ch. 145.

§ 143-1. Findings.

Increased use of motorized sport bikes, hereafter called "all-terrain vehicles (ATV's)," throughout the Town of Marlborough without any regard for the rights of the property owners whose property is used for the operation of these ATV's, without the permission of said landowners and without regard for the noise emanating from said ATV's and the dirt and dust raised up into the air by the operation of these ATV's has increased to such a degree that these ATV's are not only hazardous and detrimental to property owners and residents, but also to those who operate them with no regard for their own safety or the safety of others.

§ 143-2. Definitions.

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

MOTORIZED SPORT BIKE -- Any all-terrain vehicle (ATV) that is motor-propelled or contains a motor to assist the operation of said vehicle and which vehicles are commonly referred to as "dirt bikes," "minibikes," "goKarts," "all-terrain vehicles (ATV's)," "dune buggies" and "trail bikes," which vehicles, by their nature and design, are not intended to be used and operated along paved roads and highways, but are intended, rather, to be operated in dirt, sand, up and down hills, along trails and in similar-type areas.

PRIVATE PROPERTY -- All land and buildings in the Town of Marlborough not

included in the definition of public property, nor part of the public road system.
PUBLIC PROPERTY -- Lands and buildings owned or leased by the Town of Marlborough, any school district, the County of Ulster or the State of New York or any other equivalent public body. This definition specifically excludes any public roadways owned or maintained by any of the aforementioned public entities.

§ 143-3. Prohibited acts.

It shall be unlawful:

- A. To operate an ATV upon public property at any time without express consent or permit issued by the governmental agency in control of said property.
- B. To operate an ATV on private property, other than that private property owned by the family of the operator, without the written consent of all of the owners of the private property.
- C. To operate an ATV for sport or recreation during the period from 9:30 p.m. to 8:30 a.m.
- D. To operate an ATV that does not comply with the requirements and regulations of the Department of Motor Vehicles of the State of New York. Should the Department of Motor Vehicles require registration or licensing of said vehicles, then it shall be unlawful to operate said vehicle without proper registration and licensing.
- E. To operate an ATV that causes noises that are disturbing and bothersome to adjoining property owners.
- F. To operate an ATV so as to cause it to propel sand, dirt, dust, rocks, gravel or other similar materials into the air so as to be likely to injure persons and/or damage property.
- G. To operate an ATV on public or private property in such a way as to harass, worry or disturb farm animals, domestic livestock or wildlife or further to destroy or damage crops or farm produce.
- H. To operate an ATV without the ATV's containing a muffler or other similar device to reduce the sound coming from the engine of the vehicle.
- I. To operate an ATV near any public roadway so that the operation of said ATV would cause operators of automobiles, motorcycles or trucks to have to take evasive or irregular action to move away from said ATV.
- J. To operate an ATV without the ATV being in proper operating condition, which means that all of the original operating equipment specified by the original manufacturer must be present on the bike or replacement equipment equal to the specifications of the original manufacturer's equipment is present and in operating condition at least equal to the manufacturer's requirements for the proper operation thereof.
- K. To operate an ATV on any private street or right-of-way within the Town of Marlborough without the written permission of the owner of the private street or right-of-way.
- L. To operate an ATV in a careless, reckless or negligent manner which endangers the safety of any person, including the operator himself, or the property of any person.
- M. To operate an ATV while under the influence of liquor or drugs.
- N. For a parent or guardian to authorize or knowingly permit a child or ward, if under sixteen (16) years of age, to operate an ATV in violation of any provision of this

chapter or any rules or regulation promulgated thereunder.

- O. For the owner or other person in possession of any ATV to authorize or knowingly permit any person under sixteen (16) years of age to operate such vehicle in violation of any provisions of this chapter.

§ 143-4. Regulations for operation.

- A. The operator of an ATV shall wear a helmet upon his head and goggles or face shields on his face, such as approved by the Department of Motor Vehicles of the State of New York.
- B. No person operating an ATV or motorcycle shall engage in fancy or trick riding or ride without maintaining full control of the ATV or remove both hands from the handlebar.
- C. No person operating an ATV shall carry any other person on it except in a place designated for such purpose and equipped for such purpose as part of the original manufacture for said purpose.

§ 143-5. Impoundment.

- A. A police officer may impound any ATV if:
 - (1) The identity of the operator or owner of the ATV is unknown to the officer.
 - (2) The operator of the ATV has no evidence of permission to operate the same on private property.
 - (3) The operator is in violation of this chapter.
 - (4) The ATV was involved in an accident causing serious injury or death while operated in violation of this chapter.
- B. The period of impoundment for the ATV shall be for such period of time as is necessary for police purposes, which shall include use of the vehicle for identification in any court action. Any person wishing to have an ATV released from impoundment must make motion before the appropriate court, and said ATV shall only be released upon court order. Upon receipt of said court order, the ATV shall be released by the Marlborough Town Police Department upon payment of an impoundment fee in an amount set by resolution of the Town Board, which sum shall be payable to the Town Clerk, and any storage fees as incurred by the Marlborough Police Department.^{97EN}
- C. The Town Police Department, upon the order of the Chief of Police or his duly authorized subordinate, may, of its own violation, without court order, release such ATV if it deems that it has no further need of the vehicle for purposes of identification, but only after payment of the impoundment fee in an amount set by resolution of the Town Board and storage fees as above.^{98EN}

§ 143-6. Penalties for offenses.

For any violation of the terms of § 143-3, Prohibited acts, and § 143-4, Regulations for operation, the offender shall be liable for a penalty of not more than one hundred dollars (\$100.) for a first offense and two hundred fifty dollars (\$250.) for a second offense. An offense shall be considered a second, third, fourth, fifth, etc., offense if, during a period

within ten (10) years of the conviction for the first offense against this chapter, a person is convicted of another offense of violating this chapter.

§ 143-7. Exclusions.

This chapter shall not apply to the operation of ATV's on premises owned by the operator in the course of his business or by employees of the owner on the business of the owner, nor to the operation of ATV's under circumstances regulated by any agency of the State of New York.

§ 143-8. Conflict with state law.

In the event that this chapter or any of the provisions herein shall conflict or vary with existing or prevalent state law involving the operation of ATV's, such inconsistencies, conflicts or variations shall be governed or controlled in favor of the state law.

Chapter 145, VEHICLES AND TRAFFIC

[HISTORY: Adopted by the Town Board of the Town of Marlborough 3-28-1977 by L.L. No. 3-1977 as Ch. 106 of the 1976 Code of the Town of Marlborough. Amendments noted where applicable.]

GENERAL REFERENCES

Town-owned vehicles -- See Ch. 47.
Streets and sidewalks -- See Ch. 130.
Tow trucks -- See Ch. 140.
All-terrain vehicles -- See Ch. 143.

ARTICLE I, General Provisions

§ 145-1. Definitions and word usage.

- A. The words and phrases used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them by Article 1 of the Vehicle and Traffic Law of the State of New York.
- B. The following words and phrases, which are not defined by Article 1 of the Vehicle and Traffic Law of the State of New York, shall have the meanings respectively ascribed to them in this section for the purposes of this chapter:
- CURBLINE** -- The prolongation of the lateral line of a curb or, in the absence of a curb, the lateral boundary line of the roadway.
- OFFICIAL TIME STANDARD** -- Whenever certain hours are named herein or on traffic control devices, they shall mean the time standard which is in current use in this state.

§ 145-2. Authority to install traffic control devices.

The Superintendent of Highways shall install and maintain traffic control devices when and as required under the provisions of this chapter, to make effective the provisions of this chapter, and may install and maintain such additional traffic control devices as he may deem necessary to regulate, warn or guide traffic under the Vehicle and Traffic Law of the State of New York, subject to the provisions of §§ 1682 and 1684 of that law.

§ 145-3. Delegation of powers to regulate traffic.

- A. Pursuant to the provisions of Subdivisions (a) and (e) of § 1603 of the Vehicle and Traffic Law, power is hereby delegated to the Supervisor to exercise, by official order, rule or regulation, the following powers granted to the legislative body of this Town in Article 41 of the Vehicle and Traffic Law, subject, however, to the limitations imposed by §§ 1664 and 1684, of the Vehicle and Traffic Law.^{99EN}
- B. For the purpose of maintaining an accurate record of all regulations adopted under the provisions of this chapter, there is hereby established a system of schedules in which shall be entered all regulations after adoption. Pursuant to the provisions of § 1660 of the Vehicle and Traffic Law, the schedules contained in §§ 145-4, 145-5, 145-6, 145-10, 145-11, 145-12, 145-17 and 145-18 may be amended by resolution of the Town Board, and all regulations shall be adopted with reference to the appropriate schedule as indicated in the various sections of this chapter. [Added 8-22-1994 by L.L. No. 2-1994]

ARTICLE II, One-Way Roadways

§ 145-4. One-way roadways designated.

The following streets or parts of streets are hereby designated as one-way streets, and vehicles shall proceed only in the direction indicated within the limits designated below:

Name	Direct Location of Travel
------	---------------------------

*Town of Marlborough
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Brewster Street East From Main Street to Dock Road in the Hamlet of Milton

King Street South From Western Avenue to U.S. Route 9W (SH 5114) in the Hamlet of Marlboro

Orange Street [Added 10-23-1995] South Between Western Avenue and Church Street

West From
Wester U.S.
n Route
Avenu 9W
e (SH
5114)
to
King
Street
in the
Hamle
t of
Marlb
oro

White North From
Street Prospe
ct
Street
to
Birdsal
l
Avenu
e in
the
Hamle
t of
Marlb
oro

ARTICLE III, Stop and Yield Intersections

§ 145-5. Stop intersections designated. [Amended 5-16-1983 by L.L. No. 4-1983; 8-22-1994 by L.L. No. 2-1994]

The following highway intersections are hereby designated as stop intersections, and stop signs shall be erected as follows:

Stop	At
Sign	Direct Inters
on	ion of action
	Travel With

	North	
Albert son Road		Wester n Avenu e
Anna Place	East	Hudso n Terrac e
Apple Blossom Drive	East	Clarks Lane
Ashlye n Drive	South	Ruby Road
Bailey' s Gap Road	Both	Route 44/54
Bailey' s Gap Road	East	Milton Cross Roads
Bailey' s Gap Road	West	Pancak e Hollo w Road
Billasi mo Drive	East	Plattek ill Road
Bingha m Road	Both	Lattint own Road

East
Bingham Road Highland Avenue

West
Bingham Road Plattekill Road

East Route
Birdsal Avenue 9W

West
Birdsal Avenue Prospect Street

Both Grand
Bloom Street Street
[Added 7-13-1998]

East Route
Bloom Street 9W

South South
Blossom Hill Drive Street

East
Breezy Heights Highland Avenue

East Dock
Brewster Street Road

North South
Briarw Street
ood
Lane

North
Burma Idlewil
Road d Road
[Adde
d 11-
22-
2004]

South
Burma Plattek
Road ill
Road

Center East
Street Highla
nd
Avenu
e

South Old
Chero Indian
kee Road
Drive

East Route
Chestn 9W
ut
Lane

West Old
Chestn Indian
ut Road
Lane

East Grand
Churc Street
h
Street

West
Churc Highla
h nd
Street Avenu
e

West Sands
Church Avenue
Street
[Added 3-22-
2004]

Clarks North
Lane Milton
Turnpike

Clarks South
Lane Willow Tree
Road

East
Conklins Hill Lattintown
Road

West
Conklins Hill Milton
Turnpike

Conte East
Terrace Highland
Avenue
[Added 9-27-
1999]

Cross North
Road Plattekill
Road

Cross South South
Road Street

North Old
Cubbard Indian
Road
Drive

North South
Dragot Street
ta
Lane

Both Grand
Dubois Street
Street
[Amen
ded 3-
22-
2004]

Both West
Dubois Street
Street

East Route
Dubois 9W
Street

East Paula
Evy Drive
Lane

West
Felichel Lattint
lo own
Drive Road

North
Frozen Bingha
Ridge m
Road Road

South
Gabrit Mahon
y Road ey
[Adde Road
d 3-22-
2004]

Both
Grand Bloom
Street Street

Grand North
Street Wester
 n
 Avenu
 e

 North Old
Greent Indian
ree Road
Lane
[Adde
d 1-26-
2004]

 North
Hampt Plattek
on ill
Road Road

 South
Hampt Bingha
on m
Road Road

 Both South
Highla Street
nd
Avenu
e
[Adde
d 8-23-
1999]

 North
Highla Wester
nd n
Avenu Avenu
e e

 East
Hillcre Hillcre
st st
Center Drive

 North South
Hillcre Street
st
Drive

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West Route
Hillsid 9W
e Road

West Route
Hudso 9W
n Bluff

Both
Hudso Bloom
n Street
Terrac
e

Both
Hudso Churc
n h
Terrac Street
e

East
Idlewil Plattek
d Road ill
Road

East
Jackso Highla
n nd
Avenu Avenu
e e

West
Jackso Plattek
n ill
Avenu Road
e

West Old
Jonath Post
an Road
Place

South Route
King 9W
Street

North

Landfill
Entrance
Bailey's Gap
Road

Lauria Drive
East Route
9W

Lillie Lane
North
Willow Tree
Road

Luella Drive
South
South Street

Lyons Lane
East Route
9W

Lyons Lane
West Ridge
Road

Mahoney Road
Both Route
9W

Mahoney Road
East North
Road

Mahoney Road
East Peach
Road

West

Mahoney Road
Milton Cross
Roads

Maple Street
West South
Road
[Added 3-22-
2004]

McLaughlin Drive East Route 9W

Millhouse Road East Old Post Road

Mohawk Drive South Old Indian Road

Mount Rose Road East Route 9W

Mount Zion Road East Lattintown Road

Mulberry Road North Milton Turnpike

Mulberry Road South Lattintown Road

New Road North Mahoney Road

New Road South Route 9W

North Young Avenue West Route 9W

Ohara South
Road Milton
Turnpike

Old Both
Indian Lattint
Road own
[Amen Road
ded 8-
9-
1999]

Old Both South
Indian Road
Road

Old East Route
Indian 9W
Road

Old North Route
Post 9W
Road

Both
Orange Bloom
Street Street

Both
Orange Churc
Street h
Street Street

North
Orange Wester
Street n
Avenu
e

Both
Orchar Bloom
d Street
Street

	Both	
Orchard Street		Church Street
	West	
Overlook Bluff [Added 3-22-2004]		Dragotta Road
Paula Drive	North	Chestnut Lane
Peach Road	South	Milton Turnpike
Penny Lane	East	Lattintown Road
	South	
Pleasant View Drive		McLaughlin Road
	East	
Prospect Street		Western Avenue
Purdy Avenue	East	Route 9W
Ridge Road	Both	Prospect Street

North

Ridgec
rest
Road

Willo
w Tree
Road

Ridge
Road

North
Old
Indian
Road

Ridge
Road

South
Wester
n
Avenu
e

River
Knoll

West
North
Road

Riverc
rest
Lane
[Adde
d 1-24-
2000]

West
Route
9W

South

River
wood
Drive
[Adde
d 5-22-
1995]

Hudso
n Bluff
Drive

Robyn
Drive

East
Blosso
m Hill
Drive

Ruby
Road

East
Lattint
own
Road

Rue
de Vin
[Adde
d 12-9-
2002]

East
Hampt
on
Road

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Saint East South
James Road
Road

Saint West Route
James Road 9W
Road
[Added 9-27-
1999]

Sands South Dock
Avenue Road
e

North
Sherman Milton
Drive Turnpike

South Both Route
Road 9W

South Both
Street Highland
Avenue
e

South Both
Street Lattintown
Road

South West
Street Plattekill
Road

South East Route
Street 9W
Extension

West North
Steeple Road
Road

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Stuart East Lauria
Drive Drive
[Added 9-24-
2001]

Van South
Del Willo
Drive w Tree
Road

Both
Walnut Milton
Lane Turnpi
ke

East Route
Warren 9W
Street

North Dock
Watson Road
Avenue

Both
West Dubois
Street Street

North
West Western
Street Avenue
e

South
West Bloom
Street Street

North
White Birdsal
Street l
Avenue
e

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Wild East
Flower Billesi
Lane mo
Drive

Both
Willo Mulbe
w Tree rry
Road Lane
[Amen
ded 3-
22-
2004]

Both Route
Willo 9W
w Tree
Road

Both Van
Willo Del
w Tree Drive
Road
[Adde
d 1-26-
2004]

East South
Willo Road
w Tree
Road
[Adde
d 3-22-
2004]

West
Willo Lattint
w Tree own
Road Road

West Route
Woodc 9W
rest
Lane

East
Wygant Road Lattintown Road

Wyms North Ridge
Height Road

§ 145-6. Yield intersections designated. [Amended 5-16-1983 by L.L. No. 4-1983; 8-22-1994 by L.L. No. 2-1994]

The following locations are hereby designated as yield intersections, and yield signs shall be erected as follows:

Yield Sign on **At Direct Intersection of Travel of**

Church Street
[Added 7-12-1999;
repealed 3-22-2004]

West
Dubois Street Orange Street
[Added 3-22-2004]

Gabriety Road
[Repealed 3-22-2004]

Main Street South South Road
[Added 3-22-2004]

Maple Avenue
[Added 6-12-1995;
repealed 3-22-2004]

North Mount
Mount Zion Road
ain Road

South

Mount Reserv
ain oir
Road Road

Old East
Count Milton
y Road Turnpi
 ke

Old West
Count Milton
y Road Turnpi
 ke

Overlook Bluff
[Repealed 3-22-2004]

 East Dock
Shang Road
hi Hill

 West Sands
Shang Avenu
hi Hill e

Willow Tree Road
[Repealed 3-22-2004]

Willow Tree Road
[Added 6-12-1995;
repealed 3-22-2004]

ARTICLE IV, Speed Regulations

§ 145-7. Minimum speed limits designated.

All speed limits in the Town of Marlborough shall be prescribed by the New York Department of Transportation pursuant to § 1622 of the Vehicle and Traffic Law.

ARTICLE V, Parking, Standing and Stopping [Amended 5-16-1983 by L.L. 4-1983; 4-20-1987 by L.L. No. 1-1987]

§ 145-8. Application of article.

The provisions of this article shall apply except when it is necessary to stop vehicles to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

§ 145-9. Parking prohibited during emergencies; maintenance of sidewalks.

- A. The parking of vehicles is hereby prohibited on all highways within the Town during snowstorms.
- B. The owner or owners of premises abutting any street where a sidewalk has been laid shall keep the sidewalk in front of such premises free and clear of ice and snow within 24 hours after a snowstorm or ice storm ceases.

§ 145-10. Parking and/or standing prohibited at all times in certain locations.

The parking and/or standing of vehicles is hereby prohibited at all times in any of the following locations:

Name of Street	Side of	Location
Brewster Street [Added 10-15-2002 by L.L. No. 3-2002]	North	Entire length

North From
Churc the
h interse
Street ction
with
Sands
Avenu
e to a
point
50 feet
west
thereof
in the
Hamle
t of
Milton

Grand West From
Street the
[Adde interse
d 9-13- ction
2004] with
Churc
h
Street
to a
point
34 feet
south
thereof

Grand Both From
Street Wester
n
Avenu
e to a
point
525
feet
south
thereof
in the
Hamle
t of
Marlb
oro

King Street	East	From its intersection with U.S. Route 9W to a point 60 feet south of its intersection with Western Avenue in the Hamlet of Marlboro
-------------	------	---

King Street	West	From its intersection with Western Avenue to a point 50 feet southerly in the Hamlet of Marlboro
-------------	------	--

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Main Street East From Dock Road to a point 75 feet south thereof in the Hamlet of Milton

Main Street West From the Milton firehouse to a point 525 feet south thereof in the Hamlet of Milton

Maple Avenue North From the intersection of Watson Avenue to a point 50 feet west thereof in the Hamlet of Milton

Maple South From
Avenu the
e interse
ction
of
South
Road
to the
interse
ction
of
Watso
n
Avenu
e in
the
Hamle
t of
Milton

Orang East From
e the
Street interse
ction
with
Churc
h
Street
to its
interse
ction
with
Bloom
Street
in the
Hamle
t of
Marlb
oro

Orange Street West From the intersection with Bloom Street to its southerly end in the Hamlet of Marlboro

Orange Street West From the intersection with Western Avenue to the intersection with Church Street in the Hamlet of Marlboro

*Town of Marlborough
PC/CodeBook for Windows*

	East	From
Prospect		a point
Street		100
		feet
		north
		of
		Hidea
		way
		Lane
		(private road)
		to a
		point
		100
		feet
		south
		of
		Hidea
		way
		Lane

Sands	East	From
Avenue		the
e		intersection
		with
		Dock
		Road
		to the
		intersection
		with
		Church
		Street
		in the
		Hamlet
		of
		Milton

Sands West From
Avenu the
e interse
ction
with
Dock
Road
to its
interse
ction
with
Maple
Avenu
e in
the
Hamle
t of
Milton

Watso West From
n the
Avenu interse
e ction
with
Maple
Avenu
e to a
point
50 feet
north
thereof
in the
Hamle
t of
Milton

	North From
Wester n Avenu e	its interse ction with West Street to a point 50 feet west of its interse ction with Orang e Street Extens ion in the Hamle t of Marlb oro

	South From
Wester n Avenu e	its interse ction with U.S. Route 9W to its interse ction with Prospe ct Street in the Hamle t of Marlb oro

§ 145-11. Parking time limited in certain locations.

The parking of vehicles is hereby prohibited for a longer period of time than that designated, between the hours indicated, in any of the following locations:

Name of Street	Side	Time Between the Hours of	Limit (hours on)	Location
King Street	East	7:00 a.m. to 6:00 p.m.	2	From its intersection with Western Avenue to a point 60 feet south in the Hamlet of Marlboro

*Town of Marlborough
PC/CodeBook for Windows*

Main Street	West	7:00 a.m. to 6:00 p.m.	1/2	From its intersection with the Milton Turnpike northerly with its intersection at Dock Road in the Hamlet of Milton
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Western Avenue	North	7:00 a.m. to 6:00 p.m.	2	From its intersection with U.S. Route 9W to its intersection with West Street in the Hamlet of Marlboro
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§ 145-12. Angle parking.

The parking of vehicles upon any of the streets or parts thereof described below is

prohibited except at the angle designated and only within the painted stall lines. On all streets or portions hereof where angle parking is now or shall hereafter be authorized, all vehicles parked thereon shall be parked with the front thereof nearest the curb.

Name of Street	Side	Angle (degrees)	Location
Western Avenue	North	45	From a point 50 feet west of the west curbline of U.S. Route 9W to a point 200 feet east of its intersection with West Street

§ 145-12.1. Parking prohibited at certain times in certain locations. [Added 5-24-1999]

The parking of vehicles is hereby prohibited at certain times in the following locations:

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ARTICLE VI, Removal and Storage of Vehicles

§ 145-13. Authority to impound vehicles. [Amended 8-22-1994 by L.L. No. 2-1994]

- A. When any vehicle is parked or abandoned on any highway within this Town during a snowstorm, flood, fire or other public emergency which affects that portion of the public highway upon which said vehicle is parked or abandoned, said vehicle may be removed by a member of the Police Department, a member of the Town Highway Department or, at the request of a member of the Police Department, by a tow truck operator who has obtained a permit under the terms of Chapter 140, Tow Trucks.
- B. When any vehicle is found unattended on any highway within this Town where said vehicle constitutes an obstruction to traffic, said vehicle may be removed by a member of the Police Department, a member of the Town Highway Department or, at the request of a member of the Police Department, by a tow truck operator who has obtained a permit under the terms of Chapter 140, Tow Trucks.
- C. When any vehicle is parked or abandoned on any highway within this Town where stopping, standing or parking is prohibited, said vehicle may be removed by a member of the Police Department, a member of the Town Highway Department or, at the request of a member of the Police Department, by a tow truck operator who has obtained a permit under the terms of Chapter 140, Tow Trucks.

§ 145-14. Storage and charges. [Amended 8-22-1994 by L.L. No. 2-1994]

After removal of any vehicle by any person authorized as provided in this article, said

person may store such vehicle in a suitable place at the expense of the owner. Such owner or the person in charge of the vehicle may redeem the same upon payment of the charges therefor.

§ 145-15. Notice of removal.

The person hereinbefore authorized removing the vehicle shall, without delay, report the removal and the disposition of any vehicle removed, as provided in this article, to the Chief of Police, and it shall be the duty of such Chief of Police to ascertain to the extent possible the owner of the vehicle or the person having charge of the same and to notify him of the removal and disposition of such vehicle and of the amount which will be required to redeem the same.

§ 145-16. Delegation of duties by Chief of Police.

Any of the duties of the Chief of Police under this article may be delegated by him to other members of the Police Department of the Town.

ARTICLE VII, Truck Exclusions

§ 145-17. All trucks excluded from certain highways.

All trucks (and/or commercial vehicles and/or tractors and/or tractor-trailer combinations) are hereby excluded from the following highways within this Town:

**Name
of Locati
Street on**

Entire
Brewst length
er in the
Street Hamle
t of
Milton

§ 145-18. Trucks over fifteen tons excluded from certain highways.

Trucks over 15 tons are hereby excluded from the following highways within this Town:

**Name
of Locati
Street on**

Dock Entire
Road length
in the
Hamle
t of
Marlb
oro

Main Entire
Street length
[Adde in the
d 7-13-Hamle
2001 t of
by Milton
L.L.
No. 1-
2001]

North Entire
Road length
[Adde in the
d 7-13-Hamle
2001 t of
by Milton
L.L.
No. 1-
2001]

South From
Road the
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No. 1- Road
2001] southe
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of
State
Route
9W in
the
Hamle
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Milton

§ 145-19. Local deliveries and pickups exempted.

The regulations established in this article shall not be construed to prevent the delivery or pickup of merchandise or other property along the highways from which such vehicles and combinations are otherwise excluded.

ARTICLE VIII, Penalties

§ 145-20. Penalties for offenses.

Every person convicted of an offense against any provision of this chapter which is not a violation of any provision of the Vehicle and Traffic Law of the State of New York shall be guilty of a violation punishable as follows: by a fine of not more than \$250 or by imprisonment for not more than 15 days, or by both such fine and imprisonment.

§ 145-21. Penalties for parking offenses. [Amended 3-25-1996 by L.L. No. 4-1996]

- A. Every person accused of a parking offense in violation of the Vehicle and Traffic Law of the State of New York has the option of appearing in Town Court before the presiding Town Justice or may use the mail by filing the official Town of Marlborough traffic summons and remitting the minimum fine set pursuant to this

section as follows:

	Fine
Offense	
Double parking, blocking driveway, parking over time, parked against traffic, parked in bus stop, no parking or parked on sidewalk	\$20.00
Parked in fire lane	35.00
Blocking fire hydrant or violation of Snow Ordinance	50.00

20.00

Parkin
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vehicle
on a
public
highw
ay that
is
unregi
stered
or
improp
erly
registe
red
display
s
improp
er or
switch
ed
license
plates,
does
not
display
a valid
inspect
ion
sticker,
obstru
cts the
normal
flow of
traffic
or
protru
des
into an
interse
ction

- B. Any vehicle that is found in violation of any of the above parking offenses, after been issued a parking ticket for the same, may be towed at the owner's expense, at the direction of any Town of Marlborough Police or traffic officer.

ARTICLE IX, When Effective

§ 145-22. When effective; approval.

- A. Except those parts, if any, which are subject to approval under § 1684 of the Vehicle and Traffic Law of the State of New York and § 46 of the Highway Law of the State of New York, this chapter shall take effect when filed with the Secretary of State.
- B. Any part or parts of this chapter which are subject to approval under § 1684 of the Vehicle and Traffic Law and § 46 of the Highway Law of the State of New York shall take effect from and after the day on which approval, in writing, is received from both the New York State Department of Transportation and the New York State Department of Public Works.

Chapter 149, WATER

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

ARTICLE I, Water Service Regulations [Adopted 3-28-1977 by L.L. No. 3-1977 as Ch. 111, Art. I]

§ 149-1. Compliance with regulations required. [Amended 11-25-2002 by L.L. No. 7-2002]

It shall be unlawful and subject to the penalties provided for any person to do plumbing work in connection with the Marlborough Water District otherwise than in compliance with the terms and provisions of this article.

§ 149-2. Agents for issuance of permits and inspections. [Amended 11-25-2002 by L.L. No. 7-2002]

The Superintendent of Marlborough Water District shall act as agent for the Town Board in the issuance of permits and the inspection of work.

§ 149-3. Approval required for engaging in installation work.

No plumber or firm shall engage in the installation of services unless and until such person or some member of said firm shall have been approved by the Town Board or the Superintendent of the respective district.

§ 149-4. Application for use of water.

All applications for the use of water from the mains or distribution pipes of either district must be made at the office of the Town Clerk, where a copy of the rules and regulations

will be furnished, together with instructions as to the form prescribed for the purpose. The application shall state truly and fully each particular purpose and manner in which the water is to be used and the name of the plumber or firm selected to do the work and shall be signed by the owner of the premises or his authorized agent.

§ 149-5. Issuance of permit.

The permit may be granted thereupon by the Superintendent of the water district concerned to the plumber or firm designated, who will be recognized as the agent of the owner or applicant.

§ 149-6. Tapping; fees. [Amended 8-28-1978 by L.L. No. 3-1978; 7-11-1983 by L.L. No. 6-1983; 8-22-1994 by L.L. No. 2-1994]

- A. The tapping of water mains or distribution pipes and the furnishing of valves, boxes, curb valves, copper and material needed for restoration of the opening to the water main shall be done by the Marlboro Water District, to be paid for by the applicant for a water supply.
- B. No single tap larger than three-fourths (3/4) inch (inside diameter) will be allowed, except by special permission issued by the Superintendent.
- C. The tapping of a water main or distribution pipe shall be done by the Marlboro Water District as a service to the applicant. Tapping costs are included in the application fee.
- D. The application fee for work performed by the Marlboro Water District in tapping the water main and appurtenances to and including the curb box and valve shall be set at the annual reorganization meeting of the Town Board.^{100EN}
- E. The application fee for work performed by the Marlboro Water District in tapping the water main and appurtenances to and including the curb box and valve, including backhoe services and backfilling, shall be set at the annual reorganization meeting of the Town Board.^{101EN}
- F. When it becomes necessary to cross a Town road to tap a main, the road shall be cut with a saw prior to excavation by a power shovel. Materials acceptable to the Superintendent of Highways shall be used for backfill and compacted as per his specifications. The work for replacing the bituminous wearing course shall be done by the Superintendent of Highways, at his discretion. The fee for highway service shall be set at the annual reorganization meeting of the Town Board.^{102EN}
- G. When it becomes necessary to cross a county road to tap a main, a permit shall be obtained from the Ulster County Highway Department. In the event that the permit requires boring under the county road, the applicant shall contract for the services of a private contractor, the costs to be borne by the applicant.

§ 149-7. Distribution of water to be independent of other systems.

Any water supply taken from the districts' system shall be distributed through a piping system entirely independent of any system conveying another water supply.

§ 149-8. Size of water supply pipes; fittings, valves and joints. [Amended 8-22-1994

by L.L. No. 2-1994]

- A. The minimum size of water service pipes from the curb to the meter shall be three-fourths-inch and the maximum size shall be two-inch copper service Type K tubing and brass fittings and valves. All joints between the main and the meter shall be flared, or a compression fitting approved by the Water Superintendent may be used.
- B. Connections above two inches are to be of ductile iron and shall conform to the standards of water mains for each district.
- C. Where a tap to an existing water main will serve more than one metered user, either existing or planned, and any user is more than 200 feet from the existing water main, there shall be installed a main, which specifications shall be determined by the Water Superintendent. If the tap is part of a site plan or subdivision review by the Town Planning Board, the Water Superintendent shall review said plans and provide specifications prior to final approval of said plans. [Added 11-25-2002 by L.L. No. 7-2002]
- D. The requirements of Subsection C may be waived or varied for cause with the mutual consent of the Water Superintendent, the Planning Board if the tap is part of a site plan or subdivision and the Town Board. [Added 11-25-2002 by L.L. No. 7-2002]

§ 149-9. Tapping notice.

A plumber receiving a permit to lay service or supply pipes for the introduction of water to any premises shall give the Superintendent 24 hours' notice previous to the time for tapping the main.

§ 149-10. Owner responsible for expenses.

All expenses for introducing water to any premises and excavating for and laying service pipes and all fixtures connected therewith (except the corporation cock at the main which belongs to the water district) must be paid by the owner of the premises.

§ 149-11. Placement of service pipes.

- A. All service pipes to any premises shall be laid at least four feet below the surface of the grade lines of the street and shall extend at right angles to and from the street main to the inside of the curblines, where a curb cock shall be attached and a valve box placed.
- B. There shall be a stainless steel ball valve placed on every supply pipe just inside the building or cellar and on the customer's side of the meter. [Amended 8-22-1994 by L.L. No. 2-1994]

§ 149-12. Supervision of introduction of water service.

All work attendant upon the introduction of water to any premises and laying supply pipes thereto and fixtures connected therewith shall be done under the supervision of the Superintendent of the water district involved and subject to his approval.

§ 149-13. Report upon completion of work.

All plumbers shall, after completing the work to any service pipe or fixture, make a true report, upon blanks furnished by the district, of all the fixtures and pipes attached or connected by them or under their supervision, and such report shall be filed in the office of the Town Clerk within forty-eight (48) hours after completing the work.

§ 149-14. Permits required.

- A. No plumber shall make any addition, alteration, attachment or extension to any water supply or service pipe or service side of meter on any premises until a permit is granted upon an application made and signed by the owner of the premises, as provided in §§ 149-4 and 149-5.
- B. No plumber or other person shall open any curb cock or let on the supply of water through any water main or service pipe. Only the Water Superintendent or other authorized water district personnel may open a water main, curb cock or other service pipe. [Amended 1-23-1995 by L.L. No. 1-1995]

§ 149-15. Independent stops required for each house.

One tap and one service pipe will not be allowed to supply more than one house or premises, unless such service pipe is provided with separate and independent curb stops and boxes at the curblin in front of each house or premises. In no case will service pipes be allowed to run across lots, but must be taken from the main in front of the premises. Any exception to this regulation must receive the approval of the Town Board.

§ 149-16. Shutting off water supply generally.

- A. The supply of water to any premises may be shut off for nonpayment if any bills or other charges are unpaid at the expiration of 60 days from the date due. The Superintendent shall give such delinquent five (5) days' written or printed notice, at the expiration of which time, if the charges are not paid, the water will be shut off from such premises until said charges are paid in full. The amount set by resolution of the Town Board shall be charged for turning the water on. [Amended 8-22-1994 by L.L. No. 2-1994]^{103EN}
- B. The payment of the regular water rents shall not conflict with the right of the Superintendent to shut off the supply of water from any premises for any violation of these rules and regulations.
- C. In case a house or other building is to be closed or become vacant, notice thereof shall be given to the district in order that the meter may be read and the curb cock closed. Where such notice is not given and pipes burst from freezing or other cause, the value of the water lost by reason thereof, as estimated by the Superintendent, together with an additional sum in an amount set by resolution of the Town Board to cover labor and expense to the district, shall be added to the next bill and paid in like manner as regular water charges. [Amended 8-22-1994 by L.L. No. 2-1994]^{104EN}

§ 149-17. Shutting off water supply at main.

In cases where water is shut off for nonpayment of water rent or other causes and when, in the opinion of the Superintendent, the shutting off at the curb is not sufficient protection against the further use of water, he may cause the corporation cock to be shut off and the supply pipe to be disconnected therefrom.

§ 149-18. Reapplication for service; fee. [Amended 8-22-1994 by L.L. No. 2-1994]^{105EN}

Upon reapplication for water where the water has been shut off at the corporation cock, an additional charge in an amount set by resolution of the Town Board must be paid for opening the street main and reconnecting the supply line.

§ 149-19. Stoppage of supply; pressure-reducing valves.

No person shall be entitled to damages nor to have any portion of a payment refunded for any stoppage of supply occasioned by accident to any portion of the work, nor for any stoppage for purposes of addition or repairs. Owners desiring pressure-reducing valves shall furnish and install the same at their own expense. The Superintendent of each district shall have the right to shut off water to make repairs or additions of new work.

§ 149-20. Check valves.

- A. In all cases where water is supplied to water backs in stoves and ranges or to steam boilers for domestic use or manufacturing purposes, the supply pipe must be provided with a suitable check valve or other sufficient device to prevent any damage from collapse or explosion when the water is shut off from the street mains or other causes.
- B. Whenever a check valve is installed on the cold water supply pipe between the street main and the hot water tank, there shall be installed on the hot water distributing system a suitable relief valve.
- C. High-pressure steam boilers shall not be supplied with water directly from public water supply pipes. All such boilers shall be provided with a tank or other receptacle of sufficient capacity to hold not less than six hours' supply for the boiler.

§ 149-21. Use in public buildings.

The use of water in all public and school buildings shall be subject to the same requirements and restrictions as in private dwellings.

§ 149-22. Fire hydrants and valves.

- A. No person or persons shall open any fire hydrant or draw water therefrom except the Superintendents of each district and persons under their direction or with their permission, except in case of fire, when the Chiefs of the Fire Departments, their assistants and officers and members of the Fire Departments shall have free and entire control of the hydrants for the purpose of extinguishing fires.

- B. No person or persons except the Superintendents or employees under their direction shall open or close any valve or gate in any water main or street pipe or in any manner interfere with or obstruct the same.

§ 149-23. Permits for building and special purposes.

Persons desiring to use water for building purposes, filling cisterns or any special purpose whatever shall be required to make application at the office of the Town Clerk and to pay in advance for the same, when the Superintendent of the district involved will issue a permit therefor, such advance payment to be the minimum charge as fixed by § 149-28.

§ 149-24. Meters.

- A. The plumber making the water main installation shall provide all necessary supports for the meter, as directed by the Water Superintendent. Any meter so attached shall not be interfered with, removed, disconnected or repaired by any person other than an employee of the Marlborough Water District. The Superintendent shall be given not less than 24 hours' notice of the setting of the meter. [Amended 1-23-1995 by L.L. No. 1-1995]
- B. Owners of premises where meters are attached to the supply pipes will be required to protect the meter from frost or other injury at their own expense, and whenever it should be necessary to attach a meter outside of the building, they shall pay the expense incurred in excavating for and boxing the same. Any cost of repairs necessitated by failure to observe this section shall be born solely by the owner(s) of the premises.
- C. Where a meter fails to register the correct quantity of water delivered through it or where it becomes otherwise out of order or in need of repair, notice thereof shall be given to the district. Another meter will then be loaned and installed during the time required for testing and repair. When repairs are found necessary, the same shall be made by the district. When, in the opinion of the Superintendent of the district, a meter becomes unsuitable for further use, it shall be replaced by another.

§ 149-25. Districts to be saved harmless; protection of excavations; surety bond.

- A. Any plumber or firm obtaining a permit to make connections with the Marlboro Water District and/or the Milton Water District shall save harmless said districts from all suits, accidents and damages consequential thereupon for or by reason of any opening in any street, alley or avenue made by him or those in his employ, for making any connection with said water districts' system or for any other purpose or object whatever, and he shall also replace and restore said street over such opening in as good state and condition as he found it or reimburse the water district for the cost of the same when done by said district or shall keep guards by day and light by night and keep and maintain the same in good order and comply with all ordinances of the Town Board applicable thereto.
- B. Every plumber or firm, before entering upon said business or calling, shall execute and file a bond in the office of the Town Clerk in the sum of \$50,000 with one or more sureties, and which bond shall cover all provisions of the preceding subsection

and shall be approved by the Town Board as to sufficiency of the sureties and by the districts' counsel as to its form. [Amended 8-22-1994 by L.L. No. 2-1994]

§ 149-26. Regulations to be considered part of contract with user.

All the foregoing rules, regulations and restrictions made and adopted by the Town Board shall be considered a part of the contract with and between any person who applies for and obtains a supply of water, and every person receiving the water so supplied shall be considered as having expressed his consent to be bound thereby.

§ 149-27. Penalties for offenses.

- A. Any person committing an offense against any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.
- B. Any willful act whereby said Marlboro Water District or said Milton Water District or any property, apparatus or appliances pertaining thereto shall be injured or the supply of water obstructed, impaired or made less pure shall be deemed a misdemeanor punishable by the maximum fine and imprisonment allowed by law. [Amended 8-22-1994 by L.L. No. 2-1994]

§ 149-28. Schedule of water rates: Marlboro Water District.

- A. Meters will be read semiannually on a schedule to be set at the annual Town reorganization meeting. [Amended 7-11-1983 by L.L. No. 6-1983; 11-25-2002 by L.L. No. 7-2002]
- B. Rates. [Amended 7-11-1983 by L.L. No. 6-1983]
 - (1) The minimum rate shall be ten dollars (\$10.) semiannually, payable as set forth in § 149-29. [Amended 8-22-1994 by L.L. No. 2-1994]
 - (2) The rate shall be determined by dividing the operating and maintenance budget for the current fiscal year by the total number of gallons billed during the previous fiscal year, expressed in cost per thousand.
- C. No out-of-district users will be allowed to tap on the water mains or pipes of the Marlboro Water District following the adoption of this chapter.^{106EN}

§ 149-29. Payment of water rents.

- A. All water rents or other charges shall be payable at the office of the Town Clerk semiannually.
- B. All water rents, accounts or other charges shall be made against the owner or owners of the premises which are connected with the water main, and such owners shall be held responsible for all accounts and charges.
- C. Water rents for all services shall be payable semiannually on a schedule to be set at the annual Town reorganization meeting. [Added 11-25-2002 by L.L. No. 7-2002]
- D. Ten percent (10%) will be added to bills which are unpaid after the due date listed on

- the bill or after thirty (30) days, whichever the latter. [Amended 3-9-1992^{107EN}]
- E. Water rents for fractional parts of a period shall be prorated for the remainder of the period and shall be payable on the first day of the ensuing semiannual period.
- F. The foregoing schedule of rates is subject to change from time to time by resolution of the Town Board.^{108EN}

§ 149-30. Backflow prevention devices. ^{109EN}

Backflow prevention devices shall be required on all water taps in the Marlboro Water District in compliance with the Town's specifications on file in the Town offices.

§ 149-31. Cross-connection control. ^{110EN}

A. Purpose. The purpose of this section is to:

- (1) Protect the public potable water supply of the Town of Marlborough from the possibility of contamination or pollution by isolating within the consumer internal distribution system(s) or the consumer private water system(s) such contaminants or pollutants that could backflow into the public water system.
- (2) Comply with the requirements of the New York State Sanitary Code, Subpart 5-1, Section 5-1.31.

B. Definitions.

(1) As used in this section, the following terms shall have the meanings indicated:

AIR GAP SEPARATION -- A physical break between a supply pipe and a receiving vessel. The air gap shall be at least double the diameter of the supply pipe, measured vertically above the top rim of the vessel, and in no case less than one (1) inch.

APPROVED DOUBLE CHECK VALVE ASSEMBLY -- An assembly of at least two (2) independently acting approved single check valves, including tightly closing shutoff valves on each side of the check valve assembly and suitable test cocks, plus connections available for testing the watertightness of each valve (Watts No. 007 or equal).

APPROVED REDUCED-PRESSURE PRINCIPAL BACKFLOW PREVENTION DEVICE (RPZ) -- A device incorporating two (2) or more single check valves and an automatically operating differential relief valve located between the two (2) checks and two (2) shutoff valves and equipped with necessary appurtenances for testing (Watts No. 009 or equal). The device shall operate to maintain the pressure in the zone between the two (2) check valves less than the pressure on the public water supply side of the device. At cessation of normal flow, the pressure between the check shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve shall operate to maintain this reduced pressure by discharging to the atmosphere. When the inlet pressure is two (2) pounds per square inch or less, the relief valve shall open to the atmosphere, thereby providing an air gap in the device. To be approved, these devices must be readily accessible for maintenance and testing and installed in a location where no part of the device will be destroyed.

APPROVED WATER SUPPLY -- Any water supply approved by or under the public health supervision of the public health agency of the State of New York, the County of Ulster or the Town of Marlborough. In determining what constitutes an "approved water supply," the Department of Health of the State of New York (herein called the "State

Health Department") shall have the final judgment as to its safety and potability.

AUXILIARY WATER SUPPLY -- Any water supply on or available to the premises other than the Town water supply.

BACKFLOW -- A flow condition, induced by a differential in pressure, that causes the flow of water or other liquids and/or gases into the distribution pipes of the public water supply from any source other than its intended source.

CONSUMER -- Any person to whom water is sold and/or furnished from the Town of Marlborough.

CONTAMINATION -- An impairment of the quality of the Town water supply by the presence of any foreign substance (organic, inorganic, radiological or biological) to a degree which creates a hazard to the public health.

COUNTY HEALTH DEPARTMENT -- The Ulster County Commissioner of Health, his assistants or authorized deputies acting as or any other person appointed as health officer of the County of Ulster.

CROSS-CONNECTION -- Any unprotected connection between any part of the Town waterworks system used or intended to supply water for drinking purposes and any source or system containing water or substance that is not or cannot be approved as safe, wholesome and potable for human consumption.

NONTOXIC SUBSTANCE -- Any substance of a nonpoisonous nature that may create a moderate or minor hazard to the water supply system.

PERSON -- Any natural person, firm, association, organization, partnership, trust or association of persons, joint venture, corporation or company, and includes the United States, the State of New York, the County of Ulster, any special purpose district and any officer or agent thereof.

PREMISES -- Integrated land area, including improvements thereon, undivided by public thoroughfares or water distribution mains of the Town of Marlborough and where all parts of the "premises" are operated under the same management and for the same purpose.

PROTECTIVE DEVICE -- Any of the following devices:

- (a) Air gap separation.
- (b) Approved reduced-pressure principal backflow prevention device (RPZ).
- (c) Approved double check valve assembly.
- (d) Approved single check valve.

SERVICE CONNECTION -- The terminal end of a service connection from the Town water supply to its point of delivery to the consumer. If a meter is installed, "service connection" means the downstream end of the meter. No unprotected takeoffs from the service line ahead of any meter or backflow protective device located at the point of delivery to the consumer shall be permitted.

SUPPLIER OF WATER -- The Town of Marlborough or its authorized representatives.

TOWN -- The Town of Marlborough.

TOWN WATER SUPPLY -- An approved water supply sold and delivered to consumers' premises through the waterworks system of the Town of Marlborough.

TOXIC SUBSTANCE -- Any substance (liquid, solid or gaseous), including raw sewage and lethal substances, that, when introduced into the water supply system, create or may create a danger to the health and well-being of the consumer.

WATER BOARD -- The Marlborough Town Board.

(2) "Shall" is mandatory; "may" is permissive.

C. Responsibility.

- (1) The supplier of water shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow of contaminants or pollutants through the water service connection. If, in the judgment of said supplier of water, an approved backflow prevention assembly is required at the consumer's water service connection or within the consumer's private water system for the safety of the water system, the supplier of water shall give notice, in writing, to said customer to install such an approved backflow prevention assembly(s) at specific locations on his/her premises. The consumer shall obtain a New York State application for approval of backflow prevention devices (DOH-347) and the specifications for the installation of backflow preventers from the supplier of water. Upon approval, the consumer must immediately install such approved assembly(s) at his/her own expense, and failure, refusal or inability on the part of the consumer to install, have tested (by a certified tester) and maintain said assembly(s) shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met.
- (2) Consumer responsibility. It shall be the responsibility of each consumer, at his/her own expense, to furnish, install and keep in good working order and safe condition any and all protective devices required in this section. The supplier of water shall not be responsible for any loss or damage directly or indirectly resulting from or caused by the improper or negligent installation, operation, use, repair or maintenance of or interfering with any protective device by any consumer or any other person.
- (3) Conflicts. When two (2) or more corrective conditions exist (i.e., hazardous, aesthetically objectionable or nonhazardous) at any premises under this section, the consumer shall be required only to install the protective device which, in the opinion of the supplier of water and the County Health Department, affords the maximum protection to the Town water supply.
- (4) Inspection, records, cost. The consumer on whose premises any protective device is installed shall have each such device inspected at least annually. This device must be tested only by a certified backflow device tester and maintained as prescribed in the State Sanitary Code 5-1.31. If successive inspections disclose repeated failures in the operation of any device, the supplier of water may require more frequent inspection. Each device shall be repaired, overhauled or replaced at the expense of the consumer whenever it is found to be defective. Records of such tests, repairs and overhauls shall be kept and a copy of such records forwarded to the supplier of water on an annual basis. The supplier of water shall have the duty of determining that the inspections required herein are performed properly. If, following demand, the consumer fails to have any of the inspections made, as required herein, or to make the above-described records available, the supplier of water will have the right to inspect the device, and the consumer shall pay the cost thereof. The cost of any inspection made by the supplier of water shall be included as part of the next ensuing municipal water bill presented to the customer.

- (5) Maintenance. Any defective backflow prevention device should be immediately repaired or replaced. The supplier of water should be notified of all corrective repairs. The consumer should be required to keep an inspection log and a formal record in a manner and frequency acceptable to the supplier of water. A simplified form combining testing and maintenance data is titled "Report on Test and Maintenance of Backflow Prevention Device" (DOH-1013) and can be acquired from the supplier of water or the County Health Department. General maintenance inspections should check for protection from freezing, continued accessibility and adequate drainage provision (if required). The backflow prevention device shall be disassembled and overhauled every five (5) years.

D. Noncompliance.

- (1) No questionable service connection shall be installed on the premises of any consumer unless the public water supply is protected as required by this section.
- (2) Delivery of water to the premises of any consumer may be discontinued by the supplier of water if any protective device required by this section has not been installed, inspected, tested and maintained or is defective or has been bypassed.
- (3) Delivery of water shall be discontinued immediately and without notice to the consumer if the supplier of water or the County Health Department determines that:
 - (a) The Town water supply is being contaminated or is in immediate danger of contamination.
 - (b) A protective device required by this section has not been installed or is defective or has been removed or bypassed.
 - (c) The consumer cannot immediately be located.
- (4) Delivery of water shall not be resumed until any protective device required by this section is approved by the supplier of water and the County Health Department and has been properly installed or until conditions at the consumer's premises causing the contamination or danger of contamination have been abated or corrected to the satisfaction of the supplier of water and the County Health Department.
- (5) Except as provided in Subsection D(3), delivery of water shall not be discontinued until written notice thereof has been given to the consumer. The notice shall state:
 - (a) The conditions of the defects which must be corrected.
 - (b) The manner in which the stated conditions or defects are to be corrected.
 - (c) The date on or after which delivery of water will be discontinued and which shall not be less than fifteen (15) days nor more than ninety (90) days following the date of delivery of the mailing of notice. The Town may grant the consumer an extension of an additional period not to exceed ninety (90) days if it determines that the consumer has exercised due diligence but has been unable to comply with the notice within the time originally allowed. The notice shall be given by delivering the same to the consumer, the manager or agent thereof or to any person in charge of or employed in the place of business of the consumer or, if the consumer has no place of business, at the place of residence of the consumer, if known, or by leaving the notice at either the place of business or the residence of the consumer. If

the consumer cannot be found, then service of the notice shall be mailed, postage fully prepaid, addressed to the consumer at the place of business or residence set forth in the application of the consumer for water service in the records of the Town.

- (6) Once disconnected, delivery of water shall not be resumed until any protective device required by this section is approved by the supplier of water and the County Health Department and has been properly installed or until the conditions at the consumers premises creating the need for a protective device have been abated or corrected to the satisfaction of the supplier of water and the County Health Department.
 - (7) For the purpose of making any inspection or discharging the duties imposed by this section, the supplier of water and the County Health Department shall have the right to enter upon the premises of any consumer. Each consumer, as a condition of the continued delivery of water from the Town water supply, shall be considered as having stated consent to enter upon premises by the supplier of water and the County Health Department officer for the purposes stated herein.
- E. Presently installed devices. All presently installed backflow prevention devices which do not meet the requirements of this section but were approved devices for the purpose described herein at the time of installation and which have been properly maintained shall, except for the inspection and maintenance requirements under Subsection C(5), be excluded from the requirements of these rules so long as the Town is assured that they will satisfactorily protect the Town's water supply. Whenever the existing device is moved from the present location or requires more than minimum maintenance (which constitutes a hazard to health), the unit shall be replaced by a backflow prevention device meeting the requirements of this section.
- F. Where protection required; type of protection.
- (1) Auxiliary water supply. Each service connection from the Town water supply for furnishing water to a premises having an auxiliary water supply shall be protected against backflow of water from the premises into the Town water supply.
 - (a) If the auxiliary water supply is handled in a separate piping system with no known cross-connection, the Town water supply shall be protected by an approved double check valve assembly installed at the service connection to the premises. When the auxiliary water supply may be contaminated, the supplier of water may order the Town water supply protected by an air gap separation or an approved RPZ installed at the service connection.
 - (b) If the auxiliary water supply is handled in a separate piping system and cross-connections are known to exist between the Town water supply and the auxiliary water supply which cannot presently be eliminated, the Town water supply shall be protected by an approved RPZ installed at the service connection to the premises. When the auxiliary water supply may be contaminated, the supplier of water may order the Town water supply protected by an air gap separation (or approved RPZ) installed at the service connection.
 - (2) Toxic or hazardous substance under pressure. At the service connection to any premises on which material dangerous to health or toxic substance in toxic

concentration is or may be handled under pressure, the Town water supply shall be protected by an air gap separation. The air gap shall be located as close as practicable to the service connection and all piping between the service connection and the receiving tank shall be entirely visible. If these conditions cannot be reasonably met, the Town water supply shall be protected with an approved RPZ, provided that this alternative is acceptable to both the supplier of water and the County Health Department. A final decision in this matter shall be made by the State Health Department.

- (3) Toxic or hazardous substances not under pressure. At the service connection to any premises on which any material dangerous to health or toxic substance in toxic concentration is not handled under pressure but is otherwise handled in such manner as to constitute a cross-connection, the Town water supply shall be protected by an approved RPZ, unless such cross-connection is abated to the satisfaction of the supplier of water and approved by the County Health Department.
- (4) Nonhazardous substances. At the service connection to any premises on which a substance that would be objectionable (but not necessarily hazardous to health) if introduced into the Town water supply is handled in such a manner as to constitute a cross-connection, the Town water supply shall be protected by an approved double check valve assembly.
- (5) Sewage and storm drain treatment plants and pumping stations. At the service connection to any sewage treatment plant or sewage pumping station, the Town water supply shall be protected by an air gap separation. The air gap shall be located as close as practicable to the service connection and all piping between the service connection and the receiving tank shall be entirely visible. If these conditions cannot be reasonably met, the Town water supply shall be protected with an approved RPZ, provided that this alternative is acceptable to both the supplier of water and the County Health Department. A final decision in this matter shall be made by the State Health Department.
- (6) Fire systems. At the service connection to any premises in which a fire protection system is installed, the Town water supply shall be protected based on the water source and arrangement of supplies in accordance with the following classifications:
 - (a) Class 1: direct connection from public water mains only; no pumps, tanks or reservoirs; no physical connections from auxiliary sources of any kind; all sprinkler drains discharging to atmosphere, dry wells or other outlets. Protection: none other than the check valve required by the National Fire Code.
 - (b) Class 2: the same as Class 1, except booster pumps may be installed in the connections from the street mains. Protection: none other than the check valve required by the National Fire Code.
 - (c) Class 3: direct connection from public water supply main, plus one (1) or more of the following: elevated storage tank; fire pumps taking suction from aboveground covered reservoirs or tanks; and pressure tanks. Protection: double check valve assembly.
 - (d) Class 4: directly supplied from public mains similar to Classes 1 and 2 and

- with an auxiliary water supply on or available to the premises; or an auxiliary supply may be located within one thousand seven hundred (1,700) feet of the pumper connection. Protection: air gap or RPZ.
- (e) Class 5: directly supplied from public mains and interconnected with auxiliary supplies, such as pumps taking suction from reservoirs exposed to contamination, or rivers and ponds; driven wells; mills or other industrial water systems; or where antifreeze or other additives are used. Protection: air gap or RPZ.
 - (f) Class 6: combined industrial and fire protection systems supplied from the public water mains only, with or without gravity storage or pump suction tanks. Protection: determined by the supplier of water upon review of engineering drawings of the system.
- (7) Pier and dock hydrants. At the service connection to any pier or dock hydrant used for supplying vessels at piers or waterfronts, the Town water supply shall be protected by an approved RPZ.
 - (8) Lawn sprinkling systems. At the service connection to any permanently installed, below-grade lawn sprinkling system, the Town water supply shall be protected by an approved RPZ assembly.
 - (9) Others. Examples of other facilities which may require cross-connection control include, but are not limited to:
 - (a) Beverage bottling plants.
 - (b) Breweries.
 - (c) Food processing plants.
 - (d) Chemical plants and plating facilities.
 - (e) Film laboratories.
 - (f) Hospitals, medical buildings, sanitariums, morgues and mortuaries.
 - (g) Irrigation systems.
 - (h) Laundries and dye works.
 - (i) Meat packing plants.
 - (j) Metal manufacturing, cleaning and fabricating plants.
 - (k) Radioactive materials production or research plants.
 - (l) Restricted, classified or other facilities closed to inspection.
 - (m) Sewage and storm drain facilities.
 - (n) Buildings heated by boilers where treatment chemicals are used.
 - (o) Buildings with certain types of air-conditioning systems.
 - (p) Swimming pools.
 - (q) Printing operations.
 - (r) Furniture stripping.

**ARTICLE II, Restrictions on Water Consumption [Adopted 3-23-1981 as
L.L. No. 1-1981]**

§ 149-32. Effect of New York City restrictions upon Town consumption.

Whenever, for conservation purposes, restrictions are imposed by the New York City Department of Water Resources upon the consumption of water by consumers within the City of New York, the same restrictions or restrictions of like effect which have been approved by the Commissioner of the New York City Department of Water Resources shall be imposed and enforced by the district upon the consumption of water by consumers within the Marlboro Water District.

§ 149-33. Declaration of public emergency.

The Town Board shall, by resolution, restate said restrictions placed in effect by the New York City Department of Water Resources and declare a public emergency.

§ 149-34. Posting and publication of regulations.

All regulations and orders authorized by this Article shall be promulgated by posting copies of such orders and regulations on the official bulletin board of the Town of Marlborough and by publishing a copy of such orders and regulations once each week in an official newspaper of the Town during the existence of such emergency water conditions.

§ 149-35. Penalties for offenses.

Any person committing an offense against any provision of this Article shall, upon conviction thereof, be punishable as provided in § 149-27 of this chapter.

Chapter 152, WIRELESS TELECOMMUNICATIONS FACILITIES

[HISTORY: Adopted by the Town Board of the Town of Marlborough 12-10-2001 by L.L. No. 6-2001. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction -- See Ch. 67.

Zoning -- See Ch. 155.

§ 152-1. Purpose and legislative intent.

The Telecommunications Act of 1996 affirmed the Town of Marlborough's authority concerning the placement, construction and modification of wireless telecommunications facilities. The Town Board of the Town of Marlborough finds that wireless telecommunications facilities may pose a unique hazard to the health, safety, public welfare and environment of the Town of Marlborough and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to ensure that the placement, construction or modification of wireless telecommunications facilities is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, wireless telecommunications facilities application and

permit process. The intent of this chapter is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated comprehensive review of environmental impacts of such facilities and protect the health, safety and welfare of the Town of Marlborough.

§ 152-2. Title.

This chapter shall be known and cited as the "Wireless Telecommunications Facilities Regulations for the Town of Marlborough."

§ 152-3. Severability.

- A. If any word, phrase, sentence, part, section, subsection or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
- B. Any special use permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total.

§ 152-4. Definitions.

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

ACCESSORY FACILITY OR STRUCTURE -- An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities and located on the same property or lot as the wireless telecommunications facilities, including, but not limited to, utility or transmission equipment storage sheds or cabinets.

APPLICANT -- Any person submitting an application to the Town of Marlborough for a special use permit for wireless telecommunications facilities.

APPLICATION -- The form approved by the Board, together with all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

ANTENNA -- A system of electrical conductors that transmits or receives electromagnetic waves or radio frequency signals. Such waves shall include but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS) and microwave telecommunications.

BOARD -- The Planning Board of the Town of Marlborough.

COLLOCATION -- The use of the same telecommunications tower or structure to carry two or more antennas for the provision of wireless services by two or more persons or entities.

COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE -- The meaning in this chapter and any special use permit granted hereunder as is defined and applied under the New York Uniform Commercial Code (UCC).

COMPLETED APPLICATION -- An application that contains all information and/or data necessary to enable the Board to evaluate the merits of the application and to make an informed decision with respect to the effect and impact of wireless telecommunications facilities on the Town in the context of the permitted land use for the particular location requested.

DIRECT-TO-HOME SATELLITE SERVICES or DIRECT BROADCAST SERVICE or DBS -- Only programming transmitted or broadcast by satellite directly to subscribers, premises without the use of ground receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.

EAF -- The environmental assessment form approved by the New York Department of Environmental Conservation (Appendix A to 6 NYCRR 617.20) and includes a visual EAF addendum (Appendix B).

EPA -- State and/or federal Environmental Protection Agency, or its duly assigned successor agency.

FAA -- The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC -- The Federal Communications Commission, or its duly designated and authorized successor agency.

FREESTANDING TOWER -- A tower that is not supported by guy wires and ground anchors or other means of attached or external support.

HEIGHT -- When referring to a tower or structure, the distance measured from the preexisting grade level to the highest point on the tower or structure, even if said highest point is an antenna.

NIER -- Nonionizing electromagnetic radiation.

PERSON -- Any individual, corporation, estate, trust, partnership, joint-stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS FACILITY -- See "wireless telecommunications facilities."

PERSONAL WIRELESS SERVICES or PWS or PERSONAL

TELECOMMUNICATIONS SERVICE or PCS -- The same meaning as defined and used in the 1996 Telecommunications Act.

SPECIAL USE PERMIT -- The official document or permit by which an applicant is allowed to construct and use wireless telecommunications facilities as granted or issued by the town.

STATE -- The State of New York.

TELECOMMUNICATIONS -- The transmission and reception of audio, video, data and other information by wire, radio frequency, light and other electronic or electromagnetic systems.

TELECOMMUNICATIONS SITE -- See "wireless telecommunications facilities."

TELECOMMUNICATIONS STRUCTURE -- A structure used in the provision of services described in the definition of "wireless telecommunications facilities."

TEMPORARY -- In relation to all aspects and components of this chapter, something intended to, or that does, exist for fewer than 90 days.

TOWN -- The Town of Marlborough, Ulster County, New York.

WIRELESS TELECOMMUNICATIONS FACILITIES or TELECOMMUNICATIONS TOWER or TELECOMMUNICATIONS SITE or PERSONAL WIRELESS FACILITY -- A structure, facility or location designed, or intended to be used as, or used to support, antennas. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures that employ camouflage technology, including but not limited to structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services or microwave telecommunications, but excluding those used exclusively for the town's fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

§ 152-5. Overall policy and desired goals for special use permits.

In order to ensure that the placement, construction and modification of wireless telecommunications facilities protects the town's health, safety, public welfare, environmental features and other aspects of the quality of life specifically listed elsewhere in this chapter, the Town Board hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities.
- B. Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent.
- C. Establishing reasonable time frames for granting or not granting a special use permit for wireless telecommunications facilities, or recertifying or not recertifying, or revoking the special use permit granted under this chapter.
- D. Promoting and encouraging, wherever possible, the sharing and/or collocation of wireless telecommunications facilities among service providers.
- E. Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner as to minimize adverse aesthetic impacts to the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities.

§ 152-6. Special use permit application and other requirements.

- A. All applicants for a special use permit for wireless telecommunications facilities, or any modification of such facility, shall comply with the requirements set forth in this section. The Board is the officially designated agency or body of the community to whom applications for a special use permit for wireless telecommunications facilities must be made, and that is authorized to review, analyze, evaluate and make decisions

with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities. The Board may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for wireless telecommunications facilities.

- B. An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- C. Applications not meeting the requirements stated herein, or which are otherwise incomplete, may be rejected by the Board.
- D. The applicant shall include a statement in writing that:
 - (1) The applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the Board in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.
 - (2) The construction of the wireless telecommunications facilities is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.
- E. No wireless telecommunications facilities shall be installed or constructed until the site plan is reviewed and approved by the Board and the special use permit has been issued.
- F. All applications for the construction or installation of new wireless telecommunications facilities shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the state. Where this section calls for certifications, such certification shall be by a qualified New York State licensed professional engineer, unless otherwise noted. The application shall include, in addition to the other requirements for the special use permit, the following information.
 - (1) Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily within the Town.
 - (2) Name, address and phone number of the person preparing the report.
 - (3) Name, address and phone number of the property owner, operator and applicant.
 - (4) Postal address and Tax Map parcel number of the property.
 - (5) Zoning district or designation in which the property is situated.
 - (6) Size of the property stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines.
 - (7) Location of nearest residential structure.
 - (8) Location of nearest habitable structure.

- (9) Location, size and height of all structures on the property which is the subject of the application.
 - (10) Location, size and height of all proposed and existing antennas and all appurtenant structures.
 - (11) Type, locations and dimensions of all proposed and existing landscaping and fencing.
 - (12) The number, type and design of the telecommunications tower(s) antenna(s) proposed and the basis for the calculations of the telecommunications tower's capacity to accommodate multiple users.
 - (13) The make, model and manufacturer of the tower and antenna(s). Only monopole towers shall be permitted within the Town of Marlborough.
 - (14) A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.
 - (15) The frequency, modulation and class of service of radio or other transmitting equipment.
 - (16) Transmission and maximum effective radiated power of the antenna(s).
 - (17) Direction of maximum lobes and associated radiation of the antenna(s).
 - (18) Applicant's proposed tower maintenance and inspection procedures and related system of records.
 - (19) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
 - (20) Certification that the proposed antenna(s) will not cause interference with existing telecommunications devices, though the certifying engineer need not be approved by the Town.
 - (21) A copy of the FCC license applicable for the use of wireless telecommunications facilities.
 - (22) Certification that a topographic and geomorphologic study and analysis has been conducted, and that, taking into account the subsurface and substrate, and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site, though the certifying engineer need not be approved by the Town.
 - (23) Propagation studies of the proposed site and all adjoining proposed, in-service or existing sites.
 - (24) Applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new telecommunications tower that it constructs
- G. In the case of a new telecommunications tower, the applicant shall be required to submit a written report demonstrating its efforts to secure municipal use or shared use of existing telecommunications tower(s) or use of existing buildings or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Board.
- H. The applicant shall furnish written certification that the telecommunications facility, foundation and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the wireless facility is subsequently approved and constructed, as-built

certification indicating that the facility has been constructed in accordance with all standards shall be furnished prior to the Town prior to issuance of any certificate of occupancy or compliance.

- I. After construction and prior to receiving a certificate of compliance, the applicant shall furnish written certification that the wireless telecommunications facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- J. The applicant shall submit a completed long-form EAF and a completed visual EAF addendum. Based on the results of the visual EAF addendum, the Board may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the preapplication meeting.
- K. The applicant shall furnish a visual impact assessment which shall include:
 - (1) A Zone of Visibility Map which shall be provided in order to determine locations where the tower may be seen.
 - (2) Pictorial representations of "before" and "after" views from key viewpoints both inside and outside of the Town, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Board, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites.
- L. Any and all representations made by the applicant to the Board, on the record, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Board.
- M. The applicant shall, in a manner approved by the Board, demonstrate and provide in writing and/or by drawing how it shall effectively screen from view its proposed wireless telecommunications facilities base and all related facilities and structures.
- N. All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The Board may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Board, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area.
- O. All wireless telecommunications facilities shall contain a demonstration that the facility be sited so as to have the least adverse visual effect on the environment and its character, on existing vegetation and on the residences in the area of the wireless telecommunications facilities sites.
- P. Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.
- Q. At a telecommunications site, an access road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall

closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

- R. A person who holds a special use permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, country, state or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- S. A holder of a special use permit granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- T. With respect to this application process, the Board intends to be the lead agency, pursuant to SEQRA. The Board shall conduct an environmental review of the proposed project in combination with its review of the application under this chapter.
- U. An applicant shall submit to the Clerk of the Board 10 copies of the completed application and any supporting documentation. A notification of the application shall be provided to the legislative body of all adjacent municipalities and to the County Planning Department if determined to be necessary, based upon the proposed location of the structure. Additional copies may be required for evaluation to other agencies.
- V. The applicant shall examine the feasibility of designing a proposed telecommunications tower to accommodate future demand for at least two additional commercial applications, for example, future collocations. The scope of this examination shall be determined by the Board. The telecommunications tower shall be structurally designed to accommodate at least two additional antenna arrays equal to those of the applicant and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provision of future shared usage of the telecommunications tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
 - (1) The foreseeable number of FCC licenses available for the area.
 - (2) The kind of wireless telecommunications facilities site and structure proposed.
 - (3) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites.
 - (4) Available space on existing and approved telecommunications towers.
- W. The applicant shall submit to the Board a letter of intent committing the owner of the proposed new tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Board. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter shall commit the new tower owner and its successors in interest to:

- (1) Respond within 60 days to a request for information from a potential shared-use applicant.
 - (2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
 - (3) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- X. The holder of a special use permit shall notify the Board of any intended modification of wireless telecommunications facilities and shall apply to the Board to modify, relocate or rebuild a wireless telecommunications facility.
- Y. In order to better inform the public, in the case of a new proposed telecommunications tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test" as follows: The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three-foot diameter brightly colored balloon at the maximum height of the proposed new tower. The dates (including a second date in case of poor visibility on the initial date), times and location of this balloon test shall be advertised twice by the applicant, seven and 14 days in advance of the test date, in one of the official newspapers in the Town. The applicant shall inform the Board, in writing, of the dates and times of the hours sometime between 7:00 a.m. and 4:00 p.m. of the dates chosen. The balloons shall be flown for a minimum of four hours. The primary date shall be on a weekend, but the second date, in case of poor visibility on the initial date, may be on a weekday.
- Z. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the telecommunications tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

§ 152-7. Location of wireless telecommunications facilities.

- A. Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one being the highest priority and five being the lowest priority.
- (1) On existing telecommunications towers or other tall structures on Town property.
 - (2) Collocation on a site with existing wireless telecommunications facilities or other tall structures in the Town.
 - (3) On other lands owned or controlled by the Town of Marlborough.
 - (4) On industrial zoned or highway development zoned lands.
 - (5) On zoned property, RAG-1, R-1 or with a minimum four-acre lot size. No tower

- shall be sited in the RAG-1 Zone above elevation 700 based on the NGVD 1929.
- (6) No wireless telecommunications facilities shall be permitted in the C-1, C-2, or R Zones within the Town.
- B. If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
- C. An applicant may not bypass sites of higher priority by stating the site presented is the only site leased or selected. An application shall address collocation as an option and, if such option is not proposed, the applicant must explain why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of commercial impracticability or hardship.
- D. Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants.
- E. The applicant shall submit a report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.
- F. The applicant shall, in writing, identify and disclose the number and locations of any additional sites that the applicant has been, is or will be considering, reviewing or planning for wireless telecommunications facilities in the Town, and all municipalities adjoining the Town, for a two-year period following the date of the application.
- G. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Board may disapprove an application for any of the following reasons:
- (1) Conflict with safety and safety-related codes and requirements.
 - (2) Conflict with traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws.
 - (3) Conflict with the historic nature of a neighborhood or historical district.
 - (4) The use or construction of wireless telecommunications facilities which is contrary to an already-stated purpose of a specific zoning or land use designation.
 - (5) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers.
 - (6) Conflicts with the provisions of this chapter.

§ 152-8. Shared use of wireless telecommunications facilities and other structures.

- A. Shared use of existing wireless telecommunications facilities shall be preferred by the

Town as opposed to the proposed construction of a new telecommunications tower. Where shared use is unavailable, location of antennas on other preexisting structures shall be considered and preferred. The applicant shall submit a comprehensive report inventorying existing towers, municipal facilities, such as water towers, and other appropriate structures within four miles of any proposed new tower site and identifying their priority as described in § 152-7A above, unless the applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other preexisting structures as a preferred alternative to new construction.

- B. An applicant intending to share use of an existing telecommunications tower or other structure shall be required to document the intent of the existing owner to share use. In the event that an application to share the use of an existing telecommunications tower does not increase the height of the telecommunications tower, the Board shall waive such requirements of the application required by this chapter as may be for a good cause shown.
- C. Such shared use shall consist only of the minimum antenna array technology required to provide service within the Town, to the extent practicable, unless good cause is shown.

§ 152-9. Height of telecommunications tower(s).

- A. The applicant must submit documentation justifying to the Board the total height of any telecommunications tower, facility and/or antenna and the basis therefor. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown.
- B. Telecommunications towers shall be no higher than the minimum height necessary.
- C. The maximum height of any telecommunications tower and attached antennas constructed after the effective date of this chapter shall not exceed that which shall permit operation without artificial lighting of any kind, in accordance with municipal, county, state, and or any federal statute, law, local law, Town ordinance, code, rule or regulations.

§ 152-10. Visibility of wireless telecommunications facilities.

- A. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B. Telecommunications towers shall be painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Board and shall be maintained in accordance with the requirements of this chapter.
- C. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 300 feet of all property lines of the parcel on which the wireless telecommunications facilities are located.

§ 152-11. Security of wireless telecommunications facilities

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access; specifically as follows:

- A. All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into.
- B. Transmitters and telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

§ 152-12. Signage.

Wireless telecommunications facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. The sign shall not be lighted unless the Board shall have allowed such lighting or unless such lighting is required by applicable provisions of law. The sign shall be approved by the Board before installation. No other signage, including advertising, shall be permitted on any facilities, antennas, antenna supporting structures or antenna towers, unless required by law.

§ 152-13. Landscaping.

The following requirements shall govern the landscaping surrounding towers:

- A. Tower facilities shall be landscaped with a buffer of plant material that effectively screens the view of the tower compound from property used for residences or planned residences or any other area frequented by the public. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. However, at a minimum, the facility should be shielded from public view by evergreen trees at least eight feet high at planting and planted in staggered double rows 15 feet on center.
- B. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced at the sole discretion of the Board.
- C. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as a tower sited on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer. The determination of whether the existing tree growth and topography are sufficient is at the sole direction of the Board.

§ 152-14. Lot size and setbacks.

All proposed wireless telecommunications facilities shall be set back from abutting parcels, recorded rights-of-way and road and street lines by a distance of twice the height of the tower. A minimum lot size of four acres shall be required in the R-1 Zone. Any accessory structure shall be located so as to comply with the applicable minimum setback

requirements identified above.

§ 152-15. Retention of expert assistance and reimbursement by applicant.

- A. The Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the application and any requests for recertification.
- B. An applicant shall deposit with the Town funds sufficient to reimburse the Board for all costs of consultant and expert evaluation provided to the Board in connection with the review of any application. The initial deposit shall be \$7,500. The initial deposit for recertification shall be \$2,500. These funds shall accompany the filing of an application, and the Town will maintain an escrow account and separate accounting for all such funds. The Town's consultants/experts shall bill or invoice the Town no more frequently than monthly for their services in reviewing the application and performing their duties. If at any time during the review process this escrow account has a balance less than 1/3 the original sum, the applicant shall immediately, upon notification by the Town, replenish said escrow account so it has a balance of at least 1/2 the original initial deposit. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event the amount held in escrow by the Town is more than the amount of the billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the applicant.
- C. The total amount of the funds set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as reasonably required and requested by the Town, shall be paid by the applicant.

§ 152-16. Exceptions from special use permit.

- A. No person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this chapter without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those exceptions noted in the definition of wireless telecommunications facilities.
- B. New construction on existing wireless telecommunications facilities shall comply with the requirements of this chapter.
- C. All wireless telecommunications facilities existing on or before the effective date of this chapter shall be allowed to continue as they presently exist; provided, however, that any modifications to wireless telecommunications facilities must comply with this chapter.

§ 152-17. Public hearing and notification requirements.

- A. Prior to the approval of any application for a special use permit for wireless telecommunications facilities, a public hearing shall be held by the Board, notice of which shall be published in the official newspaper of the Town no less than 10

calendar days prior to the scheduled date of the public hearing. In order that nearby landowners are provided notice of the hearing, the applicant, at least three weeks prior to the date of said public hearing, shall be required to provide names and addresses of all landowners whose property is located within 300 feet of any property line of the lot on which the new wireless telecommunications facilities are proposed to be located. Further, the applicant shall send notice of the public hearing to the landowners within 300 feet of any property line of the lot on which the new wireless telecommunications facilities are proposed to be located identified in this section, via certified or registered mail, at least 10 days prior to the scheduled date of the public hearing, and shall submit to the Board at the public hearing proof of mailing of the notice of public hearing.

- B. The Board shall schedule the public hearing referred to in Subsection A of this section after it determines the application is complete. The Board, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary.

§ 152-18. Action on application for special use permit.

- A. The Board will undertake a review of an application pursuant to this chapter in a timely fashion, consistent with its responsibilities with SEQRA, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.
- B. The Board may refer any application or part thereof to any other agency or committee for comments and recommendations.
- C. After the public hearing and after formally considering the application, the Board may approve and issue, or deny, a special use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.

§ 152-19. Recertification of special use permit.

- A. At any time between 12 months and six months prior to the five-year anniversary date after the effective date for the special use permit and all subsequent fifth anniversaries of the effective date of the original special use permit for wireless telecommunications facilities, the holder of a special use permit for such wireless telecommunications facilities shall submit a signed written request to the Board for recertification. In the written request for recertification, the holder of such special use permit shall note the following:
 - (1) The name of the holder of the special use permit for the wireless telecommunications facilities.
 - (2) If applicable, the number or title of the special use permit.
 - (3) The date of the original granting of the special use permit.
 - (4) Whether the wireless telecommunications facilities have been moved, relocated, rebuilt or otherwise modified since the issuance of the special use permit and, if so, in what manner.
 - (5) If the wireless telecommunications facilities have been moved, relocated, rebuilt

- or otherwise modified, then whether the Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with.
- (6) Any requests for waivers or relief of any kind whatsoever from the requirements of this chapter and any requirements for a special use permit.
 - (7) That the wireless telecommunications facilities are in compliance with the special use permit and in compliance with all applicable codes, laws, rules and regulations.
 - (8) Recertification that the telecommunications tower and attachments both are designed and constructed (as built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified New York State licensed professional engineer acceptable to the Town, the cost of which shall be borne by the applicant.
- B. If, after such review, the Board determines the permitted wireless telecommunications facilities are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Board shall issue a recertification special use permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Board determines that the permitted wireless telecommunications facilities are not in compliance with the special use permit and all applicable statutes, local laws, ordinances, codes, rules and regulations, then the Board may refuse to issue a recertification special use permit for the wireless telecommunications facilities, and, in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of such decision by the Board. Any such decision shall be in writing and supported by substantial evidence contained in a written record.
- C. If the applicant has submitted all of the information requested by the Board and required by this chapter, and if the Board does not complete its review, as noted in Subsection B of this section, prior to the five-year anniversary date of the special use permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the special use permit for up to six months in order for the Board to complete its review.
- D. If the holder of a special use permit for wireless telecommunications facilities does not submit a request for recertification of such special use permit within the time frame noted in Subsection A of this section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent fifth anniversaries, unless the holder of the special use permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.

§ 152-20. Extent and parameters of special use permit.

The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

- A. Such special use permit shall be nonexclusive.
- B. Such special use permit shall not be assigned, transferred or conveyed without the express prior written consent of the Board, and such consent shall not be unreasonably withheld or delayed.
- C. Such special use permit may, following a hearing upon due prior notice to the applicant, be revoked, cancelled or terminated for a violation of the conditions and provisions of the special use permit for wireless telecommunications facilities, or for a material violation of this chapter after prior written notice to the applicant and the holder of the special use permit.

§ 152-21. Application fee.

- A. At the time that a person submits an application for a special use permit for a new telecommunications tower, such person shall pay a nonrefundable application fee of \$5,000 to the Town. If the application is for a special use permit for collocating on an existing telecommunications tower or high structure, where no increase in height of the tower or structure is required, the application fee shall be \$2,000.
- B. An application fee of \$1,000 is required in order to recertify a special use permit for wireless telecommunications facilities. In the case of any modification, the application fees provided in Subsection A shall apply.

§ 152-22. Performance security.

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at their cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000, and which such sureties as are deemed sufficient by the Board to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until the removal of the wireless telecommunications facilities and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the special use permit and shall entitle the Board to revoke the special use permit after prior written notice to the applicant and holder of the permit and after a hearing upon due prior notice to the applicant and holder of the special use permit.

§ 152-23. Reservation of authority to inspect wireless telecommunications facilities.

- A. In order to verify that the holder of a special use permit for wireless telecommunications facilities, and any and all lessees, renters and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable

requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

- B. The Town shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including towers, antennas and appurtenant or associated facilities, or refusal to otherwise cooperate with the Town with respect to an inspection, or if violations of this chapter are found to exist, in which case, the holder, lessee or licensee shall reimburse the Town for the cost of the inspection.
- C. Payment of such costs shall be made to the Town within 30 days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this chapter, said reimbursement payment must still be paid to the Town and the reimbursement shall be placed in an escrow account established by the Town specifically for this purpose, pending the final decision on appeal.

§ 152-24. Annual NIER certification.

The holder of the special use permit shall annually certify in writing to the Town that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer must be licensed to practice engineering in the State of New York.

§ 152-25. Liability insurance.

- A. A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage for the duration of the special use permit in amounts as set forth below:
 - (1) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - (2) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
 - (3) Workers compensation and disability: statutory amounts.
- B. The commercial general liability insurance policy shall specifically include the Town as additional named insured.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than 15 days after the grant of the special use permit, the holder of the special use permit shall deliver to the Town a copy of each of the policies or

certificates representing the insurance in the required amounts.

§ 152-26. Indemnification.

- A. Any application for wireless telecommunications facilities that is proposed for Town property, pursuant to this chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, boards, employees, committee members, attorney, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said wireless telecommunications facilities. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees and expert witness fees are included in those costs that are recoverable by the Town.
- B. Notwithstanding the requirements noted in Subsection A of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a special use permit for wireless telecommunications facilities.

§ 152-27. Penalties for offenses.

- A. In the event of a violation of this chapter or any special use permit issued pursuant to this chapter, the Board may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the Town, fines or penalties as set forth below.
- B. A violation of this chapter is hereby declared to be an offense, 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 purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter or of such ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each continued violation shall constitute a separate additional violation.
- C. Notwithstanding anything in this chapter, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The Town may also

seek injunctive relief to prevent the continued violation of this chapter without limiting other remedies available to the Town.

§ 152-28. Default and/or revocation of special use permit.

- A. If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the special use permit, then the Board shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Board may, at its sole discretion, order the violation remedied within 24 hours.
- B. If within the period set forth in Subsection A above the wireless telecommunications facilities are not brought into compliance with the provisions of this chapter, or of the special use permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the Board may revoke such special use permit for wireless telecommunications facilities and shall notify the holder of the special use permit within 48 hours of such action.

§ 152-29. Removal of wireless telecommunications facilities.

- A. Under the following circumstances, the Board may determine that the health, safety and welfare interests of the Town warrant and require the removal of wireless telecommunications facilities:
 - (1) Wireless telecommunications facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days.
 - (2) Permitted wireless telecommunications facilities fall into such a state of disrepair they create a health or safety hazard.
 - (3) Wireless telecommunications facilities have been located, constructed or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization.
- B. If the Board makes such a determination as noted in Subsection A of this section, then the Board shall notify the holder of the special use permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed. The Board may approve an interim temporary use agreement/permit such as to enable the sale of the wireless telecommunications facilities.
- C. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is

possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Board. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Board.

- D. If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the Board may order officials or representatives of the Town to remove the wireless telecommunications facilities at the sole expense of the owner or special use permit holder.
- E. If the Town removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within 10 days, then the Town may take steps to declare the wireless telecommunications facilities abandoned and sell them and their components.
- F. Notwithstanding anything in this section to the contrary, the Board may approve a temporary use permit/agreement for the wireless telecommunications facilities, for not more than 90 days, during which time a suitable plan for removal, conversion or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the Board, and an agreement to such plan shall be executed by the holder of the special use permit and the Town. If such a plan is not developed, approved and executed within the ninety-day time period, then the Town may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

§ 152-30. Relief from requirements.

Any applicant desiring relief or exemption from any aspect or requirement of this chapter may request such from the Board at a preapplication meeting, provided that the relief or exemption is contained in the original application for either a special use permit or, in the case of an existing or previously granted special use permit, a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove to the satisfaction of the Board. The applicant shall bear all costs of the Board of the Town in considering the request, and the relief shall not be transferable to a new or different holder of the permit or owner of the tower or facilities without the specific written permission of the Board. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers, and the Board must determine the grant of relief or exemption does not conflict with and/or violate the intent of this chapter. Under no circumstances are the provisions for public hearing contained in this chapter to be waived.

§ 152-31. Adherence to state and/or federal rules and regulations.

- A. To the extent that the holder of a special use permit for wireless telecommunications

facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules, regulations, standards and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- B. To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security, are changed and/or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such a special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision, or sooner as may be required by the issuing entity.

Chapter 155, ZONING

[HISTORY: Adopted by the Town Board of the Town of Marlborough 9-13-1993 by L.L. No. 2-1993. Amendments noted where applicable.]

GENERAL REFERENCES

- Planning Board -- See Ch. 33.
- Amusement devices -- See Ch. 58.
- Building construction -- See Ch. 67.
- Clearing and grading -- See Ch. 75.
- Environmental quality review -- See Ch. 89.
- Flood damage prevention -- See Ch. 97.
- Mobile homes -- See Ch. 102.
- Right to farm -- See Ch. 115.
- Sewers -- See Ch. 118.
- Streets and sidewalks -- See Ch. 130.
- Subdivision of land -- See Ch. 134.
- Water -- See Ch. 149.

ARTICLE I, Definitions and Word Usage

§ 155-1. Terms defined.

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

ACCESSORY USE OR STRUCTURE -- A use or 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.

ACRE -- A measure of land area equal to 43,560 square feet.

ADULT ENTERTAINMENT ESTABLISHMENT -- Any establishment run by a person, firm, corporation, association, club or other organization to operate a public or private business serving food and/or beverages in the Town of Marlborough which presents nude or topless dancers, strippers, male or female impersonators or similar entertainment or which employs nude or topless persons for food or beverage service, which establishment is not customarily open to the public, but excludes minors by reason of age. [Added 12-13-1993 by L.L. No. 4-1993]

ADULT MULTIPLE DWELLING -- A building or portion thereof used or designed as a residence for three or more apartments or dwelling units owned by one or more persons, each of whom is 50 years of age or over, or real property rented or owned by a husband and wife, one of whom is 50 years of age or older. [Amended 7-11-1994 by L.L. No. 1-1994]

AFFORDABLE HOUSING -- Residential units available for a sales price or rental fee within the means of a low- or moderate-income household as defined by state or federal legislation. [Added 11-13-1995 by L.L. No. 5-1995]

AFFORDABLE SENIOR CITIZEN HOUSING -- A residential cluster development of 20 or more residential units which meets specific conditions and the definitions of affordable housing and senior citizens housing as set forth in this chapter. [Added 11-13-1995 by L.L. No. 5-1995]

AGRICULTURE -- The cultivation of the soil for food products, tree crops or other useful or valuable growths of the field or garden; and dairying and poultry and livestock raising.

ALTERATION -- A change or rearrangement of the structural components of a building or structure resulting in a change in the exterior dimensions of said building or structure.

AUTOMOBILE SERVICE STATION -- A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and affixed directly to the motor vehicle and where minor repair service is rendered.

AUTOMOTIVE OR MECHANICAL EQUIPMENT SALES AREA -- An open area for the display, sale or rental of motorized or mechanical equipment, including new or used motor vehicles, trucks and farm equipment or mobile homes in operable condition.

BED AND BREAKFAST -- A home occupation allowing overnight accommodations in residential structures which takes place only in owner-occupied structures. The use is limited to 50% of the structure. Meals may be served to guests of the business. Use is subject to site plan review by the Planning Board. [Amended 3-8-1999 by L.L. No. 1-1999]

BILLBOARD -- A sign which directs attention to a business, commodity, service or entertainment conducted, offered or sold elsewhere than on the premises where the sign is located.

BOARDINGHOUSE -- A building, other than a hotel, with a resident owner or manager, where lodging and meals for five or more persons are provided in return for compensation. Such manager shall also be specifically authorized to undertake such repairs or maintenance as may be ordered by the Building Inspector. Such manager shall also be specifically authorized by the building owner to receive legal summonses pertaining to the building. This definition includes tourist homes.

BUILDING -- A structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.

- A. BUILDING HEIGHT -- The vertical distance measured from the mean level of the ground surrounding the building to a point midway between the highest and lowest point of the roof, but not including chimneys, spires, towers, tanks and similar projections.
 - B. BUILDING, PRINCIPAL -- A structure in which is conducted the principal use of the site on which it is situated. In any residential district, any dwelling shall be deemed to be a "principal building" on the lot on which the same is located.
 - C. BUILDING, RECYCLABLE AGRICULTURAL -- A structure, such as a barn, packinghouse or cooler, used previously for an accessory agricultural purpose, which purpose is no longer economically viable. Such building may be recycled, i.e., converted to a permitted, accessory or special permit use in the zoning district of its location subject to its meeting standards set forth elsewhere in this chapter. To be classified as "recyclable," such building shall have a minimum floor area of 2,500 square feet; have served its prior use for a minimum of 10 years; be certified for appropriateness for its proposed use by the Building Inspector; and receive site plan and environmental review approval from the Planning Board.
- CAMPSITE -- Any parcel of land, with or without accommodations for temporary living purposes, but containing two or more paved or unpaved areas to be used for the parking of travel trailers, the erection of a tent or the accommodation of other forms of temporary, portable or movable shelter.
- CEMETERY -- A burial place or ground for humans.
- COMMERCIAL GROUP -- Two or more retail establishments totaling no more than 30,000 square feet of rentable commercial space and sharing certain facilities, such as parking, public utilities and open space.
- COMMUNITY BUILDING -- A building owned or operated by a certified nonprofit, nondenominational organization for assembly by its members.
- DECIBEL -- A unit of sound pressure level.
- DENSITY -- The number of dwelling units or commercial or other nonresidential units per square foot or acre of lot area.
- DENSITY, AVERAGE -- The number of dwelling units or commercial or other nonresidential units divided by the number of square feet or acres of a building lot or tract.
- DWELLING -- Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, except a mobile home or trailer.
- A. SINGLE-FAMILY -- A detached building, designated for or occupied exclusively by one family and containing not more than one dwelling unit.
 - B. 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.
 - C. MULTIPLE -- A building or portion thereof used or designed as a residence for three or more apartment or dwelling units.
 - D. VACATION -- A dwelling which is temporarily occupied by a person or persons having a usual residence elsewhere from whence they customarily journey to work, send children to school or conduct other principal activities.
- DWELLING UNIT -- One or more rooms designed for occupancy by one family for cooking, living and sleeping purposes.

EDUCATIONAL USE -- Public, parochial or private elementary or secondary schools and higher education, duly licensed by the State of New York, attendance at which is a sufficient compliance with the compulsory attendance requirements of the state.

ESSENTIAL SERVICES -- The erection, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health and safety or general welfare.

"Essential services" shall include firehouses, first aid and emergency aid squads and CATV, whether provided by a municipal or a private agency.

FAMILY -- One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit. [Amended 8-22-1994 by L.L. No. 2-1994]

FARM -- Any parcel of land of 10 acres or more used principally in the raising or production of agricultural products and the necessary or usual dwellings, farm structures, storage and equipment.

FLOOR AREA -- The sum of the gross horizontal areas of the floors of a building measured from the interior faces of the exterior walls.

FUNERAL HOME -- A building or part thereof used and occupied by a professional licensed mortician for burial preparation and funeral services.

GARAGE, ACCESSORY -- A detached accessory structure or portion of a principal building used to satisfy the off-street parking requirements of on-site uses as set forth in this chapter.

GARAGE, COMMERCIAL -- A building used for the storage, repair, including body work, and/or servicing of motor vehicles, but not including the storing, holding or displaying of the same for sale or resale.

HELIPAD -- A landing pad for a helicopter, which pad meets the conditions set forth in this chapter, as well as the applicable regulations of § 249 of the General Business Law and those of any other public agency having jurisdiction.

HOME OCCUPATION -- Any business or professional use customarily conducted entirely within a dwelling, provided that such use is carried on by the owner of the dwelling, is clearly incidental and secondary to the use of the dwelling and does not significantly change the character of the dwelling or neighborhood.

HOTEL -- A building or any part thereof which contains living and sleeping accommodations hired out for compensation for 20 or more persons, has a common exterior entrance or entrances and contains one or more dining rooms.

HOUSE OF WORSHIP -- The principal structure used by a religious society or congregation, incorporated pursuant to the provisions of the laws of the State of New York, for public worship, ritual and ceremony.

INSTRUCTIONAL USE -- An institution or organization which may or may not be licensed or accredited as a school by the State of New York, which provides for the teaching of any skill or body of knowledge independent of a general curriculum of studies. An "instructional use" is to be distinguished from an educational use and from tutoring.

JUNK CARS/UNREGISTERED VEHICLES -- Vehicles which do not have a current

and/or valid New York State Department of Motor Vehicles Registration. Vehicles typically used for farming are exempt from this definition. No more than one junk car/unregistered vehicle shall be allowed per lot unless otherwise permitted under local law. [Added 3-8-1999 by L.L. No. 1-1999]

JUNKYARD -- Consists of buildings, structures or premises where junk, waste or discarded or salvage materials are bought or sold, exchanged, stored, baled, packed, disassembled or handled, including automobile wrecking yards, but not including the purchase or storage of used furniture and household equipment or used cars in operable condition.

KENNEL -- Any enclosure, premises, building, structure, lot or area in or on which more than four dogs of at least six months of age are kept, harbored or maintained for commercial or noncommercial purposes for continuous periods of 24 hours or more.

LANDFILL, SANITARY -- A municipally owned and operated site which uses an engineered method of solid waste disposal on land in a manner that protects the environment: waste is spread in thin layers, compacted to the smallest possible practical volume and covered with soil at the end of each working day.

LIGHT INDUSTRIAL ACTIVITY -- Activities generally limited to the assembly, processing, storage and distribution of goods and materials manufactured elsewhere from raw materials.

LOT -- A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

- A. **LOT, CORNER** -- A lot abutting upon two or more streets at their intersection or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than 135°. The point of intersection of the street lot lines is the "corner."
- B. **LOT DEPTH** -- The mean horizontal distance between the front and rear lot lines.
- C. **LOT LINES** -- The property lines bounding the lot.
 - (1) **FRONT** -- The line separating the lot from the street. Where there is no road along any lot line, the "front lot line" will be a lot line which abuts a street.
 - (2) **REAR** -- The lot line opposite and most distant from the front lot line.
 - (3) **SIDE** -- Any lot line other than a front or rear lot line. A "side lot line" separating a lot from a street is called a "side street lot line."
 - (4) **STREET** -- A lot line separating the lot from a street or alley.
- D. **LOT AREA** -- The computed area of a lot contained within the lot lines and measured in square feet or acres.
- E. **LOT WIDTH** -- The distance between the two side lot lines measured parallel to the front lot line at the required setback line or the actual building line chosen by the owner.
- F. **LOT COVERAGE** -- The percentage of the area of a lot covered by the area of the foundation of a building or buildings; includes building coverage.

LOW-INCOME HOUSING -- Housing affordable according to the Federal Department of Housing and Urban Renewal and/or New York State standards for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the housing region in which the housing is located. [Added 11-13-1995 by L.L. No. 5-1995]

MARLBORO HAMLET PARKING DISTRICT -- Those areas in the Hamlet of Marlboro included in the C-1 Commercial District, on Tax Map Sheets 108.012 and 108.004. [Added 3-8-1999 by L.L. No. 1-1999]

MILTON HAMLET PARKING DISTRICT -- Those areas in the Hamlet of Milton on the current tax maps at the time of adoption of this regulation located east of State Route 9W, west of Maple Avenue, west of Watson Avenue and south of Church Street, including all lots in Tax Map Sections 103.009 and 103.001 Block 3. [Added 3-8-1999 by L.L. No. 1-1999]

MINING AND EXCAVATION -- The excavation, removal, handling and processing of stone, sand gravel, clay, earth or other surface or subsurface material extracted from the premises, including the transportation, storage, crushing, grinding, pulverizing or mixing of the extracted raw materials and all uses and operations accessory thereto.

MOBILE HOME -- Any structure 14 feet wide or less, adaptable to be moved by a power connected thereto, and so designed as to permit occupancy thereof for dwelling or sleeping purposes or for the conduct of any business, profession, occupation or trade and provided with any combination of the following mechanical systems and equipment: plumbing, heating, electrical, cooking and refrigeration. Such structure shall have a steel frame attached to the underside and may or may not have axles and wheels attached to such frame. Such "mobile home" or "house trailer" shall be in conformity with the New York State Code for the Construction of Mobile Homes, March 13, 1974, as amended, and such certificates of the United States Department of Housing and Urban Development as may supersede such code.

MOBILE HOME PARK -- Any plot of ground upon which two or more mobile homes, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodations.

MOBILE OR MODULAR HOME SALES LOT -- Any area of land upon which mobile or modular homes are placed for the sole purpose of display or sale.

MOBILE RETAIL STAND -- Motorized vehicle or portable stand, stationed in one location for more than 30 minutes, with facilities for storage and sale of retail goods, food and drink or other commodities.

MODERATE-INCOME HOUSING -- Housing affordable according to the Federal Department of Housing and Urban Development and/or New York State standards for home ownership and rental costs, occupied or reserved for occupancy by households with a gross income in excess of 50% but less than 80% of the median gross income for households of the same size within the housing region in which the housing is located. [Added 11-13-1995 by L.L. No. 5-1995]

MODULAR HOME -- A factory-fabricated, transportable building designed for placement on a permanent in-ground foundation for use as a dwelling.

MOTEL -- A building or group of buildings containing individual living and sleeping accommodations for hire, each of which is provided with a separate exterior entrance and a parking space and is offered for rental and use primarily by motor vehicle travelers. The term "motel" includes but is not limited to every type of similar establishment known variously as an "auto court," "motor inn," "motor lodge," "tourist court," "tourist cabin" or "roadside hotel."

NEIGHBORHOOD STORE -- A retail business establishment of not more than 1,500 square feet.

NONCONFORMING LOT, BUILDING OR USE -- A lot, building or use which does not conform to the regulations prescribed in this chapter for the zoning district in which such lot, building or use is situated.

NURSERY OR GREENHOUSE, COMMERCIAL -- A place where young trees or plants are raised for transporting or sale.

NURSERY OR GREENHOUSE, PRIVATE -- A place or structure where young trees or other plants are raised for the personal use of the owner of the place or structure. If a freestanding structure or extension to the principal building, it is to be reviewed as an accessory building.

PERSONAL SERVICES -- Those services involving the care of the person or his apparel, such as laundries, cleaning and dyeing establishments, barber- and beauty shops and cleaning and pressing shops. ^{111EN}

POULTRY RAISING, LOW-DENSITY -- A farm, the major occupation of which is the raising of poultry, wherein there is more than one square foot of ground floor area per bird in those structures housing the poultry.

PROFESSIONAL OFFICE -- The office of an accountant, architect, attorney, dentist, engineer, physician or similar licensed activity, whether in a single-family house as a home occupation or in a commercial office building.

PUBLIC BUILDING -- A building owned or leased by the Town of Marlborough or a local, county, state or federal agency for public purposes.

PUBLIC WATER OR SEWER -- Water or sewerage systems administered by the Town of Marlborough within a duly established water or sewer district.

RECREATION, COMMERCIAL -- A recreation facility operated as a business which does not generate sound levels in excess of 75 decibels at the property line, meets all lot and setback requirements, provides adequate on-site parking and is open to the public for a fee.

RESIDENTIAL CLUSTER DEVELOPMENT -- An area to be developed as a single entity according to a plan containing common or public open space as an appurtenance to residential housing units within the entity. While the residential units may be placed on lots of smaller area than those permitted within the zoning district or have setbacks of smaller size, the average residential density of the complete development, expressed in dwelling units per acre, shall not exceed the density permitted in that district for noncluster development.

RESORT HOTEL -- An area of land on which is located a hotel or group of buildings containing living and sleeping accommodations for 20 or more persons hired out for compensation and which has a public lobby serving guests and contains one or more dining rooms and recreation facilities.

RESTAURANT, DRIVE-IN -- A structure where food and/or nonalcoholic beverages are prepared and sold ready for consumption and in which packaging practices, service and external layout serve the convenience of customers who arrive at the site primarily by automobile and who may consume such food and/or beverages on the premises, either inside or outside the structure.

ROADSIDE STAND FOR AGRICULTURAL PRODUCTS -- An accessory structure situated on an operating farm and offering for sale between the months of May and November agricultural products, a majority of which have been produced on the premises.

ROOMING HOUSE -- A dwelling unit occupied by a resident-owner or agent thereof and his family and from whom four or more tenants rent sleeping space without provision for meals. The definition includes a lodging house, but does not include a hotel, motel, boardinghouse or other lodging arrangement for transients.

SEASONAL USE -- A use engaged in for a period of six consecutive months or less.

SENIOR CITIZEN HOUSING -- Dwelling units within which residency shall be restricted to a permanent resident aged 62 years or more of age and one other person related by blood or marriage.

SETBACK -- A restriction placed upon the use of land referring to the distance a structure must be situated from a lot line. The setback line shall be parallel to the lot line from which it is measured. In the case of a cul-de-sac, the front setback line shall be established parallel to a chord connecting the two points of intersection of the side lot line with the arc representing the cul-de-sac right-of-way line, i.e., the front lot line. Setback distances shall be measured perpendicular to the chord described above. In the case where rights-of-way or easements border the property line, the setback distance shall be determined by measurement from the edge of the right-of-way or easement nearest to the structure in question. [Amended 8-22-1994 by L.L. No. 2-1994]

SHOPPING CENTER -- A group of stores, shops and similar establishments occupying adjoining structures, all of which may be deemed one building if designed as an architectural unit and if it has adequate space for customer parking and for loading and unloading commodities.

SIGN -- Any structure or part thereof or device attached thereto or painted or represented thereon which shall of itself or by display or inclusion of any letter, word, device or representation used as or which is in the nature of an announcement, direction or advertisement. A "sign," however, shall not include a display of official, court or public notices, any official traffic control devices or the flag, emblem or insignia of a nation, state, county, municipality or religious group. Each display surface of a "sign" shall be considered to be a single sign.

SIGN AREA -- The area within the shortest lines that can be drawn around the outside perimeter of a sign, including all decorations and lights, but excluding the supports if they are not used for advertising purposes. All faces of the sign shall be counted in computing the area. Any neon tube, string of lights or similar device shall be deemed to have minimum dimensions of one foot.

SIGN, DIRECTORY -- A sign indicating the location and direction of premises other than those on which the sign is located.

SPECIAL USE -- A use which, because of its unique characteristics, requires individual consideration in each case by the Planning Board, as specified in Article VII, before it may be permitted in the district enumerated in Article IV. In accordance with the provisions of this chapter, the Planning Board may require certain conditions and safeguards before such a use is permitted or expanded.

STREET -- A right-of-way for vehicular traffic, including road, avenue, lane, highway or other way which is an existing public way, or a way shown upon a subdivision plat approved by the Town Planning Board, as provided by law.

STRUCTURE -- A combination of materials assembled, constructed or erected at a fixed location, including, for example, a building, swimming pool and stationary and portable carports, the use of which requires location on the ground or attachment to something

having location on the ground.

SUBDIVISION -- As defined in Chapter 134, Subdivision of Land. [Amended 8-22-1994 by L.L. No. 2-1994]

TEMPORARY MOVABLE STORAGE FACILITY -- A container in use for dry or liquid storage not affixed to a permanent foundation and resting on wheels, skids or other device facilitating movability. Such container shall be considered an accessory building requiring a permit from the Building Inspector when the liquid storage volume is 1,000 gallons or greater and, for dry storage, 144 cubic feet or greater.

TOWN ENGINEER -- The person duly designated as engineer of the Town on a permanent or consulting basis.

TRAVEL TRAILER -- A movable unit designed for short-term occupancy and frequent travel, equipped with a chassis, but lacking one or all of the following mechanical systems and equipment: plumbing, heating, electrical, cooking and refrigeration.

TUTORING -- When practiced as a home occupation, the instruction by one person of up to five persons at one time in a skill or field of knowledge.

USABLE AREA FOR INDIVIDUAL WASTE DISPOSAL SYSTEM -- The general area required and suitable for the normal and reasonable development of a building site to permit the provision of water supply and sewerage facilities to serve the area for proposed occupancy in accordance with the provisions of local ordinances, watershed rules and regulations and the requirements of the County Health Department or other provision regulating land use.

- A. A usable area shall not be deemed to include any area occupied by any existing building, structure, lake, stream, pond or swamp areas of exposed or underlying rock or groundwater within five feet of the surface or marginal areas subject to flooding or along streams or other bodies of water.
- B. The area intended for sewerage systems shall be well-drained by natural or artificial means.
- C. The Building Inspector may require to be shown such usable area as he may deem necessary for any other type of land usage, other than single-family occupancy, indicated on the plan and permitted under existing zoning laws.
- D. The usable area shall include a protective area not less than 10 feet in width laterally on all sides of the separate sewerage system and such other protective area between any separate sewerage system and any water supply line or drainage, watercourse or other hazardous condition as the Department shall deem necessary or adequate.
- E. As applied to separate sewerage systems, the usable area shall contain a suitable absorptive area for a depth of not less than four feet below proposed leaching devices. Where placement of soils is made in sewage leaching areas, the existing surface soils may not be displaced over clay or rock.

USABLE OPEN SPACE -- An unenclosed portion of the ground area of a lot or tract of land containing a residential cluster subdivision which is not assigned for driveways or parking areas, is free from structures of any kind and is accessible to all occupants of the building or buildings on said lot or tract for purposes of active or passive outdoor recreation.

USE -- The principal purpose for which a lot or the principal building thereon is designated to be occupied, maintained or used.

WAREHOUSE -- An enclosed building used for the commercial storage of materials.

WATER TAKING -- The taking of water from on-site subsurface surfaces for collection, transportation and sale. [Added 4-8-1996 by L.L. No. 2-1996]

YARD -- An open space which 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.

- A. FRONT -- An open space extending the full width of the lot between a principal building and the front lot line, unoccupied and unobstructed from the ground upward.
- B. REAR -- An open space extending the full width of the lot between a principal building and the rear lot line, unoccupied and unobstructed from the ground upward.
- C. SIDE -- An open space extending from the front yard to the rear yard between a principal building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

§ 155-2. Word usage.

In the interpretation and construction of this chapter:

- A. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular.
- B. The word "structure" shall include the word "building."
- C. The work "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased" or "intended to be used."
- D. The word "shall" is mandatory and not optional.

ARTICLE II, General Provisions

§ 155-3. Scope.

This chapter is adopted to limit and restrict to specified districts or zones and to regulate therein buildings and structures according to their construction and the nature and extent of their use and the nature and uses of land in the Town of Marlborough, in the County of Ulster, and to provide for the administration and enforcement of provisions herein contained and to fix penalties for violations thereof.

§ 155-4. Short title.

This chapter shall be known and may be cited as the "Zoning Ordinance of the Town of Marlborough, New York."

§ 155-5. General intent; statutory authority.

This intent of this chapter is to establish a precise and detailed plan for the use of land in the Town of Marlborough based on the Comprehensive Plan, as it may be amended, and other studies and findings. This chapter is enacted pursuant to the Town Law of the State of New York, Chapter 62 of the Consolidated Laws, Article 16, to protect and promote public health, safety, morals, comfort and convenience and the general welfare of the

people.

§ 155-6. Purpose.

Such regulations are deemed necessary to further the advancement of the Town as a social, economic and political unit, to promote the general welfare and to achieve the following purposes:

- A. Promote orderly development: to protect the character and maintain the stability of residential, business and agricultural areas and to secure and protect open space and recreation areas within the Town and to promote the orderly and beneficial development of the Town.
- B. Limit congestion on streets: to limit congestion in the public streets and to protect the public health, safety and convenience and the general welfare by providing for off-street parking of motor vehicles and for the loading and unloading of commercial vehicles.
- C. Protect against hazards: to provide protection against fire, explosion, noxious fumes and other hazards in the interest of the public health, safety and comfort and the general welfare.
- D. Regulate intensity of use: to regulate the intensity of use of zoning lots, to determine the area of open spaces surrounding buildings, which spaces shall be necessary to provide adequate light and air, privacy, convenience and access to property, and to protect the public health.
- E. Regulate location of buildings: to establish building lines and the location of buildings designed for residential, commercial, manufacturing or other uses within such lines.
- F. Establish standards of development and encourage good aesthetics: to fix reasonable standards to which buildings or structures shall conform and to encourage the highest standards of aesthetics within the Town.
- G. Prohibit incompatible uses: to prohibit uses, buildings or structures which are incompatible with the character of development or the permitted uses within specified zoning districts.
- H. Regulate alterations of existing buildings: to prevent such additions to and alterations or remodeling of existing buildings or structures as would not comply with the restrictions and limitations imposed hereunder.
- I. Conserve taxable value of land: to conserve the taxable value of land and buildings throughout the Town.

ARTICLE III, Establishment of Districts

§ 155-7. Designation of districts.

The following classes of districts are designated in the Town of Marlborough:

R Reside
 ntial

District
R-1 Residential District
R-Ag-1 Rural Agricultural District
C-1 Commercial District
C-2 Commercial 2 District
[Added 3-8-1999 by L.L. No. 1-1999]
HD Highway Development District
I Industrial District

§ 155-8. Adoption of Zoning Map. [Amended 7-11-1994 by L.L. No. 1-1994; 9-22-1997 by L.L. No. 2-1997]

The location and boundaries of said districts are hereby established as shown on the Zoning Map of the Town of Marlborough, dated September 22, 1997.^{112EN} In addition, said boundaries precisely defined on the Tax Map of the Town of Marlborough are hereby made a part of this chapter. Said map or maps and all notations, references and

designations shown thereon shall be a part of this chapter, as if the same were all fully described and set forth therein.^{113EN}

§ 155-9. Interpretation of boundaries.

- A. The district boundary lines are generally intended to follow the center lines of rights-of-way, the mean water levels of rivers, streams and other waterways, existing lot lines or Town boundary lines, all as shown on the Zoning Map, but where a district boundary does not follow such a line, its position is shown on said Zoning Map by a specific dimension expressing its distance in feet from a street line or other boundary line as indicated.
- B. Where a district boundary line divides a lot in single or joint ownership of record at the time such line is established, if that district extending back from the front lot line occupies 60% or more of the total area, then the rear lot line of that lot shall be considered the district boundary. In all other cases, the lot shall remain in two or more districts. In the event that a zone boundary is unclear, the Building Inspector shall request the Zoning Board of Appeals to render its judgment with respect thereto.

ARTICLE IV, District Regulations

§ 155-10. Regulations and controls in effect.

The regulations and controls intended to guide development in each district are set forth in § 155-12, Use regulations, and Schedule I, Lot, Yard and Height Regulations, which are supplemented by other sections of this chapter.^{114EN}

§ 155-11. Applicability of regulations.

Except as hereinafter otherwise provided:

- A. No building shall be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be designed, used or intended to be used, for any purpose or in any manner other than as specified among the uses hereinafter listed as permitted in the district in which such building or land is located.
- B. No building shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the district in which such building is located.
- C. No building shall be erected, no existing buildings shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot area and building location regulations hereinafter designated for the district in which such building or open space is located.
- D. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.

- E. General use restriction. Any use not designated as a principal permitted use, a permitted accessory use or a special permit use is specifically prohibited from any zoning district in the Town of Marlborough.

§ 155-12. Use regulations.

A. R Residential District.

- (1) Purpose. The purpose of this district is to provide for the orderly growth of established residential centers, to prevent overcrowding of the land, to regulate those uses which are not compatible with residential neighborhoods and to create conditions which are otherwise conducive to carrying out the purposes of this chapter.
- (2) Principal permitted uses shall be:
 - (a) One-family or two-family detached dwellings.
 - (b) Houses of worship and related residences.
 - (c) Parks and playgrounds.
 - (d) Educational and instructional uses.
- (3) Permitted accessory uses shall be:
 - (a) Home gardening.
 - (b) Signs.
 - (c) Private garages.
 - (d) Parking and loading areas.
 - (e) Other accessory uses and structures customarily appurtenant to a principal permitted use.
- (4) Special uses shall be:
 - (a) Community buildings, clubs, lodges and fraternal organizations.
 - (b) Essential services.
 - (c) Multiple dwellings.
 - (d) (Reserved)^{115EN}
 - (e) Neighborhood stores.
 - (f) Mobile home parks, in accordance with Chapter 102, Mobile Homes, of the Code of the Town of Marlborough.
 - (g) Home occupations.
 - (h) Affordable senior citizen housing. [Added 11-13-1995 by L.L. No. 5-1995]
 - (i) Professional office. [Added 11-25-2002 by L.L. No. 8-2002]
 - (j) Bed-and-breakfast. [Added 11-25-2002 by L.L. No. 8-2002]
 - (k) Residential cluster development. [Added 11-25-2002 by L.L. No. 8-2002]

B. R-1 Residential District.

- (1) Purpose. The purpose of this district is to provide reasonable standards for the development of residential area in the vicinity of established residential centers, to encourage a greater variety of lot sizes and housing types, to control activities not compatible with moderate-density residential development and otherwise to create conditions conducive to carrying out the purposes of this chapter.
- (2) Principal permitted uses shall be:
 - (a) One-family or two-family detached dwellings.
 - (b) Houses of worship and related residences.

- (c) Parks and playgrounds.
 - (d) Educational and instructional uses.
 - (e) Agricultural uses with a minimum parcel size of 10 acres. [Added 11-25-2002 by L.L. No. 8-2002]
 - (3) Permitted accessory uses shall be the same as in the R District.
 - (4) Special uses shall be:
 - (a) Community buildings, clubs, lodges and fraternal organizations.
 - (b) Essential services.
 - (c) Residential cluster developments.
 - (d) Private schools.
 - (e) Home occupations.
 - (f) Adult multiple dwellings. [Added 7-11-1994 by L.L. No. 1-1994]
 - (g) Affordable senior citizen housing. [Added 11-13-1995 by L.L. No. 5-1995]
 - (h) Nursery schools, preschools and similar activities. [Added 3-8-1999 by L.L. No. 1-1999]
 - (i) Bed-and-breakfast. [Added 11-25-2002 by L.L. No. 8-2002]
 - (j) Professional office. [Added 11-25-2002 by L.L. No. 8-2002]
 - (k) Recreation uses with a minimum parcel of 10 acres. [Added 11-25-2002 by L.L. No. 8-2002]
 - (l) Resort hotel with a minimum parcel size of 10 acres. [Added 11-25-2002 by L.L. No. 8-2002]
- C. R-Ag-1 Rural Agricultural District.
- (1) Purpose. The purpose of this district is to encourage the continuation of agriculture and uses compatible with the soil, topography and location of this district, to preserve important natural and economic resources and to create conditions conducive to rural life and country living on lands within an area primarily dedicated to agriculture.
 - (2) Principal permitted uses shall be:
 - (a) All agricultural land uses, buildings and activities, including the growing of field, truck and tree crops, dairying, livestock raising, low-density poultry raising and similar agricultural uses.
 - (b) Cemeteries.
 - (c) Essential services.
 - (d) Nurseries and greenhouses.
 - (e) Public parks and recreation areas.
 - (f) One-family or two-family detached dwellings.
 - (g) Water taking, with the following conditions: [Added 4-8-1996 by L.L. No. 2-1996]
 - [1] The water to be taken shall be drawn from a parcel of no less than 10 acres.
 - [2] If the water is to be used for human consumption, it must meet all applicable Ulster County Health Department regulations.
 - (3) Permitted accessory uses shall be:
 - (a) Accessory farm buildings.
 - (b) Garages and parking and loading areas.
 - (c) Farm labor housing, in accordance with New York State Department of

Health Standards.

- (d) Roadside stands for the sale of agricultural products produced primarily on the premises.
 - (e) Signs.
 - (f) Other accessory uses and structures customarily appurtenant to a principal permitted use.
- (4) Special uses shall be:
- (a) Neighborhood stores.
 - (b) Light industrial activities or businesses of a kindred nature engaged in the manufacturing, processing, packaging or warehousing of agricultural and related products, when conducted without public hazard or nuisance.
 - (c) Mining and excavation.
 - (d) (Reserved)^{116EN}
 - (e) Community buildings, lodges and fraternal organizations.
 - (f) Recreation and amusement uses, including golf courses, swim clubs and other outdoor commercial recreation.
 - (g) Recyclable agricultural buildings.
 - (h) Home occupations.
 - (i) (Reserved)^{117EN}
 - (j) Helipads.
 - (k) Nursery schools, preschool and similar activities.
 - (l) Kennels. [Added 3-25-1996 by L.L. No. 1-1996]
 - (m) Residential cluster development. [Added 11-25-2002 by L.L. No. 8-2002]
 - (n) Bed-and-breakfast. [Added 11-25-2002 by L.L. No. 8-2002]
 - (o) Resort hotel. [Added 11-25-2002 by L.L. No. 8-2002]
- D. C-1 Commercial District.
- (1) Purpose. The purpose of this district is to provide reasonable standards for the orderly expansion of general retail and commercial uses in conformity with the objectives of the Town of Marlborough Comprehensive Plan and to otherwise create conditions conducive to carrying out the purposes of this chapter.
- (2) Principal permitted uses shall be:
- (a) Retail business or personal service establishments, such as grocery, drug- and hardware stores, meat or food markets, barber- and beauty shops, shoe repair shops and the like.
 - (b) Eating and drinking establishments.
 - (c) Automobile service, repair and filling stations.
 - (d) Essential services.
 - (e) Dwelling units over ground floor retail commercial uses.
 - (f) Business and professional offices.
 - (g) One-family or two-family dwellings. [Added 11-25-2002 by L.L. No. 8-2002]
- (3) Permitted accessory uses shall be:
- (a) Garages and parking and loading areas.
 - (b) Signs, not including billboards.
 - (c) Living quarters for owners or caretakers of structures housing permitted uses.
 - (d) Other accessory uses customarily appurtenant to a permitted use.

- (4) Special uses shall be:
 - (a) Commercial recreation.
 - (b) Funeral homes.
 - (c) Motels.
 - (d) Wholesale and accessory use storage establishments.
 - (e) Instructional uses.
 - (f) Multiple dwellings. [Added 11-25-2002 by L.L. No. 8-2002]
 - (g) Bed-and-breakfast. [Added 11-25-2002 by L.L. No. 8-2002]
- E. HD Highway Development District.
 - (1) Purpose. The purpose of this district is to encourage the orderly functioning and expansion of the Town's transportation-related activities in such fashion as to be harmonious with adjacent land uses and to contribute to the soundness of the Town's economic base and to otherwise further the general purposes of this chapter.
 - (2) Principal permitted uses shall be:
 - (a) Wholesale and accessory use storage establishments conducted in completely enclosed buildings, except that open storage is permitted if enclosed by an opaque fence or wall at least eight feet in height.
 - (b) (Reserved)^{118EN}
 - (c) Essential services.
 - (d) Shopping centers.
 - (e) Commercial groups.
 - (f) Light industrial activities or businesses of a kindred nature engaged in the manufacture, assemblage, treatment or packaging of products when conducted without public hazard, except for those which, by reason of odor, noise, smoke or dust, constitute a nuisance.
 - (g) Business and professional offices.
 - (h) Agricultural uses. [Added 11-25-2002 by L.L. No. 8-2002]
 - (i) Retail uses. [Added 5-27-2003 by L.L. No. 2-2003]
 - (3) Permitted accessory uses shall be:
 - (a) Accessory uses customarily incident to a principal permitted use.
 - (b) Off-street parking, loading and unloading.
 - (c) Signs.
 - (4) Special uses shall be:
 - (a) Gasoline service stations.
 - (b) New and used car sales.
 - (c) Drive-in restaurants.
 - (d) Instructional uses.
 - (e) Eating and drinking establishments.
 - (f) Adult entertainment establishments, provided that the same shall not be within 1,500 feet of any:
 - [1] Church, synagogue or place of worship.
 - [2] School, playground or youth recreation area.
 - [3] Premises licensed to sell alcoholic beverages for on- or off-premises consumption. [Added 12-13-1993 by L.L. No. 4-1993]
 - (g) Mobile retail stands. [Added 8-22-1994 by L.L. No. 2-1994]

- (h) Warehousing. [Added 3-8-1999 by L.L. No. 1-1999]
- (i) Commercial recreation. [Added 3-8-1999 by L.L. No. 1-1999]
- (j) Funeral homes with water and sewer. [Added 3-8-1999 by L.L. No. 1-1999]
- (k) Hotel and motel with water and sewer. [Added 3-8-1999 by L.L. No. 1-1999]
- (l) Farm and produce stands. [Added 11-25-2002 by L.L. No. 8-2002]
- (m) Nursery schools, pre-schools and similar uses. [Added 5-27-2003 by L.L. No. 2-2003]

F. I Industrial District.

- (1) Purpose. The purpose of this district is to encourage the orderly expansion of industry in the Town in such fashion as to be harmonious with adjacent land uses and to contribute to the soundness of the Town's economic base and to otherwise further the general purpose of this chapter.
- (2) Principal permitted uses shall be:
 - (a) Light mechanical or industrial operations not offensive, obnoxious or detrimental to neighboring uses by reason of dust, smoke, vibration, noise, odor or effluents.
 - (b) Buildings for wholesale business, storage buildings or warehouses, including outside storage of building material and other material in large quantities.^{119EN}
- (3) Permitted accessory uses shall be:
 - (a) Storage of trucks and other equipment.
 - (b) Storage of gasoline, fuel oil and related products, including pumps for use only by the owner on the premises.
 - (c) Living quarters for caretakers of structures and equipment.
 - (d) Other accessory uses customarily appurtenant to a permitted use.
- (4) Special uses shall be:
 - (a) Essential services.
 - (b) Waterfront parks.
 - (c) Junkyards with a minimum lot size of 20 acres. [Amended 11-25-2002 by L.L. No. 8-2002]
 - (d) Experimental laboratories. [Added 11-25-2002 by L.L. No. 8-2002]
 - (e) Printing plants. [Added 11-25-2002 by L.L. No. 8-2002]
 - (f) Cold storage plants, creameries, ice cream plants, bottling or central distributing stations, baking plants, or dyeing plants. [Added 11-25-2002 by L.L. No. 8-2002]
 - (g) The establishment and maintenance of quarries, including any processing of natural products extracted on the premises and the storage of the same, with necessary loading areas, wharves and docks. [Added 11-25-2002 by L.L. No. 8-2002]
 - (h) Industries or businesses engaged in the manufacturing, processing, packaging, or warehousing of cement, asphalt, concrete and related products. [Added 11-25-2002 by L.L. No. 8-2002]
 - (i) Laundries and/or dry-cleaning plants. [Added 11-25-2002 by L.L. No. 8-2002]

G. C-2 Commercial 2. [Added 3-8-1999 by L.L. No. 1-1999]

- (1) Purpose. The purpose of this district is to provide reasonable standards for the

orderly expansion of general retail and commercial uses in conformity with the objectives of the Town of Marlborough Comprehensive Plan and to otherwise create conditions conducive to carrying out the purposes of this chapter.

- (2) Principal permitted uses shall be:
 - (a) Retail business or personal service establishment, such as grocery, drug and hardware stores, meat or food markets, barber- and beauty shops, shoe repair shops and the like.
 - (b) Eating and drinking establishments.
 - (c) Automotive service, repair and filling stations.
 - (d) Essential services.
 - (e) Dwelling units over ground floor retail commercial uses.
 - (f) Business and professional offices.
 - (g) One-family or two-family detached dwellings.
- (3) Permitted accessory uses shall be:
 - (a) Garage and parking and loading areas.
 - (b) Signs, not including billboards.
 - (c) Living quarters for owners or caretakers of structures housing permitted uses.
 - (d) Other accessory uses customarily appurtenant to a permitted use.
- (4) Special uses shall be:
 - (a) Commercial recreation.
 - (b) Funeral homes with water and sewer only.
 - (c) Motels with water and sewer only.
 - (d) Wholesale and accessory use storage establishments.
 - (e) Instructional uses.
 - (f) Bed-and-breakfast. [Added 11-25-2002 by L.L. No. 8-2002]
 - (g) Farm and produce stands. [Added 11-25-2002 by L.L. No. 8-2002]
 - (h) Multiple dwellings. [Added 11-25-2002 by L.L. No. 8-2002]

§ 155-12.1. Mixed uses. [Added 5-27-2003 by L.L. No. 2-2003]

- A. Purpose. The purpose of allowing mixed uses is to encourage the establishment of commercial and business entities that are compatible in nature and allowed in the designated zone without the necessity of creating smaller individual lots.
- B. Mixed uses allowed. Mixed uses on a single parcel of land shall be allowed in all zones. Uses may be mixed among those uses considered compatible according to the following list.
- C. Applicability, uses must be allowed by current zoning. Mixed uses must meet all density requirements as if individual uses and must be either principal permitted or special uses within the designated zone. The applicability of these uses does not supersede restrictions placed on uses within the zones, i.e., a combination of uses may be allowed only if those uses are allowed as separate entities within the zone as described in § 155-12 (Use regulations).
- D. Special use. Mixed uses shall be considered a special use and subject to Planning Board approval.
- E. Residential uses. More than one residential unit shall be considered compatible with other combinations of uses only in the C-1 and C-2 Zones.

§ 155-12.2. Additional restrictions on uses. [Added 3-22-2004 by L.L. No. 1-2004]

- A. In all zones other than the C-1 and C-2 Zones, residential use of a lot shall be limited to one single-family residence, or if density allows, one two-family residence on an individual lot.
- B. This restriction shall not apply to multiple-family dwellings, adult multiple dwellings, affordable senior citizen housing or any other specific section of the Code of the Town of Marlborough designed to make exception to this restriction.

§ 155-13. Water and sewer requirements.

- A. Notwithstanding any other provision of this chapter which permits single-family homes on lots of less than one acre, the minimum lot area for any residential dwelling not served by a public sewer system shall be related to the minimum usable area for on-site waste disposal systems, as defined in this chapter, as follows:
 - (1) For lots having both on-site water supply and waste disposal systems, a minimum usable area of 12,500 square feet.
 - (2) For lots having on-site waste disposal systems but public water supply, a minimum usable area of 4,000 square feet.
- B. Determinations of minimum usable area shall be subject to the approval of the Town Engineer, if such is appointed, or the Ulster County Department of Health.
- C. The Town Engineer or the Department of Health shall certify to the Building Inspector the minimum usable area for any lot not served by public waste disposal before any building permit is issued.

ARTICLE V, Supplementary Lot, Height and Yard Regulations

§ 155-14. Lot regulations.

- A. Lot frontage. The minimum lot frontage of any lot shall be measured along the minimum building setback line as required for the district in which the property is located or the setback line as required by deed, whichever is greater.
- B. Corner lots. At all street intersections, no obstruction to vision which is a hazard to vehicular movement (other than an existing building, post, column or tree) and which exceeds 30 inches in height above the established grade of the street at the property line shall be erected or maintained on any lot within the triangle formed by the street lot lines of such lot and a line drawn between points along such street lot lines 30 feet distant from their point of intersection.
- C. Required area or open space cannot be reduced. The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter, and, if already less than the minimum required by this chapter, said area or dimension may be continued and shall not be further reduced.
- D. Minimum lot size for one- or two-family dwellings. Lots to be developed with individual water supply and/or waste disposal systems shall, when utilized for one- or two-family units, have a lot size whose average per dwelling unit is no less than the

area required for a single dwelling unit in that district having the same facilities, as specified in this chapter.

- E. Through lot requirements. A through lot shall be considered as having two street frontages, both of which shall be subject to the front yard requirements of this chapter.
- F. Dwellings on small lots. Notwithstanding the limitations imposed by any other provisions of this chapter, the Zoning Board of Appeals shall permit erection of a one-family dwelling on any lot in a residential district separately owned or under contract of sale and containing, at the time of the passage of this chapter, an area or a width smaller than that required for a one-family dwelling. No such permit shall be granted if the applicant is the owner of adjoining vacant property, so that he could comply with the requirements of this chapter, or if the applicant does not meet the standards of the Department of Health.
- G. Interior lots. The minimum width of a right-of-way connecting an interior lot to a public road shall be not less than 25 feet.
- H. Minimum front lot line distance. The minimum distance of a front lot line from the center line of the road abutting that lot shall be not less than 25 feet.

§ 155-15. Height regulations.

- A. General application. No building or structure shall be higher than the height permitted in the district where such building is located.
- B. Permitted exceptions. Height limitations stipulated elsewhere in this chapter shall not apply to open amusement uses, church spires, belfries, cupolas and domes, monuments, water towers, chimneys, smokestacks, flagpoles, radio and television towers, masts and aerials or parapet walls, except that no parapet wall may extend more than four feet above the limiting height of the building, or to farm buildings or structures on farms, provided that these farm buildings are at least 100 feet from every lot line, or to buildings or structures on lands in an industrial district used for quarrying, including the processing, packaging or warehousing of cement, asphalt, concrete or related products, provided that these buildings and structures are at least 150 feet from every lot line.

§ 155-16. Yard regulations.

- A. The side yard of every corner lot shall be equal to the front yard requirement of structures fronting on the side street.
- B. Additional yards required when nonresidential districts abut residential districts. All uses permitted in nonresidential districts which abut residential districts at the lot line or on the same street shall provide yards, where they abut, of at least the minimum yard requirements in such residential district.
- C. Side yard width may be varied. Where the side wall of a building is not parallel to the side lot line or is broken or otherwise irregular, the side yard may be varied. In such case, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any point than 1/2 the otherwise required minimum width.
- D. Front yard exception. When an unimproved lot is situated between two improved lots,

each having a principal building within 25 feet of any side lot line of such unimproved lot and each having a front yard less than the minimum required for that district, the front yard required for any principal structure to be erected on the unimproved lot may be no greater than the deeper of the two adjacent front yards.

- E. Front yard of corner lot. The front yard of any corner lot shall be established on the wider of the two streets abutting said lot, except where the widths of the two abutting streets are equal, then the front yard may be established on either street.
- F. Provision for yard or other open space. No yard or other open space provided about any buildings for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on another lot shall be considered as providing a yard or open space for a building on any other lot.
- G. Location, limitation and coverage accessory.
 - (1) No accessory building permitted by this chapter shall be placed in any required side or front yard except as specified hereinafter in this article.
 - (2) The aggregate ground area covered by any accessory buildings in any rear yards shall not exceed 24% of the rear yard area.
 - (3) Accessory structures which are not attached to a principal structure may be erected in accordance with the following restrictions:
 - (a) No accessory structure 10 feet in height or less may be closer than 10 feet to any rear lot line or encroach on any side yard, nor may the combination of any accessory and principal structures encroach on the minimum side yard requirement for any district. Accessory structures more than 10 feet in height shall be set back an additional foot for each additional foot in height.
 - (b) No accessory structure shall be located closer to the street than the street wall of the principal structure, except in the case of farm and quarry buildings.
 - (c) No accessory structure shall be located closer to a principal structure than 10 feet.
 - (d) Accessory structures used in connection with loading freight cars on railroad sidings or vessels on inland waterways may be constructed up to the lot line.
 - (e) Accessory buildings with a greater than one-hundred-sixty-square-foot footprint must be placed on a permanent foundation in compliance with state and local building codes. [Added 3-8-1999 by L.L. No. 1-1999]
 - (f) Truck bodies, travel trailers, mobile homes, overseas containers or vehicles of any kind may not be used as accessory buildings except as permitted in the R-Ag-1 Zone. [Added 3-8-1999 by L.L. No. 1-1999]
 - (4) When an accessory structure is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal buildings.
- H. Cut or fill; retaining walls.
 - (1) Any cut or fill of more than two feet vertically, within five feet horizontally of any side or rear lot line, requires approval of the Building Inspector or the Town Engineer.
 - (2) The outside face of a retaining wall less than three feet in height can be constructed along any lot line.
 - (3) The outside face of a retaining wall over three feet in height shall be no closer

than three feet to any lot line.

- I. Side yards in HD District. Where a side yard in the HD District abuts Route 9W, its width shall be the same as the prescribed depth of front yards in that district.

§ 155-17. General landscaping requirements.

Any nonresidential use which is in, abuts, is adjacent to or is less than 50 feet from any residential district and which is not conducted within a completely enclosed building, such as storage yards, lumber and building materials yards, parking lots and like uses, shall be entirely enclosed by a fence or landscaping sufficient to effectively shield such uses.

ARTICLE VI, Supplementary Regulations Governing Certain Uses

§ 155-18. Amusement, recreation and vacation uses.

A. Outdoor recreation facilities.

- (1) Such uses shall include golf courses, swimming pools, tennis courts, ice-skating rinks, ski runs and ski trails.
- (2) No building or structure shall be located within 100 feet of any property line.
- (3) Unenclosed recreational facilities shall be located not less than 150 feet from any property line, except where greater distances are otherwise required herein, and shall be effectively screened from adjoining dwelling uses.
- (4) Illuminated signs and other lights shall be directed away or shielded from adjoining properties.
- (5) No public address system is permitted, except where such system will not be audible at any property line.
- (6) Permanent private swimming pools or portable pools 10 feet or more in any dimension shall, when located in residence districts, conform to all yard and setback requirements for detached accessory structures of the district in which located, except that pools may be located no closer than 10 feet from a rear property line. All pools must be made safe and secure by fencing or other means, as required by regulations of the New York State Uniform Fire Prevention and Building Code. (See 9 NYCRR 720.) All pool installations, aboveground, in-ground or portable, must be equipped with a ground fault interrupter (GFI), and all electrical installations must be approved by the authorized inspection agency.^{120EN}

B. Tourist and vacation buildings.

- (1) Such uses shall include motels, resort hotels and tourist homes and may be permitted upon approval of the Planning Board, provided that:
 - (a) There shall be filed with the application a map or plan of the entire property, showing the proposed location and dimensions of all structures, recreation grounds and community facilities proposed to be constructed thereon.
 - (b) There shall be presented with the application for this permit a certificate of

the County Department of Health approving of the source and method of treatment of the proposed supply of potable water.

- (c) There shall be presented with the application for this permit two copies of a map or plan of the system of sewage and waste disposal, which said copies shall bear the endorsement and approval of the County Department of Health.
 - (d) No structure in such use shall be within 50 feet of any property line or within 100 feet of any watercourse which is a part of any public water supply system.
 - (e) The total number of units to be accommodated in such use shall not exceed one for each 2,000 square feet of area within such premises.
 - (f) Within the total area of the lot, each principal building used for living purposes shall have the equivalent of lot area and width, yards and open spaces as follows: each principal building shall have appurtenant and adjacent thereto a portion of the total area of the lot to give it front and rear yards, each not less than 25 feet in depth, and side yards, each not less than 15 feet in width.
 - (g) Any building designed or used as a place for entertainment, such as a clubhouse, pavilion, casino or for a similar purpose, or for bathhouses for guests of the premises shall have appurtenant and adjacent thereto a portion of the total area of the lot to give it front and rear yards, each not less than 50 feet in depth, and side yards, each not less than 40 feet in width.
 - (h) If swimming facilities are proposed to be provided in such use, plans showing the extent and location of such facilities and proposed source of water and method of treatment, if any, shall be submitted with the application for the above permit, and such plans shall bear the approval of the County Department of Health.
 - (i) No certificate of occupancy shall be issued for any such use until the Building Inspector has made a personal examination and satisfied himself that all of the requirements herein set forth have been complied with. No such use shall be used or occupied until a certificate of occupancy has been issued.
- (2) Such uses in existence and being operated as such at the time of the passage of this chapter shall not be subject to the above requirements. A nonconforming resort use abandoned for a period greater than two years shall be deemed to be discontinued, and the premises may not thereafter be used as a resort except on approval of the Zoning Board of Appeals, as hereinafter provided.
- C. Campsites. Such uses may be permitted upon the approval of the Planning Board, provided that they conform to all requirements of Chapter 102, Mobile Homes, except as follows:
- (1) Occupancy by any individual or group of individuals in any form of permitted temporary, movable or portable shelter shall be for a period of not to exceed 90 days in any calendar year.
 - (2) Each camping space shall be at least 2,500 square feet in area and 50 feet in width. There shall be an average of no more than 12 camping areas per acre for any campsite.
 - (3) Parking spaces for automobiles shall be 30 feet long and 12 feet wide, with an

eight-foot-wide strip of gravel, if necessary. Parking spaces for automobiles with trailers shall be 50 feet long and 14 feet wide, with a ten-foot-wide strip of gravel, if necessary.

- (4) No camping space shall be within 50 feet of any property line or within 100 feet of any watercourse which is part of any public water supply system.
- (5) No electrical outlets are required for individual camping spaces.
- (6) Sanitation facilities shall be furnished in accordance with the following specifications:
 - (a) One toilet for each sex for every five units or fraction thereof.
 - (b) Each toilet room for men shall have, in addition, one urinal stall.
 - (c) One lavatory for each unit of three toilets or less and one lavatory for every three toilets, where additional toilets are provided.
 - (d) One shower for each sex for every five units or fraction thereof. Bathtubs are prohibited.
 - (e) Slop sinks or basins and laundry tubs, with water supply to be provided to serve each five units.
 - (f) All toilets, sinks, showers, urinals, etc., are to be placed in properly constructed buildings located not less than 100 nor more than 500 feet from each camping space intended to be served thereby.
 - (g) Each toilet and shower for which provision is made in Subsection C(6)(f) above shall be in a private compartment or stall.
 - (h) The toilet and other sanitation facilities for males and females shall be either in separate buildings or shall be separated, if in the same building, by a soundproof wall. The sanitation facilities for males and females shall be distinctly marked to denote the sex for which they are intended.
- (7) Service buildings housing sanitation facilities shall be constructed and maintained in accordance with the following specifications:
 - (a) They shall be permanent structures complying with all applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems.
 - (b) The service building shall be well-lighted at all times of the day and night, shall be well-ventilated with screened openings, shall be constructed of such moistureproof material, which may be painted woodwork, as shall permit repeated cleaning and washing and shall be maintained at a temperature of at least 68° F. during the period from October 1 to May 1. The floors of the service buildings shall be of concrete or similar materials, elevated not less than four inches above grade, and shall slope to a floor drain located in each room.
 - (c) All service buildings and the grounds of the site shall be maintained in a clean, sightly condition and kept free of any condition that will menace the health of any occupant or the public or constitute a nuisance.

D. Seasonal dwelling unit conversions.^{121EN}

- (1) Conversion of a seasonal dwelling shall require a special use permit from the Planning Board, in accordance with the provisions of § 155-32 of this chapter.
- (2) In considering and approving an application for seasonal dwelling conversion, it shall be the primary concern of the Planning Board to preserve the public health,

safety and welfare. To this end, the approval of any such application shall include appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter and particularly with regard to the following:

- (a) Safe and adequate ingress and egress.
- (b) Adequate construction to provide sufficient protection from the elements.
- (c) Proper installation of heating, plumbing, water, sewage and lighting facilities, in accordance with appropriate codes for new construction.

§ 155-19. Community facilities.

- A. Community buildings, clubs, lodges and fraternal organizations.
 - (1) All buildings shall be a minimum of 20 feet from any property line, except where greater distances are required herein.
 - (2) In the R-1 District, where permitted, there may be included retail sales for members and guests only.
 - (3) All applications for such uses in the R-1 District shall demonstrate to the satisfaction of the Planning Board that the proposed use will serve primarily the residents of the locality and is not operated for gain.
- B. Essential services. Such uses shall include electric substations, transformers, switches, sewage treatment plants, auxiliary apparatus serving a distribution area and water pumping stations.
 - (1) Such facilities shall be so located as to draw a minimum of vehicular traffic to and through residential streets.
 - (2) The location, design and operation of such facilities shall not adversely affect the character of the surrounding residential area.
 - (3) Lots containing essential services shall be of sufficient size to allow for the construction of the essential service and to provide adequate setbacks, buffers, landscaping and parking. Adequate fences, barriers and other safety devices shall be installed.
- C. Waterfront parks. Public parks adjacent to the Hudson River or its tributaries may be permitted in any zoning district, subject to the following conditions:
 - (1) Minimum lot size shall be one acre.
 - (2) Access shall be connected to a public road.
 - (3) Where adjacent to nonresidential uses, screening may be required by the Planning Board.

§ 155-20. Commercial and industrial uses.

In order to ensure that commercial and industrial uses, where permitted in the Town of Marlborough, will have no adverse effect on the environment or on adjacent land uses, the following conditions and procedures shall be complied with before a building permit or a certificate of occupancy may be issued:

- A. Environmental quality review. Such review shall be employed in considering proposed reuses of recyclable agricultural buildings.
- B. Outdoor storage of materials and equipment. In the R, R-1 or R-Ag-1 Districts, on lots of three acres or less, outdoor storage of materials or equipment unrelated to a principal permitted use in that district shall be prohibited.

§ 155-21. Recyclable agricultural buildings. [Amended 8-22-1994 by L.L. No. 2-1994; 3-25-1994 by L.L. No. 3-1996]

Storage, processing and packaging buildings shall include coolers, packinghouses and barns. These buildings may be utilized for nonagricultural activities, such as warehousing and long-term storage, when conducted without public hazard or nuisance caused by odor, noise, smoke, dust or traffic generation. A principal building with attendant accessory buildings and outside storage shall occupy no more than 30% of a lot which shall be created for such purpose. Such lot shall not be smaller than the minimum of two acres. All buildings, when recycled or completed, shall meet the requirements of the New York State Uniform Fire Prevention and Building Code.

§ 155-22. Mobile retail stands. [Amended 8-22-1994 by L.L. No. 2-1994]

Such stands, where permitted, shall comply with the following:

- A. They shall be set back 50 feet from the edge of the right-of-way.
- B. The space for parked vehicles is to be level, well-drained and covered with gravel.
- C. A license to be granted by the Town Clerk is required, as is payment of an annual fee which will be set by the Town Board at the annual reorganizational meeting, said fee to be paid to the Town Clerk before the license is issued.^{122EN}
- D. Site review and approval by the Planning Board is required.
- E. Written authorization of the property owner is required.

§ 155-23. Home occupations.

All home occupations shall meet the following conditions:

- A. The home occupation shall be clearly incidental to the principal use of the residential structure in which it is located, and no more than one home occupation shall be conducted on the premises. Such use shall not exceed 35% of the total floor area of the dwelling unit within which the home occupation is conducted, inclusive of preexisting attached garages, exclusive of accessory buildings whether or not attached to the principal structure.
- B. The home occupation shall be conducted solely by the owner residing on the premises. Except as specified in Subsection E below, no other persons shall be permitted to share, let or sublet space within the residence for home occupation use.
- C. The home occupation shall be conducted entirely within the principal structure, and there shall be no visible exterior display of goods or external evidence of such home occupation, such as a commercial vehicle which exceeds the standards set forth in § 155-27. Only the signs permitted by § 155-28B hereof shall be allowed. The home occupation shall not change the residential character of the building or of the neighborhood in which it is situated. [Amended 8-22-1994 by L.L. No. 2-1994]
- D. There shall be no structural alteration to the principal building in order to accommodate the home occupation. Home occupations shall generate no noise, odor, vibration, smoke, dust, traffic or other objectionable effects.
- E. No more than two nonresident persons, other than family members related by blood or marriage, may be employed to assist the operator of the home occupation.
- F. All home occupations are subject to an annual fee which will be set by the Town

Board at the annual reorganizational meeting. [Amended 8-22-1994 by L.L. No. 2-1994]

§ 155-24. Helipads. [Amended 8-22-1994 by L.L. No. 2-1994]

Helipads, where permitted, shall comply with the following:

- A. It shall be located on a single parcel of land of not less than 50 acres.
- B. Takeoffs and landings shall be only during daylight hours.
- C. It shall be operated only by members of the resident family for agriculturally-related commercial purposes.
- D. Sound levels at the property line of the nearest residential property shall not exceed 75 decibels.

§ 155-25. Junkyards. [Amended 8-22-1994 by L.L. No. 2-1994]

Junkyards, where permitted, shall comply with the following:

- A. The maximum site area shall be five acres.
- B. The site shall be screened from adjacent uses by plantings acceptable to the Planning Board.
- C. Such use shall comply with the requirements of § 136 of the General Municipal Law, as it may be amended.

§ 155-26. Mining and excavation.

- A. Mining and excavation in the R-Ag-1 District. Excavation and sale of shale, sand, clay, gravel, rock or other natural mineral deposit shall be allowed only by special permit, subject to the following provisions. The preceding sentence notwithstanding, property owners may utilize gravel, stone quarrying or other materials excavated on their own property for fill or leveling.
 - (1) Before a special permit is issued, the applicant shall submit to the Planning Board two copies of a map, at a scale of one inch equals no more than 100 feet, showing all land within 200 feet thereof, with exact locations of all buildings, streets, utilities, drainage or other easements, watercourses, lot lines, block and lot numbers and names of the landowners. Such map shall also show the present topography at ten-foot contour intervals. The map shall be signed by a licensed engineer or land surveyor for certification of its accuracy and source. [Amended 3-8-1999 by L.L. No. 1-1999]
 - (2) (Reserved)^{123EN}
 - (3) During excavation or quarry operations, open pits and quarry walls shall be entirely surrounded by a substantial fence, at least six feet high, that will effectively block access to the area with suitable gates provided with locks. The top and/or toe of the slope shall be not closer than 40 feet to a property line.
 - (4) The proposed finished grading plan shall show the land to be smooth graded and topsoil or other suitable material respread.
 - (5) The applicant shall be required to furnish a performance bond in an amount determined by the Planning Board Engineer and approved by the Planning Board and then the Town Board and to be held by the Town Clerk to be sufficient to

guarantee the completion of the finished grading and drainage plan. The bond(s) shall be released only upon certification by the Planning Board Engineer that all requirements, including the finished grading and drainage, have been complied with. [Amended 3-8-1999 by L.L. No. 1-1999]

- (6) No special permit for excavation operations or soil mining shall be granted for a period of more than three years, but such permit may be extended for additional two-year periods upon approval of the Planning Board.
- (7) Upon approval, one copy of the approved excavation plan shall be returned to the applicant by the Town Clerk, together with the special permit, upon the payment of a fee in an amount set by resolution of the Town Board to cover all engineering and other costs directly attributable to the approval and office and field checking of the proposed soil mining operations.^{124EN} [Amended 8-22-1994 by L.L. No. 2-1994]

B. Mining and excavation in the I District. Mining and excavation and the sale of shale, sand, clay, gravel, rock or other natural mineral deposits shall be allowed, provided that the following conditions are met:

- (1) A map showing the contours at five-foot intervals and the exterior boundary line of the property to be included in the quarry shall be filed with the Building Inspector.
- (2) The minimum size of the lot is at least 50 acres and a distance of not less than 50 feet shall be maintained between any quarry operation and any street or property line.
- (3) No quarry operation shall emit an injurious amount of dust, noise or vibration beyond the geographical limits of such quarry.
- (4) All roads within any quarry which are located within 500 feet of any residential district boundary shall be provided with a dustless surface satisfactory to the Town Superintendent of Highways.
- (5) The exterior bounds of the property shall be posted, and fences at least six feet in height shall be maintained, with suitable locking gates, across each roadway or other means of vehicular access to the property.
- (6) All activities involving and all storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of explosion and fire, and adequate fire-fighting and fire-suppression equipment and devices prescribed by the laws of the State of New York shall be maintained.

§ 155-27. Off-street parking; off-street loading; filling and service stations.

A. Off-street parking. In all districts, in connection with every manufacturing, business, institutional, recreational, residential or any other use, there shall be provided, at the time any building or structure is erected or is enlarged or increased in capacity, off-street parking spaces for vehicles in accordance with the requirements set forth herein.

- (1) Size, access and construction.
 - (a) Each off-street parking space shall have an area of not less than 200 square feet, exclusive of access drives or aisles, and shall be of usable shape and condition. Parking areas shall be suitably drained and shall be paved with an

all-weather surface in accordance with the minimum specifications of Chapter 134, Subdivision of Land.

- (b) There shall be adequate provisions for ingress to and egress from all parking spaces. Access to off-street parking areas shall be limited to several well-defined locations, and in no case shall there be permitted unrestricted access along the length of the street or alley upon which the parking area abuts.
 - (c) In the R, R-1 and R-Ag-1 Districts, on lots of two acres or less whose principal use is a residence, off-street parking for any commercial truck or associated trailer with a manufacturer's rated capacity of more than one ton shall be considered a permitted accessory use when such vehicle is housed in a garage. Such garage shall meet all yard setback and lot coverage requirements.
- (2) Number of parking spaces required.
- (a) The number of off-street parking spaces required shall be as set forth in Table 1 below. Except in the case of dwellings, no parking area provided hereunder shall be established for less than three spaces.
 - (b) In the case of any building, structure or premises, the use of which is not specifically mentioned herein, the provisions for a use which is so mentioned and to which said use is similar, in the opinion of the Zoning Board of Appeals, shall apply.

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- (3) Off-site facilities. All permitted and required accessory off-street parking spaces, open or enclosed, shall be located on the same lot as the use to which such spaces are accessory, except that such spaces may be provided within a radius of no greater distance than 250 feet from that lot as measured from property lines.
 - (4) The Planning Board, in its discretion, may increase the parking spaces necessary as part of the site plan review process. [Added 11-13-1995 by L.L. No. 5-1995]
 - (5) The Planning Board, at its discretion, may reduce the parking spaces necessary as part of the site plan review process for areas located in the Hamlet Parking District. [Added 3-8-1999 by L.L. No. 1-1999]
- B. Off-street loading.
- (1) In any district, in connection with every building or building group or part thereof hereafter erected and having a gross floor area of 10,000 square feet or more, which is to be occupied by manufacturing or commercial uses or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same zone lot with such building, off-street loading berths in accordance with the requirements of Table 2, following:

**Table 2
 Required Off-Street
 Loading Berths**

Uses	Floor Area Numb (square feet)	Loadi ng Berths
Schools	15,000 or more	1

Hotels and 10,000 offices or more	1
Retail comm 10,000 ercial to and 25,000 miscell aneous	1
25,001 to 40,000	2
40,001 to 60,000	3
60,001 to 100,000	4
For each additio additio nal 50,000 or major fractio n thereof	1

- (2) Dimensions for required loading berths. Each required loading berth shall be a minimum of 60 feet long, 14 feet wide and, if covered, 15 feet high. Minimum length may be increased depending on the dimensions of the transportation mode (vehicle or railroad car) customarily serving the building described in Table 2 above.
- (3) Location and dimensions of loading areas. All loading areas, including those which are not required by Subsection B(1), shall be on the same lot as the use which is to be served. For the purposes of this section, "loading area" shall include all areas where cargo is transferred between a building and a

transportation mode, as well as all space where railroad cars or trucks are parked during such transfer. Such areas shall be supplemented by an apron space whose depth is at least equal to the required length of the loading berth. Loading and apron areas shall not encroach upon any road, required off-street parking area or open space.

- (4) Access to roads. There shall be no more than one entrance-exit point of 28 feet in width onto any road from such a loading area for every 500 feet of frontage on any state highway. There shall be no access within 200 feet of any school, playground or church, nor closer to the intersection of any two street lot lines than 500 feet.
- C. Joint facilities for parking or loading. Off-street parking and loading facilities for separate uses may be provided jointly, if the total number of spaces so provided is not less than the sum of the separate requirements for each use, and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one use, unless otherwise approved by the Zoning Board of Appeals in accordance with the purposes and procedures set forth herein.
- D. Automobile service and filling stations.
- (1) Location of exits and entrances. No gasoline filling station or automobile repair shop or any vehicular access thereto shall be located within 200 feet of schools, playgrounds and churches. Vehicular access to the above automotive uses shall not be closer to the intersection of any two street lot lines than 500 feet.
 - (2) Location of appliances or pits. No gasoline filling station or parking garage shall be permitted where any gasoline or oil pump or oil draining pit or visible appliance for any such purpose is located within 20 feet of any street lot line.

§ 155-28. Signs.

Signs may be erected and maintained in the Town of Marlborough only when in compliance with the following provisions:

- A. Signs advertising items sold or produced elsewhere than on the lot where such sign is located are prohibited. Signs advertising services or resorts not located on the lot where such sign is located are prohibited. This shall not apply to general directory or directional signs. General directory signs shall be no larger than 32 square feet in area and shall include only the names of the establishments in letters no higher than five inches. Such signs shall be permitted upon special approval by the Zoning Board of Appeals. The Zoning Board of Appeals shall encourage uniform directory signs.
- B. Signs indicating the name or address of the occupant or a permitted home occupation, provided that they shall not be larger than two square feet in area, are permitted. Only one such sign per dwelling unit shall be permitted, except in the case of corner lots, where two such signs (one facing each street) shall be permitted for each dwelling unit.
- C. For buildings other than dwellings, one identification sign not exceeding 32 square feet in area may be displayed for each 250 feet of road frontage. Building permits shall be required for all signs larger than eight square feet in area.
- D. Signs advertising the sale or rental of the premises upon which they are erected by the owner or broker or any person interested in the sale or rental of such premises may be

erected or maintained, provided that:

- (1) The size of any such sign is not in excess of six square feet; and
- (2) Not more than two signs are placed upon any property, unless such property fronts upon more than one street, in which event two more signs may be erected on each additional frontage.

E. The following general regulations shall apply to all permitted signs.

- (1) Signs must be constructed of durable materials, maintained in good condition and not allowed to become dilapidated.
- (2) Attached signs shall not project from any building more than three feet in the direction of the street; provided, further, that no such sign shall extend over the public street or public sidewalk area.
- (3) No sign shall be higher than the height limit in the district where such sign is located.
- (4) No illuminated signs shall be permitted which utilize flashing lights or allow their lights to be directed onto the highway.
- (5) For signs in the interest of the public information and convenience, the Building Inspector, upon approval of the Zoning Board of Appeals, may issue a temporary permit for a period to be designated by said Board. Such temporary signs shall be completely removed by the property owner at the termination of any permit for the erection thereof.

§ 155-29. Residential cluster developments. [Amended 8-22-1994 by L.L. No. 2-1994; 3-8-1999 by L.L. No. 1-1999]

In the R-1 District, an applicant for a subdivision containing more than three lots or a site plan for three or more dwelling units may, if all lots or units are served by municipal water and sewer, apply to the Planning Board for a residential cluster subdivision as authorized by § 278 of the Town Law. Such application, as proposed in a letter, shall be accompanied by sketches indicating, in general, the plan and the area to be retained in open space or used for other municipal purposes. If, in the opinion of the Planning Board, such development will succeed in achieving the objectives of the Comprehensive Plan, then the Planning Board shall request approval from the Town Board that said open space or land resulting from the application of lot density zoning will be accepted by the Town or a homeowners' ownership plan approved. If said approval is not forthcoming, the applicant may not submit a cluster plan. If the Town Board indicates its approval, the applicant shall proceed as follows:

- A. Submission. The applicant shall proceed in accordance with the regular subdivision procedures, as provided in Chapter 134, Subdivision of Land, as they may be adopted.
- B. Standards.
 - (1) Single-family detached houses.
 - (a) Single-family detached houses may be grouped in clusters, with minimum lot dimensions and setbacks corresponding to those in the R District, when served by municipal water and sewer systems.

- (b) All other yard requirements and maximum coverage and maximum height requirements as specified in Schedule I^{125EN} for the district in which located shall be complied with.
 - (2) Multiple dwellings. In cases where a developer has designed multiple dwellings, the Planning Board, after inspecting plans and elevations, may approve minimum lot areas other than those provided, provided that the sanitary systems are approved by the County Health Officer, that the average density does not exceed that permitted within the zoning district in which the land occurs or that the layout is not detrimental to the health and general welfare of the community.
 - (3) Buildings with more than two and not more than six dwelling units shall be eligible for the multiple dwelling provisions of residential cluster developments.
- C. Area to be dedicated. The area to be dedicated shall be not less than the difference in lot sizes that would have resulted in the application of the noncluster lot area standards as set forth in Article IV. The number of lots that would have resulted in application of noncluster standards shall be determined by submission of a sketch plan using noncluster standards.
- D. Dedicated lands, locations and uses. The Planning Board shall have full authority to approve or disapprove the locations and proposed uses of land required to be dedicated in accordance with the foregoing and as guided in its decisions by this section and the following:
 - (1) Where land being developed under the authority of this section is partly in other residence zones not included in the provisions of this section, the Planning Board may accept, as dedicated lands, lands which are in adjacent zones. Such a

dedication, if approved, shall dictate the adjustment of the number of lots in the area of development and in accordance with the provisions of this section.

- (2) The Planning Board shall have full discretion as to the location and size of the various use need areas and their distribution. It shall not generally approve areas of less than five acres, except when such a site is considered adequate for its specific use, and it shall make certain that a reasonable portion of required dedicated area shall be located so as to specifically serve the need of the development being considered.

E. Disposition of dedicated areas.

- (1) Dedicated areas, if accepted by the Town Board, may be deeded to Town ownership and control for its dedicated purpose; or
- (2) Dedicated areas may be deeded to property owners or associations within the bounds of the original development for their use, control and management for a club or recreational use and providing appropriate restrictions to assure the effectuation of the purpose of this chapter and to provide for the maintenance and control of the area. Every effort shall be made, if nonTown ownership is approved, to place development and maintenance responsibility upon the property owners within the bounds of the development. Upon failure to maintain an orderly open space, the Town may and can perform such maintenance and assess the cost to the responsible property owner or owners.

F. Rights of owner. Proposals in accordance with this section shall only be approved by the Planning Board, as above regulated, if the lesser requirements will promote the public health, safety and morals and general welfare and will enhance property values within the area of development and the Town of Marlborough. Nothing herein shall be construed as requiring a developer to elect this means of developing his tract.

§ 155-29.1. Affordable senior citizen housing. [Added 11-13-1995 by L.L. No. 5-1995]

Application may be made to the Planning Board for a residential cluster development which provides affordable senior citizen housing whose residential units contain one bedroom or fewer and are served by municipal water and sewer systems.

A. Lot, yard and density regulations.

- (1) The minimum project area shall be three acres, with a minimum lot width of 200 feet.
- (2) Residential units may be attached or detached with designs to be approved by the Planning Board and consistent with density requirements.
- (3) Multiple dwellings shall be consistent with lot, yard and height requirements for multiple dwellings in § 155-30.
- (4) Maximum density shall be 10 units per acre.

B. Planning Board review. Required information and Planning Board review shall be as set forth in § 155-31, Site plan review.

C. Proof of affordability. Compliance with affordability, as defined herein, shall be furnished by the applicant.

§ 155-29.2. Kennels. [Added 3-25-1996 by L.L. No. 1-1996]

Kennels, where permitted, shall comply with the following:

- A. Minimum lot area shall be 10 acres.
- B. Building enclosures shall be located on the lot a minimum distance of 500 feet from any property line and in other respects in accordance with § 60-5G.
- C. Building enclosures for animals shall be soundproofed to comply with the requirements of § 60-5B.
- D. Kennel areas shall be maintained so as to comply with the requirements of § 60-5C.
- E. Animals may be permitted outside of building enclosures between the hours of 8:00 a.m. and 6:00 p.m.
- F. Kennels shall be licensed annually. Failure to comply with the above conditions shall be cause for revocation or nonrenewal of the license.

§ 155-30. Multiple dwellings. [Amended 6-26-1995 by L.L. No. 4-1995; 5-27-2003 by L.L. No. 2-2003]

Application may be made to the Planning Board for the development of multiple-family residences containing two or fewer bedrooms per dwelling unit with restrictions in addition to those normally found in the zone as follows:

- A. Lot, yard and density regulations.
 - (1) R District.
 - (a) Minimum lot area shall be three acres, with a minimum lot width of 200 feet.
 - (b) Maximum lot coverage shall be 15%.
 - (c) Lot shall be served by and utilize public water and sewer.
 - (d) Setbacks for front yard shall be 40 feet, each side yard 30 feet and rear yard 30 feet.
 - (e) Maximum density shall be six dwelling units per acre.
 - (2) C-1 District.
 - (a) Each dwelling unit shall have a minimum habitable space of 500 square feet for one bedroom and 750 square feet for two bedrooms. Rooms which may be reasonably considered as use for a bedroom by the Planning Board shall be used for these calculations.
 - (b) Lots shall be served by and utilize public water and sewer.
 - (3) C-2 District.
 - (a) Minimum lot area shall be three acres, with a minimum lot width of 200 feet.
 - (b) Maximum lot coverage shall be 15%.
 - (c) Setbacks for front yard shall be 40 feet, each side yard 30 feet and rear yard 30 feet.
 - (d) Maximum density shall be six dwelling units per acre.
- B. Design standards.
 - (1) Maximum units per structure. No more than eight units shall be contained in a single structure, except in the case of adult multiple dwellings, as defined, where the Planning Board, without modifying height or density requirements, permits variations in design due to special site conditions or occupant needs.
 - (2) Minimum distances between structures. Where there are two or more structures on a single lot, the minimum distance between structures shall be twice that of a minimum side yard.
 - (3) Off-street parking. The minimum number of off-street parking spaces provided

per dwelling unit shall be as established by Table 1, § 155-27, of this chapter.

§ 155-31. Site plan review.

Before a building permit is issued for anything other than a principal permitted use or before approval is given for parking areas for four or more vehicles or for off-street loading facilities or for essential services, a site plan shall be submitted to the Planning Board in accordance with the provisions of § 274-a of the Town Law.

A. Information required by this section.

- (1) Site plans shall include the following information:
 - (a) The location of all existing watercourses, wooded areas, easements, rights-of-way, streets, roads, highways, freeways, railroads, canals, rivers, buildings, structures or any other feature directly on the property or beyond the property, if such feature has an effect upon the use of said property.
 - (b) The location, use and ground area of each proposed building, structure or any other land use.
 - (c) The location and widths of proposed streets servicing the area, with the Highway Superintendent's approval and/or recommendations endorsed thereon.
 - (d) The location and capacity of proposed off-street parking areas.
 - (e) The location and size of proposed loading berths.
 - (f) The location and treatment of proposed entrances and exits to public rights-of-way, including the possible utilization of traffic signals, channelization, acceleration and deceleration lanes, additional width and any other device necessary to traffic safety and/or convenience.
 - (g) The location and identification of proposed open spaces, parks or other recreation areas.
 - (h) The general location of landscaping and other forestry features.
 - (i) The location and design of buffer areas and screening devices to be maintained.
 - (j) The location of sidewalks, walkways and all other areas proposed to be devoted to pedestrian use.
 - (k) The general nature and location of public and private utilities, including maintenance facilities.
 - (l) The specific location of signs.
 - (m) The Planning Board may at its discretion require submission of sample construction materials and/or material specifications, including, but not limited to, windows, exterior walls, roof material, colors and architectural standards. The Planning Board may request any additional information it requires to assure that the proposed plan and/or structure is in harmony with the surrounding area. The information submitted will be reviewed for color, design consideration, aesthetics and architectural standards. No information provided to the Planning Board warrants the quality or durability of the construction material. [Added 3-8-1999 by L.L. No. 1-1999]
- (2) Any other information required by the Planning Board which is reasonably necessary to ascertain compliance with the provisions of this chapter.
- (3) Drawings shall be at a scale of one inch equals 50 feet for sites of 10 acres or

less; the scale for drawings of larger sites shall be adjusted accordingly.

B. Planning Board review.

- (1) The Planning Board shall hold a public hearing on the site plan within 62 days from the receipt of the application, in accordance with the provisions of § 274-a of the Town Law. The Planning Board shall mail notice of the hearing to the applicant at least 10 days before such hearing and shall give public notice of said hearing in a newspaper of general circulation in the Town at least five days prior to the date thereof. The Planning Board shall decide on the application within 62 days after the hearing. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Board. The decision shall immediately be filed in the office of the Town Clerk and a copy thereof mailed to the applicant. [Added 8-22-1994 by L.L. No. 2-1994]
- (2) In reviewing the site plan, the Planning Board shall consider its conformity with the Comprehensive Plan and the other codes and ordinances of the Town. Traffic flow, circulation and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets. The impact on drainage shall be considered to ensure against flooding. Conservation features, aesthetics, landscaping and impact on surrounding development as well as on the entire Town shall be part of the Planning Board review.
- (3) In its review, the Planning Board must request recommendations from the Town Board, the Building Inspector, the Highway Superintendent or any other local, county, state or federal agency which may have an interest in the particular development for which site plan approval is being sought.
- (4) In the event that a determination cannot be made with respect to required data or information at the time of submittal of a site plan, the Planning Board may make or recommend, as the case may be, compliance with the particular requirement a condition of approval for a certificate of occupancy and not require it prior to issuance of a building permit.

C. Building Inspector's action. The Building Inspector shall not act to grant a building permit until the applicant has complied with the written recommendations of the Planning Board regarding the site plan, which, in any event, shall be forwarded to the Building Inspector and the applicant not more than 62 days from the time the site plan is submitted for Planning Board review, unless extended by mutual agreement of the Planning Board and the applicant. If the Planning Board takes no action within 62 days, the site plan will be deemed to have been approved as submitted and without recommendation. [Amended 8-22-1994 by L.L. No. 2-1994]

D. Site plan binding.

- (1) The site plan as approved by the Planning Board shall be binding upon the applicant. Any changes from the approved plan shall require resubmission and reapproval by the Planning Board. The site plan shall remain effective for a period of two years from the date of approval.
- (2) In the event that a particular facility is to be constructed in stages, a site plan for each particular stage shall be required for the issuance of each building permit.

E. Performance guaranty. The Planning Board may require that public improvements and landscaping and buffer area requirements be secured by a performance guaranty,

in the same manner prescribed for such improvements in Chapter 134, Subdivision of Land, as they may be adopted.

- F. Submission to County Planning Board. Whenever a site plan is required, a copy of the site plan shall be submitted to the Ulster County Planning Board at least 30 days prior to its final approval by the Town of Marlborough Planning Board for review and comment and for approval when affecting an existing or proposed county road or drainage facility.

§ 155-32. Special use permit. [Amended 8-22-1994 by L.L. No. 2-1994]

In accordance with the provisions of § 274-b of the Town Law, applications for special use permits shall be reviewed and approved by the Town of Marlborough Planning Board. The procedure shall include a public hearing and notification of property owners within 500 feet. Required documents shall be similar to those required for site plan review. Site plan and special use reviews may be conducted concurrently where appropriate. Approved special uses shall be reviewed annually by the Building Inspector. An annual fee in an amount set by resolution of the Town Board shall be charged for approved special permit uses to cover the cost of such annual inspections to assure that conditions of approval are being met.^{126EN} In the event that said conditions are not being met, the holder of the special permit shall have 30 days to comply. Failure to comply with conditions of approval within this period shall cause special use approval to be withdrawn.

ARTICLE VII, Nonconforming Uses and Structures

§ 155-33. Continuation of use.

A use, building or structure lawfully in existence at the effective date of this chapter, which shall be made nonconforming at the passage of this chapter or any applicable amendment thereto, may be continued except as otherwise provided in this article.

§ 155-34. Regulation of nonconforming uses.

No existing building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered, except when changed to a conforming use or when required to do so by law, and except as follows:

- A. Restoration and reconstruction. Any nonconforming use or structure partially damaged by fire, casualty or act of God may be repaired and used as before, provided that the floor area of such use, building or structure shall not exceed the floor area or building volume which existed prior to such damage. All repairs shall be completed within one year after damages occur or such use shall not be rebuilt except as a conforming use. In the event that total destruction occurs or the Building Inspector orders said use or structure completely rebuilt, then the provisions of § 155-36 shall apply.

B. Repairs.

- (1) Normal maintenance, repair and incidental alteration of a structure containing a nonconforming use is permitted, provided that it does not extend the area or volume of space occupied by the nonconforming use.
- (2) A building or other structure containing residential nonconforming uses may be altered in any way to improve interior liability. No structural alterations shall be made which would increase the number of dwelling units.

§ 155-35. Termination of nonconforming uses. [Amended 11-25-2002 by L.L. No. 8-2002]

- A. The discontinuance of a nonconforming use for a period of one year and/or the change of use for any period of time shall be considered an abandonment of the nonconforming use and such nonconforming use shall not thereafter be revived.
- B. An application regarding the use and/or property in question, which has not already been abandoned, that is before the Planning Board or Zoning Board of Appeals shall postpone the effective date of the abandonment for a period of six months or the conclusion of the Planning Board or Zoning Board of Appeals process regarding the application, whichever shall come first.

§ 155-36. Reconstruction.

When a nonconforming use or structure is destroyed or damaged beyond repair or when the owner or tenant of said use or structure desires to rebuild for any reason, the Board of Appeals shall authorize such rebuilding if the rebuilding would not constitute a substantial enlargement of the use and if the rebuilding would provide better aesthetics or higher setbacks or assist in alleviating existing nuisance characteristics.

§ 155-37. Nonconforming residences.

- A. Nothing under this article shall prevent any residence from being rebuilt or reconstructed in the event of fire or other disaster.
- B. Nothing under this article shall prevent expansion of the floor area of a residence, provided that all required setbacks have been met.

ARTICLE VIII, Zoning Board of Appeals

§ 155-38. Organization and membership. [Amended 8-22-1994 by L.L. No. 2-1994]

There shall be a Board of Appeals of five members, pursuant to the provisions of Article 16 of the Town Law. The Town Board shall appoint said members, shall designate a Chairman and may remove any member of the Board of Appeals for cause after public hearing. The members of the Board of Appeals shall be appointed for terms of five years. If a vacancy shall occur otherwise than by expiration of the term, it shall be filled by the Town Board by appointment for the remainder of the unexpired term. The Chairman of

the Zoning Board of Appeals shall not succeed himself for more than three successive one-year increments.

§ 155-38.1. Training and attendance requirements. [Added 9-28-1998 by L.L. No. 3-1998^{127EN}]

- A. Within one year after initial appointment, a Zoning Board of Appeals member shall attend a training program at an appropriate level relating to the duties of Zoning Board of Appeals members, approved in the manner herein provided.
- B. All other Zoning Board of Appeals members shall attend training programs within one year of the date of the effect of this section, approved in the manner herein provided.
- C. All Zoning Board of Appeals members, after the first year of the enactment of this section or after a member's initial appointment, shall attend annual training programs related to the function of said Board.
- D. After discussion and consultation with the Town Supervisor, the Zoning Board of Appeals Board Chairperson, shall advise Zoning Board of Appeals members of approved programs to satisfy the requirements of Subsections A, B and C. Zoning Board of Appeals Board members shall be required to attend an annual minimum of three hours of training program(s) per year. The Zoning Board of Appeals Chairperson shall, from time to time as appropriate, consult with the Town Supervisor and advise Zoning Board of Appeals members of the availability of additional programs as they arise. [Amended 10-9-2001 by L.L. No. 4-2001]
- E. The Zoning Board of Appeals Chairperson shall choose programs which relate to the duties of Zoning Board of Appeals members. These may include courses, workshops or training programs sponsored by groups such as the New York State Association of Towns, the New York State Department of State, certified training providers, the New York State Department of Environmental Conservation, the Ulster County Planning Department, the New York State Planning Federation or other appropriate entities as designated by the Zoning Board of Appeals Chairperson in consultation with the Town Supervisor. [Amended 10-9-2001 by L.L. No. 4-2001]
- F. All training provided pursuant to this section shall be at Town expense.
- G. The Zoning Board of Appeals Chairperson shall cause notice of Zoning Board of Appeals members' compliance with these requirements to be entered into the minutes of the Zoning Board of Appeals as the official record of the Zoning Board of Appeals. The Zoning Board of Appeals Chairperson may require proof of attendance. [Amended 10-9-2001 by L.L. No. 4-2001]
- H. Each Zoning Board of Appeals member shall be required to attend 75% of any and all regularly scheduled Zoning Board of Appeals meetings and work sessions each year and 75% of any and all special meetings called by the Zoning Board of Appeals. Attendance at any training program does not count toward attendance at or for a Zoning Board of Appeals meeting, work session or special meeting.
- I. Noncompliance with minimum requirements relating to training and/or attendance shall be deemed a proper cause for removal from office. A Zoning Board of Appeals member who fails to attend the programs as provided in this section or who fails to meet the minimum attendance requirement as provided in this section and specified

pursuant to the resolutions promulgated thereunder shall be subject to removal following the procedures set forth in Town Law § 267.

§ 155-39. Procedure. [Amended 8-22-1994 by L.L. No. 2-1994; 5-11-1998]

Meetings shall be held at the call of the Chairman or at other such times as the Board of Appeals may determine. A quorum shall consist of three members. Decisions on any matter before the Board shall require the affirmative vote of a majority of the entire membership of the Board. The Board of Appeals shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of its examinations, findings and all other official actions.

- A. Forms and fees. All appeals and applications made to the Board of Appeals shall be in writing, on forms prescribed by the Board, and shall be accompanied by fees as prescribed by the resolution adopted by the Town Board.^{128EN}
- B. Required information in appeal or application. Each appeal or application shall fully set forth the circumstances of the case. Every appeal or application shall refer to the specific applicable provision of this chapter and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted. Where required, plans shall be prepared by a licensed professional engineer, architect or land surveyor, as the information in question requires.
- C. Decision. Every decision of the Board of Appeals shall be recorded in accordance with standard forms adopted by the Board of Appeals and shall set forth the circumstances of the case and shall contain a full record of findings on which the decision is based. Every decision of the Board of Appeals shall be by resolution, and each such resolution shall be filed in the office of the Town Clerk by case number, under the heading either of "Interpretation" or "Variances," together with all documents pertaining thereto. The Board of Appeals shall notify the Building Inspector, each member of the Town Board, the Secretary of the Planning Board and the municipal clerk of any affected municipality given notice of hearing, as required by law, of its decision in each case.
- D. Strict construction. All the provisions of this chapter relating to the Board of Appeals shall be strictly construed; the Board of Appeals, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitations contained therein; provided, however, that if the procedural requirements set forth in this chapter have been substantially observed, no applicant or appellant shall be deprived of the right of application or appeal.
- E. Expiration. Unless the variance is acted on and diligently prosecuted within 12 months of the date of its being granted, such variance shall become null and void. The Zoning Board may grant a six-month extension for cause.
- F. Conflict with state laws. In case of conflict with state laws, particularly Town Law §§ 267, 267-a, 267-b and 267-c and General Municipal Law §§ 239-l and 239-m, any provision of this section shall be superseded by such provisions. It is intended that this section shall be interpreted to be in harmony with such state law, and any requirements set forth in this section are intended to be in addition to those required by state law. [Amended 8-22-1994 by L.L. No. 2-1994]

§ 155-40. Powers and duties.

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Board of Appeals that is conferred by law:

- A. Interpretation. On appeal from an order, requirement, decision or determination made by an administrative official or on request by any official, board or agency of the Town to decide any of the following questions:
- (1) Determination of the meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter.
 - (2) Determination of the exact location of any district boundary shown on the Zoning Map.
- B. Variances. To authorize, upon appeal in specific cases, such variances from the terms of this chapter as will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, there are unnecessary hardships or practical difficulties in the way of the carrying out of the strict letter of this chapter subject to terms and conditions to be fixed by the Board of Appeals; provided, however, that no such variance shall be granted unless the Board of Appeals finds:
- (1) That there are unique physical conditions, such as an exceptionally irregular, narrow, shallow or steep lot, applicable to the land or building for which the variance is sought, which conditions are peculiar to such land or building. Such conditions shall be fully described in the findings of the Board of Appeals and taken into consideration only if they have not resulted from any act of the applicant or any predecessor in title.
 - (2) That, for reasons fully set forth in the findings of the Board of Appeals, the aforesaid circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the Board of Appeals is the minimum variance that will accomplish this purpose. All such findings shall be set forth, in writing, as further specified in this article.
 - (3) That the granting of the variances under such conditions as the Board of Appeals may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this chapter, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.
 - (4) The needs or desires of a particular owner shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto.
 - (5) Where the Board of Appeals finds the zoning classification of a particular property to be conducive to the deprivation of the reasonable use of the land or building by the owners thereof and where the Board of Appeals deems the same condition to apply generally to other land or buildings in the same neighborhood

- or district, said Board of Appeals may call this condition to the attention of the Planning Board.
- (6) In all cases where the Board of Appeals grants a variance from the strict application of the requirements of this chapter, it shall be the duty of the Board of Appeals to attach such conditions and safeguards as may be required in order that the result of its action may be as merely in accordance with the spirit and intent of this chapter as possible.
- C. To permit building in the bed of mapped streets.
- (1) After due notice and hearing as provided for in the Consolidated Laws of the State of New York and in accordance with the provisions set forth therein, the Zoning Board may grant a permit for building in the bed of a mapped street or highway shown upon the Official Map or Plan of the Town of Marlborough, as it may be adopted and from time to time amended.
- (2) Upon appeal from a decision by the Building Inspector to decide any question involving the interpretation of any provision of this chapter and where uncertainty exists as to the boundaries of any zone or district, the Zoning Board shall, upon written application or upon its own motion, determine the location of such boundaries of such districts as are established in Article IV hereof and as are designated on the Zoning Map of the Town of Marlborough.
- D. To authorize temporary uses. To grant, after due notice and hearing, the temporary occupancy and the use of a structure in any district for a purpose that does not conform to the district requirements, provided that such occupancy and use is truly of a temporary nature and subject to any reasonable conditions and safeguards which the Zoning Board may impose to minimize any injurious effect upon the neighborhood or to protect any contiguous property. The approval of the Zoning Board and any permit based thereon for such temporary occupancy and use shall not be granted for a period of more than 12 months and shall not be renewable more than once and then for a period of not more than 12 months.

ARTICLE IX, Administration and Enforcement

§ 155-41. Powers and duties of Building Inspector.

The Town Board shall provide for the services of a Building Inspector. The Building Inspector is hereby given the duty, power and authority to enforce the provisions of this chapter. He shall examine all applications for permits; issue permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with the requirements of this chapter and refer all nonconforming uses to the Zoning Board of Appeals; record and file all applications for permits with accompanying plans and documents; and make such reports as may be required. Building permits for a variance from the requirements of this chapter shall be issued only upon written order of the Zoning Board of Appeals.

§ 155-41.1. Ridgeline and steep slope protection. [Added 10-11-2005 by L.L. No. 5-

2005]

A. Statement of purpose.

- (1) It is the express purpose of this section to provide special qualitative and quantitative development controls for all lands located within the Town that have present within their boundaries topographical conditions, hereinafter defined as "steep slopes and ridgelines."
- (2) Effective and reasonable application of these regulations will protect the health, safety and welfare of the citizens of the Town and is consistent with the Town of Marlborough Comprehensive Plan¹²⁹EN.
- (3) The ridgeline protection area is defined as the area on the map known as the "Town of Marlborough Ridgeline Protection Map,"¹³⁰EN adopted with this code, and any subsequent amendments. The ridgeline of the Town of Marlborough shall be generally viewed as the high points of the ridge commonly known as the "Marlborough Mountains" as viewed from the east in a westerly direction.

B. Applicability. The requirements, guidelines and controls promulgated under this section shall be applicable to all properties within all zone districts situated in the Town in their existing physical state or condition as of the date of the passage of this section.

- (1) The term "Town Engineer" shall include the Planning Board Engineer by definition.
- (2) No lot shall be created by subdivision or other means which, by its creation, would result in a separate lot that cannot meet the following provisions for steep slope regulation or ridgeline protection as hereafter delineated.

C. Construction control limitations. Disturbance of steep slopes shall be limited to the following based on indicated slopes:

Slopes Permitted	Activity
Less than 15%	All activities

15% All
to 25% activities,
subject
to
review
and
approval of
individual
grading plans

More No
than disturb
25% ance
permitted
other
than
hereafter
provided

- D. Exception. The above construction control limitations for steep slopes are not applicable for isolated steep slopes with an area of a total of 10,000 square feet or less for the application under consideration.
- E. Lot grading/driveway/drainage plans. For all lots with proposed disturbance of a 15% to 25% steep slope area, a lot grading, driveway, and/or drainage plans shall be approved by the Town Engineer prior to the issuance of subdivision approval or a building permit. Said plan shall include, but not be limited to, existing and proposed contours, limits of soil clearing and/or disturbance, construction details, soil erosion, sedimentation control measures and drainage calculations and, where required by the other sections of the Code of the Town of Marlborough and/or Town Engineer, stormwater control measures. The Town Engineer may require additional information to make a determination of both applicability of steep slope and ridgeline protection as well as uphold the intent of this chapter.
- (1) No soil shall be excavated, removed, deposited or disturbed except as a result of, and in accordance with, a lot grading plan approved under the terms of this chapter.
 - (2) Proposed disturbance of soil shall be for purposes consistent with the intent of this chapter.
 - (3) Provision shall be made for the proper disposition of surface water runoff so that it will not create unstable conditions.

- (4) Provision shall be made for any structural or protective measures that proposed slopes may require for the protection of the public safety, including, but not limited to, retaining walls, guide rails, headwalls, and fences.
 - (5) Buffers of undisturbed land shall be maintained between adjoining properties to the extent practicable as determined by the Town Engineer.
 - (6) Should, in the opinion of the Town Engineer, application of these provisions render a lot that existed at the time this Code is adopted unbuildable, application of these regulations may be modified by the Town Engineer to preserve an allowable use of land with the intent that these provisions be applied to the greatest reasonable extent.
- F. Ridgeline protection requirements.
- (1) Applicability, review of plans; compliance. The requirements, guidelines and controls promulgated under this section shall be applicable to site plan and subdivision applications and building permits of new buildings. The Planning Board or Zoning Board of Appeals, as the case may be, shall review all plans submitted under this section as part of any application for site plan, subdivision or variance approval.
 - (2) Applicants shall submit for a determination whether the ridgelines depicted on a map entitled "Marlborough Ridgeline Protection Map" adopted upon the passage of this section is within 100 feet of the property which is the subject of the application for review and approval by the appropriate agency. Said map is intended as a guideline and is subject to further clarification by the Town Engineer for each property which may be affected. The applicant shall depict all ridgelines as shown on said map which are on or within 100 feet of said applicant's property. The map is intended to depict the ridgelines occurring in the Town at a USGS elevation of 750 feet or greater [in North American DATUM 1927 (NAD27)].
 - (3) The determination of the presence of the ridgelines above mentioned shall be done on a map provided by the applicant with topography depicted at two-foot contour intervals.
 - (4) Applicants for construction on properties to which this section applies shall demonstrate to the reviewing board or Town Engineer, as the case may be, that the proposed buildings or structures will not extend above the predominant treeline. No structure that is the subject of this section shall be located closer than 50 feet in elevation to the ridgeline affected by the application, as determined by the Town Engineer.
 - (a) If, in the Town Engineer's opinion, such requirements would render an existing lot unbuildable, the Town Engineer may recommend the issuance of, and the Building Department may issue, a construction permit for an existing lot of record which does not meet the requirements of this section upon his determination that no suitable conforming location is available.
 - (b) There shall be no disturbance within this fifty-foot area except for access driveways when said driveway cannot be reasonably located outside the fifty-foot area.
 - (5) Development should be sited behind or below visual barriers such as trees, ridgelines and other topographic features. The height and location of

- development shall not alter the views of, and from, the natural ridgeline.
- (6) No agricultural activity, as defined in the Code of the Town of Marlborough, Chapter 115, Right to Farm, shall be impeded by the adoption of this section.
- G. Violations; penalties for offenses.
- (1) Violation of any approvals or permits given under this section shall result in an immediate work stoppage, other than to protect life, limb and property. Work shall not resume until such violation(s) has been remedied or mitigation is authorized by the agency which issued the permit or approval.
- (2) Violations of this subsection shall be prosecuted pursuant to any relevant provisions in the Town Code, Town or state law.
- H. Minor changes. The Town Engineer may approve minor changes to approved plans or permits if, in the opinion of the Town Engineer, such minor changes do not affect the intent or substance of said approval or permit.
- I. This section shall be effective for all applications for permits, subdivision or other applicable actions filed after the date of adoption by the Town Board.

§ 155-42. Building permits.

- A. Purpose. To ensure compliance with the provisions of this chapter, no person shall erect, alter or convert the use of any structure or building or part thereof, nor alter the use of any land, subsequent to the adoption of this chapter, until a building permit has been issued by the Building Inspector. Building permits may be valid for a limited period of time for special uses of temporary nature, as set forth herein, and for other uses as may be regulated by the Zoning Board. Any unused building permit will expire after one year. For good cause, the Building Inspector may allow a maximum of two extensions for periods not exceeding six months each. Each extension shall require a fee in the amount set by resolution of the Town Board.^{131EN} Nothing in this chapter shall be construed to require a building permit to accomplish normal repair and maintenance so long as the use, bulk and total habitable space of the building are not altered. [Amended 8-22-1994 by L.L. No. 2-1994]
- B. Water supply and sewage disposal.
- (1) All water supply and sewage disposal installations shall conform to the Ulster County Department of Health regulations. No site plan shall be approved by the Building Inspector in any district unless such conformity is certified on the plan.
- (2) No building permit shall be issued in the R-1 and R-Ag-1 Districts without certification that said lot complies with the percolation standards of the County of Ulster for a lot of the same size.
- C. For principal permitted uses. All such applications shall be accompanied by plans, in duplicate, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location of any building, sign, parking or loading sign, parking or loading area or other physical feature, the existing and intended use of each building or part of a building, the number of families, dwelling units, employees, offices or other appropriate units of occupancy which the building is designed to accommodate and such other information as may be necessary to determine compliance with this chapter. One copy of such plans shall be returned to the owner when such plans shall be approved and one copy each of all applications, with

accompanying plans and documents, shall become a public record after a permit is issued or denied.

D. For special uses. All such applications shall be accompanied by plans and such other information as may be required by the Planning Board, except that, where site review is required, the following shall be furnished:

- (1) A general development plan showing the use or uses, dimensions and locations of proposed structures and of areas to be reserved for vehicular and pedestrian circulation, parking, public uses, such as schools and playgrounds, landscaping and other open spaces.
- (2) Architectural drawings and sketches demonstrating the design and character of the proposed uses.
- (3) Such other pertinent information as may be necessary to conform to the requirements for site plan review procedure, as set forth in § 155-31 of Article VI of this chapter.

E. Issuance of permits.

- (1) It shall be the duty of the Building Inspector to issue a permit, provided that he is satisfied that the structure, building, sign, parking area and proposed use conform to all requirements of this chapter and that all other reviews and actions, if any, called for in this chapter have been complied with and all necessary approvals secured therefor. No building permit shall be issued until subdivision roads and curb cuts have been reviewed, approved and inspected by the Highway Superintendent and such approval confirmed by the signature of the Superintendent on the subdivision plat and accepted by the Town Board.
- (2) All building permits shall be issued in duplicate and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind unless a building permit covering such operations has been displayed, as required by this chapter, nor shall he perform building operations of any kind after notification of the revocation of said building permit.
- (3) The issuance of a building permit shall constitute authority to the applicant to proceed with the work in accordance with the approved plans and specifications and in accordance with the applicable building laws, ordinances or regulations. All work shall conform to the approved application, plans and specifications.
[Added 8-22-1994 by L.L. No. 2-1994]

F. Denial of permits. When the Building Inspector is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he shall refuse to issue a building permit, and the applicant may appeal to the Zoning Board of Appeals for a reversal of the Inspector's decision.

G. Revocation of permits. [Amended 8-22-1994 by L.L. No. 2-1994]

- (1) The Building Inspector may revoke a building permit theretofore issued and approved in the following instances:
 - (a) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based.
 - (b) Where he finds that the building permit was issued in error and should not

have been issued in accordance with the applicable law.

- (c) Where he finds that the work performed under the permit is not being performed in accordance with the provisions of the application, plans or specifications.
 - (d) Where the person to whom a building permit has been issued fails or refuses to comply with a stop order issued by the Building Inspector.
- (2) Upon revocation, it shall be the duty of the person holding the same to surrender it and all copies thereof to said Building Inspector.
 - (3) After the building permit has been revoked, the Building Inspector may, in his discretion, before issuing the new building permit, require the applicant to file an indemnity bond in favor of the Town of Marlborough, with sufficient surety conditioned for compliance with this chapter and all laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building or structure if it does not comply.

§ 155-43. Certificate of occupancy.

- A. For new uses. After completion of the whole building or structure and upon the sworn application by the owner or his duly authorized agent setting forth such facts as the Building Inspector may require and after actual inspection of the premises by the Building Inspector or his duly authorized assistant, the Inspector shall, upon finding the facts to be as represented, issue, in duplicate, an occupancy permit. The occupancy permit shall certify that the premises comply with the provisions of this chapter and may be used for the purposes set forth in the permit, which purposes shall conform to the requirements of this chapter. No change of use shall be made in any building, structure or premises now or hereafter erected or altered that is not consistent with the requirements of this chapter. Any person desiring to change the use of premises shall apply to the Building Inspector for an occupancy permit. A copy of the permit shall be kept at all times upon the premises affected and shall be displayed upon request made by any building inspector or police officer. A record shall be kept of all occupancy permits issued and the original applications therefor shall be kept on file in the same manner as applications for building permits. An occupancy permit, once granted, shall continue in effect so long as there is no change of use, regardless of change in the personnel of tenants or occupants.
- B. Temporary certificates of occupancy. The Building Inspector may grant a temporary certificate of occupancy before completion of any building upon a finding of hardship. Such temporary certificate shall be valid for no more than six months. Any renewal of the temporary certificate must be based upon a finding of continuing hardship. In this determination, the Building Inspector may request the assistance of the Zoning Board of Appeals.

§ 155-44. Appeals from Building Inspector, Zoning Board or Planning Board.

- A. Procedure for appellant.
 - (1) An appeal to the Zoning Board from any ruling of the Building Inspector or Acting Zoning Official administering any portion of this chapter may be made by any person aggrieved or by an officer, department, board or bureau of the Town

affected thereby.

- (2) All applications and appeals made to the Zoning Board shall be in writing on forms prescribed by the Building Inspector. Applications and all information should be received by the Zoning Board of Appeals (ZBA) Secretary no less than seven days prior to the meeting at which the application will be discussed and/or considered. The Chairman of the ZBA, at his discretion, may waive this time frame. Every application or appeal shall refer to the specific provision of this chapter and shall exactly set forth the interpretation that is claimed or the details of the variance that is applied for, in addition to the following information:

[Amended 3-8-1999 by L.L. No. 1-1999]

- (a) The name and address of the applicant or appellant.
- (b) The name and address of the owner of the zone lot to be affected by such proposed change or appeal.
- (c) A brief description and location of the zone lot to be affected by such proposed change or appeal.
- (d) A statement of the present zoning classification of the zone lot in question, the improvements thereon and the present use thereof.
- (e) A reasonably accurate description of the present improvements and the additions or changes intended to be made under this application, indicating the size of such proposed improvements and the material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, indicating the location and size of the lot and the size of improvements thereon and proposed to be erected thereon.

B. Procedure for Building Inspector.

- (1) The notice of appeal in any case where a permit has been granted or denied by the Building Inspector shall be filed within such time as shall be prescribed by the Zoning Board under general rule after notice of such action granting or denying the permit has been mailed to the applicant. The Building Inspector shall forthwith transmit to the Zoning Board all papers constituting the record upon which the action appealed from was taken or, in lieu thereof, certified copies of said papers.
- (2) It shall be incumbent upon the Building Inspector to recommend to the Zoning Board a modification or reversal of his action in cases where he believes substantial justice requires the same, but where he has not himself sufficient authority to grant the relief sought.

C. Procedure for the Zoning Board. The Zoning Board shall decide appeals in accordance with the procedures of § 267-a of the Town Law. Upon the hearing, any party may appear in person or be represented by an agent or attorney. The Zoning Board's decision shall be immediately filed in its office and be a public record. In the exercise of its functions upon such appeals or upon exceptions, the Zoning Board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from or may make such order, requirement, decision or determination in accordance with the provisions hereof.^{132EN}

D. Appeal from decision of Zoning Board. All decisions of the Zoning Board are subject to court review in accordance with applicable laws of the State of New York.

- E. Appeal from decision of Planning Board. Any person aggrieved by any decision of the Planning Board in its administration of subdivision, site plan or special use review may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such appeal may also be made by an officer, department, board or bureau of the Town affected. Appeals from Planning Board decisions may not be considered by the Zoning Board of Appeals.

§ 155-45. Public hearings and notice.

- A. The Board of Appeals shall not grant any appeal for a variance or issue any temporary permit without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in the official newspaper of the Town at least five days before the date of such hearing. In addition to such published notice, the applicant shall cause notice to be given of the substance of every appeal for a variance, together with notice of the hearing thereon, by causing notice thereof to be mailed at least 10 days before the date of said hearing to the owners of all property abutting that held by the applicant in the immediate area (whether or not involved in such appeal or application) and all other owners within 500 feet or such additional distance as the Board of Appeals may deem advisable from the exterior boundaries of the land involved in such appeal or application, as the names of said owners appear on the last completed assessment roll of the Town. Such notice shall be by certified mail, return receipt requested, and the applicant shall furnish proof of compliance with the notification procedure. Any or all of the notices required by this section shall be issued by the Secretary of the Board of Appeals on order of the Board of Appeals.
- B. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of the preceding subsection, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Board of Appeals in connection with the granting of any appeal, variance or issuance of any temporary permit pursuant thereto.
- C. Where applicable, notices shall be given to the Ulster County Planning Board and other agencies, as required by General Municipal Law §§ 239-l and 239-m.
- D. At least 10 days before the date of any public hearing, the Secretary of the Board of Appeals shall transmit to the Secretary of the Planning Board a copy of any appeal or application, together with a copy of the notice of such hearing. The Planning Board shall submit to the Board of Appeals an advisory opinion on said appeal or application at least five days prior to the rendering of a decision.
- E. Adjournment of hearing. Upon the day for hearing any application or appeal, the Zoning Board may adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.
- F. Required interval for hearings on applications and appeals after denial. Whenever the Board, after hearing all the evidence presented upon an application or appeal, under the provisions of this chapter, denies the same, the Zoning Board shall refuse to hold further hearings on said or substantially similar application or appeal by the same applicant, his successor or assign for a period of one year, except and unless the

Zoning Board shall find and determine, from the information supplied by the request for a rehearing, that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort and prosperity and the general welfare and that a reconsideration is justified.

§ 155-46. Violations; penalties for offenses.

- A. Complaints of violations. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate and report thereon to the Town Board.
- B. Procedure for abatement of violations. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any ordinance or regulation made under authority conferred hereby, the Town Board or the Building Inspector, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- C. Penalties. Any person, firm or corporation violating any provision of this chapter shall, upon conviction, be punished by a fine not to exceed \$350 or by imprisonment for six months, or both, for a first offense; for a second offense within five years, by a fine of from \$350 to \$700 or by imprisonment for six months, or both; and for a third or subsequent offense within five years, by a fine of \$700 to \$1,000 or by imprisonment for six months, or both. Each day that a violation is permitted shall constitute a separate offense. [Amended 8-22-1994 by L.L. No. 2-1994]

§ 155-47. Fees.

- A. The fees shall be in accordance with the schedule of fees as established by the Town Board and paid at the office of the Building Inspector upon the filing of an application.
- B. The fees for a certificate of occupancy and for building permits are as set by resolution of the Town Board.^{133EN} [Amended 8-22-1994 by L.L. No. 2-1994]
- C. The fee for State Environmental Quality Review Act review shall be paid in full by the applicant.^{134EN}
- D. The fee for environmental assessment form review by the lead agency shall be an amount set by resolution of the Town Board.^{135EN} [Amended 8-22-1994 by L.L. No. 2-1994]
- E. Where applicable, the Town Board, the Town Planning Board or the Zoning Board of Appeals may refer any application for technical review, analysis and/or comment by the Town's appointed or special consultant, including engineering, planning, environmental and legal matters, as the Town Board shall deem reasonably necessary to enable it to review such application under the terms provided by law. All costs incurred by such actions shall be borne by the applicant. [Amended 3-9-1998 by L.L.

No. 2-1998]

- (1) The Town consultant review fees shall be as follows:
 - (a) Upon application to the Town board, the Planning Board or the Zoning Board of Appeals for any action or approval required in accordance with the procedures set forth by Town law, the applicant shall post with the Town of Marlborough a deposit to cover all engineering consultant fees, planning consultant fees, attorneys fees or any other necessary consultant fees deemed necessary by the reviewing board.
 - (b) Said deposit shall be in the amount as prescribed below:
 - [1] Residential subdivision: \$150 per lot for each lot up to four lots and \$75 per lot for each lot over the initial four lots.
 - [2] Lot line changes: \$150 minimum or such an amount (up to a maximum of \$400 as deemed appropriate at the time of the application).
 - [3] Multifamily site plans: \$100 per unit up to 40 units and \$25 per unit for each over the initial 40 units.
 - [4] Commercial subdivisions: \$400 for each lot up to four lots and \$200 for each over the initial four lots.
 - [5] Site plans: \$750 minimum or such amount (up to a maximum of \$2,000) as deemed appropriate at time of application.
 - [6] Town consultant escrow, for interpretations or appearance before any Town board:
 - [a] Residential: \$300.
 - [b] All other, including commercial: \$500.
 - (2) Any portion of the deposit not expended during the review of such application shall be returned to the applicant upon final action by the Town.
 - (3) If at any time during the escrow period the account falls below 25% of the original amount, the Planning board may request additional escrow to be provided by the applicant, up to 50% of the original amount. This may continue until final approval.
 - (4) Such deposit made to the Town for review of any application shall be made in a form acceptable to the Town Treasurer and shall be placed in such an account deemed appropriate by the Town Board. There shall be no requirement for the Town to pay interest on these deposits.
- F. Miscellaneous fees shall be as set by resolution of the Town Board.^{136EN} [Amended 8-22-1994 by L.L. No. 2-1994]
- G. Failure to remit in a timely manner any fee specified in this chapter and/or in Chapter 134, Subdivision of Land, shall render the violator subject to an additional penalty of \$250. For every day of nonpayment after the due date, there will be a charge in an amount set by resolution of the Town Board.^{137EN} [Amended 8-22-1994 by L.L. No. 2-1994]

ARTICLE X, Amendments

§ 155-48. Powers of Town Board.

The Town Board may from time to time on its own motion, or on petition or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this chapter, after public notice and hearing.

§ 155-49. Review by Planning Board.

Every proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for report thereon before the public hearing hereinafter provided for. The Planning Board shall issue its report within 30 days of the time such amendment is referred to it.

§ 155-50. Public notice and hearing.

The Town Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as follows:

- A. Public notice. By publishing a notice at least 10 days in advance of such hearing in at least one newspaper of general circulation in the Town of Marlborough; such notice shall state the date, time and place of such hearing and the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents and shall name the place or places where copies of the proposed amendment may be examined.
- B. Personal notice.
 - (1) By mailing a copy of such notice to every association of residents of the Town which has registered its name and address for this purpose with the Town Clerk.
 - (2) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any city, village, Town or county shall be given to the clerk of such municipality and to the County Planning Board at least 10 days prior to the date of such hearing.
- C. Opportunity to be heard at hearing. At the public hearing, full opportunity to be heard shall be given to any citizen of the Town of Marlborough and to all parties in interest.

ARTICLE XI, Interpretation

§ 155-51. Interpretation and applicability of provisions.

In the interpretation and the application of the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of health, safety, morals and the general welfare. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances, provided that where this chapter imposes greater restrictions upon the use of buildings or premises or upon the height or bulk of a building or requires larger open spaces, the provisions of this chapter shall apply.

ARTICLE XII, Miscellaneous Provisions

§ 155-52. Setbacks and buffers from active agricultural lands. [Added 11-25-2002 by L.L. No. 8-2002]

- A. Consistent with efforts to preserve and protect agricultural practices with the Town and minimize conflicts between different uses, buffers and greater setbacks shall apply to lands next to active agricultural lands in the RAG-1, R-1 and HD Zones.
- B. These setbacks shall supersede minimum setbacks where the parcel in question directly abuts a parcel which has an active agricultural practice as defined under the Right to Farm Law (Chapter 115) and such agricultural practice takes place within 150 feet of the property line.
- C. The setback shall apply to any habitable structure and shall be a minimum of 75 feet from the property line. These setbacks shall not apply to other than habitable structures.
- D. In addition, for any application for change of use, subdivision, site plan review, building permit or any other construction of addition, there shall be placed within the seventy-five-foot setback from active agricultural lands a buffer which shall have the effect of mitigation or reducing the effects of active agriculture upon the parcel in question.
- E. Such buffer may take the form of a berm, planting of trees for screening effect or similar mechanism. Determination of the extent of the required buffer shall be reasonable and shall be the responsibility of the governing official or board to which the application is made.

TABLE OF ZONING MAP AMENDMENTS

The following is an enumeration and brief description of amendments to the Zoning Map of the Town of Marlborough adopted under § 155-8 hereof. The complete text of each amendment is available for examination in the office of the Town Clerk.

L.L.

No.Date

7-1996	-23-1996the R-Ag-1 Zone to include Parcel 103.003
2-1997	-22-1997the Highway Development Zone on the west side of Route 9W between the northerly side of New Road and the southerly side of Mahoney Road
1-1999	-8-1999the existing HD zone by changing the following from R-1 to HD: Tax Map Section 103.001, Block 1, Lots 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 55, 56, 57 the C Zone by changing the following from R to C: Tax Map Section 103.009, Block 2, Lots 17.1, 17.2, 17.3, 18, 19, 20 and Lots 12, 38, 14, 15, 21, 22, 23, 24, 25 Tax Map Section 103.009, Block 1, Lots 1, 2, 6

the HD Zone by changing the following from R-1 to HD: Tax Map Section 109.001, Block 3, Lot 1.3 for a depth of 500 feet contiguous to and parallel to State Route 9W

the C Zone by changing the following from R to C: Tax Map Section 108.012, Block 2, Lots 28, 27, 26, 25

a new zone known as "C-2 Zone (Commercial 2)" by changing the following from R-Ag-1 to C-2 Tax Map Section 95.004, Block 1, Lots 1, 2, 3.1, 3.2

Map Section 95.002, Block 1, Lots 48, 46.4, 46.31, 46.32, 46.2, 46.1, 39, 38, 40, 58, 41, 37, 32, 33, 31, 29, 26, 25, 24, 23, 27, 22, 21, 20

Map Section 95.002, Block 2, Lots 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16.2, 17,18, 19, 20, 21

**L.L.
No.Date**

8-2002 -25-2002Map No. 103.1-3-53.100, from R to R-1
Map No. 103.1-3-57.111, from R to R-1
Map No. 103.1-3-57.112, from R to R-1
Map No. 103.1-1-15, from R-1 to HD
Map No. 109.1-3-14, from R to R-1
Map No. 103.3.1-17, from HD to RAG-1
Map No. 103.3.1-18, from HD to RAG-1

SCHEDULE I - LOT, YARD AND HEIGHT REGULATIONS

[Amended 3-8-1999 by L.L. No. 1-1999; 11-25-2002 by L.L. No. 8-2002;
 5-27-2003 by L.L. No. 2-2003]

Regulations	District						
	R	R-1	R-Ag-1	C-1	C-2	HD	I
Minimum lot area		1 acre ¹	1 acre ¹			2 acres	5 acres
Without public water or sewer (square feet)	20,000			15,000	20,000		
With public water or sewer (square feet)	15,000			10,000			
With public water and sewer (square feet)	10,000			5,000			
Minimum yards							
Front yard (feet)	10	35	50	5	35	75	75
Rear yard (feet)	20	50	75	20	30	75	75
Side yard (feet)							
One	10	35	35	0	35	25	25
Both	25	70	80	0	70	50	50
Minimum lot width (feet)	75	150	150	50	100	200	200
Minimum lot depth (feet)	100	200	200	100	100	200	200
Maximum building coverage (percent)	30%	20%	20%	75%	40%	40%	30%
Maximum height							

Stories	2_	2_	2_	2_	2_	2_	2_
Height (feet)	35	35	35	35	35	35	35

NOTES:

¹ Minimum lot sizes in R-1 and R-Ag-1 are subject to percolation tests required under § 155-42, but in no event are less than one (1) acre.

DISPOSITION LIST

The following is a chronological listing of legislation of the Town of Marlborough adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Town Clerk. The last legislation reviewed for the original publication of the Code was a resolution adopted 2-28-1994. A complete listing, including disposition, of all legislation reviewed in conjunction with the original publication of the Code is on file in the office of the Town Clerk.

§ DL-1. Disposition of Legislation.

Enactment Date	Adoption	Subject	Disposition
L.L. No. 1-1994	7-11-1994	Zoning 155 amendment	Ch. 155
L.L. No. 2-1994	8-22-1994	Adoption of Code	Ch. 1, Art. I

L.L. No. 3- 1994	10-24- 1994	Subdiv ision of land	Ch. 134
Res.	1-18- 1995	Person nel policie s amend ment	Ch. 29
L.L. No. 1- 1995	1-23- 1995	Water service regulat ions amend ment	Ch. 149, Art. I
L.L. No. 2- 1995	2-13- 1995	Tax exemp tion for senior citizen s amend ment	Ch. 137, Art. I
Res.	3-13- 1995	Fees schedu le	NCM; see Ch. 155
Res.	4-23- 1995	Fees schedu le	NCM; see Ch. 102
Res.	5-22- 1995	Vehicl es and traffic amend ment	Ch. 145

L.L. 6-12- Ch. 29
No. 3- 1995 Person
1995 nel
policie
s
amend
ment

Res. 6-12- Ch.
1995 Vehicl 145
es and
traffic
amend
ment

L.L. 6-26- Ch.
No. 4- 1995 Zoning 155
1995 amend
ment

Res. 10-23- Ch.
1995 Vehicl 145
es and
traffic
amend
ment

Res. 11-2- Ch. 29
1995 Person
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policie
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amend
ment

L.L. 11-13- Ch.
No. 5- 1995 Zoning 155
1995 amend
ment

Res. 12-28- Ch. 29
1995 Person
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policie
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(anti-
drug
and
alcoho
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plan)

Res. 12-28- NCM
1995 Emplo
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Progra
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Agree
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L.L. 3-25- Ch.
No. 1- 1996 Zoning 155
1996 amend
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L.L. 4-8- Ch.
No. 2- 1996 Zoning 155
1996 amend
ment

L.L. 3-25- Ch.
No. 3- 1996 Zoning 155
1996 amend
ment

L.L. 3-25- Ch.
No. 4- 1996 Vehicl 145
1996 es and
traffic
amend
ment

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L.L. 4-22- Ch.
No. 5- 1996 Sewers 118
1996 amend
ment

L.L. 6-10- Ch. 4
No. 6- 1996 Assess
1996 or

L.L. 9-23- Ch.
No. 7- 1996 Zoning 155
1996 Map
amend
ment

L.L. 4-28- Tax Ch.
No. 1- 1997 exemp 137,
1997 tion Art. II
for
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amend
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Res. 8-25- Ch. 29
1997 Person
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amend
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Res. 9-8- Ch. 29
1997 Person
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amend
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L.L. 9-22- Ch.
No. 2- 1997 Zoning 155
1997 amend
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L.L. 3-9- Tax Ch.
No. 1- 1998 exemp 137,
1998 tion Art. I
for
senior
citizen
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amend
ment

L.L. 3-9- Ch.
No. 2- 1998 Zoning 155
1998 amend
ment

Res. 5-11- Ch.
1998 Zoning 155
amend
ment

L.L. 9-28- Ch.
No. 3- 1998 Planni 33;
1998 ng Ch.
Board 155
amend
ment
Zoning
amend
ment

Res. 7-13- Ch.
1998 Vehicl 145
es and
traffic
amend
ment

L.L. 3-8- Ch.
No. 1- 1999 Zoning 155
1999 amend
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L.L. 3-8- Ch.
No. 2- 1999 Subdiv 134
1999 ision
of land
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L.L. 3-8- Ch.
No. 3- 1999 Streets 130,
1999 and Art. I
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L.L. 3-8- Ch.
No. 4- 1999 Anima 60,
1999 ls: Art. I
dogs
amend
ment

Res. 5-24- Ch.
1999 Vehicl 145
es and
traffic
amend
ment

L.L. 6-14- Ch.
No. 5- 1999 Anima 60,
1999 ls: Art. I
dogs
amend
ment

Res. 7-12- Ch.
1999 Vehicl 145
es and
traffic
amend
ment

Res. 8-9- Ch.
1999 Vehicl 145
es and
traffic
amend
ment

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Res. 8-23- Ch.
1999 Vehicl 145
es and
traffic
amend
ment

Res. 9-27- Ch.
1999 Vehicl 145
es and
traffic
amend
ment

Res. 1-24- Ch.
2000 Vehicl 145
es and
traffic
amend
ment

L.L. 4-10- Ch. 68
No. 1- 2000 Numb
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of
buildin
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L.L. 7-24- Ch.
No. 2- 2000 Sewers 118
2000 amend
ment

Res. 8-14- Ch. 7
2000 Comm
unicati
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policy

L.L. 12-11- Alarm Ch. 53
No. 3- 2000 system
2000 s

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L.L. 7-13- Ch.
No. 1- 2001 Vehicl 145
2001 es and
traffic
amend
ment

L.L. 7-23- NCM
No. 2- 2001 Morat
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towers

Res. 9-24- Ch.
2001 Vehicl 145
es and
traffic
amend
ment

L.L. 10-9- Ch. 33
No. 3- 2001 Planni
2001 ng
Board
amend
ment

L.L. 10-9- Ch.
No. 4- 2001 Zoning 155
2001 amend
ment

L.L. 11-26- NCM
No. 5- 2001 Extens
2001 ion of
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cations
towers

L.L. 12-10- Ch.
No. 6- 2001 Wirele 152
2001 ss
teleco
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faciliti
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L.L. 2-25- Ch. 67
No. 1- 2002 Buildi
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amend
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L.L. 6-10- Ch.
No. 2- 2002 Proper 114
2002 ty
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nance

L.L. 10-15- Ch.
No. 3- 2002 Vehicl 145
2002 es and
traffic
amend
ment

L.L. 11-25- Right Ch.
No. 4- 2002 to farm 115
2002

L.L. 11-25- Ch. 75
No. 5- 2002 Cleari
2002 ng and
gradin
g

L.L. 11-25- Alarm Ch. 53
No. 6- 2002 system
2002 s
amend
ment

L.L. 11-25- Water Ch.
No. 7- 2002 service 149,
2002 regulat Art. I
ions
amend
ment

L.L. 11-25- Ch.
No. 8- 2002 Zoning 155
2002 amend
ment

Res. 12-9- Ch.
2002 Vehicl 145
es and
traffic
amend
ment

L.L. 6-9- Tow Ch.
No. 1- 2003 trucks 140
2003 amend
ment

L.L. 5-27- Ch.
No. 2- 2003 Zoning 155
2003 amend
ment

L.L. 6-9- Tree Ch.
No. 3- 2003 harvest 141,
2003 ing Art. I

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L.L. 7-28- Ch.
No. 4- 2003 Proper 114
2003 ty
mainte
nance
amend
ment

Res. 1-26- Ch.
2004 Vehicl 145
es and
traffic
amend
ment

Res. 1-26- Ch.
2004 Vehicl 145
es and
traffic
amend
ment

L.L. 2-9- Road Ch.
No. 5- 2004 specifi 130,
2003 cations Art. I

L. L. 2-9- Ch.
No. 6- 2004 Subdiv 134
2003 ision
of land
amend
ment

L.L. 3-22- Ch.
No. 1- 2004 Zoning 155
2004 amend
ment

Res. 3-22- Ch.
2004 Vehicl 145
es and
traffic
amend
ment

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Res.	3-22- 2004	Ch. Vehicl es and traffic amend ment	145
L.L. No. 2- 2004	5-10- 2004	Notice of highw ay defects	Ch. 130, Art. II
L.L. No. 3- 2004	6-14- 2004	Storm water manag ement	Ch. 135
Res.	9-13- 2004	Ch. Vehicl es and traffic amend ment	145
Res.	11-22- 2004	Ch. Vehicl es and traffic amend ment	145
L.L. No. 1- 2005	6-13- 2005	Purcha sing amend ment	Ch. 38, Art. I
L.L. No. 2- 2005	9-26- 2005	Taxati on: tax exemp tion for vetera ns amend ment	Ch. 137, Art. II

L.L. 9-26- Taxati Ch.
No. 3- 2005 on: tax 137,
2005 exemp Art. I
tion
for
senior
citizen
s
amend
ment

L.L. 9-26- Taxati Ch.
No. 4- 2005 on: tax 137,
2005 exemp Art. II
tion
for
vetera
ns
amend
ment

L.L. 10-11- Zoning Ch.
No. 5- 2005 amend 155
2005 ment

¹ Editor's Note: Pursuant to § 1-11B, the following chapters, Articles and sections were added or amended: §§ 13-2, 13-3A and 13-5, Ch. 22, Ch. 33, § 35-1, Art. I of Ch. 41, §§ 47-1, 47-3B, 53-8, 53-9, 55-2, 55-3, 58-6A and B, 60-8, 60-9, 64-2, 64-9, 64-15, 64-16G, H, I, L, M and P, 64-17A(3) and (6), 64-18B, 64-20, 64-21, 64-22B, 67-10C, E and F, 67-11B, 71-3, 86-1, 86-2A, 86-3 and 89-9, Ch. 93, §§ 102-5E and F(5), 102-6B, 111-2, 111-6, 118-15C, 118-47B, 118-53A and 118-54A, Art. I of Ch. 126, Art. III of Ch. 130, §§ 137-2B, 137-3, 140-6A, 140-7F and 140-13, Ch. 143, §§ 145-3B, 145-5, 145-6, 145-13, 145-14, 149-6, 149-8, 149-11B, 149-16A and C, 149-18, 149-25B, 149-27B, 149-28B(1), 149-29D, 149-30, 149-31, 155-1, 155-12E(4)(g), 155-18A(6) and D, 155-21, 155-22, 155-23C and F, 155-24, 155-25, 155-26A(7), 155-29, 155-31B(1) and C, 155-32, 155-38, 155-39A and F, 155-42A, E(3) and G, 155-44C, 155-46C and 155-47B, D, F and G. In addition, the following were deleted: original §§ 66-6C, 47-6A, 47-7, 47-8 and 47-14D, the definitions of "coastal high hazard area" and "sand dunes" in original § 64-4B and original § 96-2C and D. A complete description of each change is on file in the office of the Town Clerk.

² Editor's Note: Former Ch. 4, L.L. No. 3-1977.

³ Editor's Note: See Public Officers Law § 84 et seq.

⁴ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁵ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁶ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General**

Provisions, Art. I.

⁷ Editor's Note: Appendix B is on file in the Town offices.

⁸ Editor's Note: Appendix A is on file in the Town offices.

⁹ Editor's Note: Appendix B is on file in the Town offices.

¹⁰ Editor's Note: Appendix E is on file in the Town offices.

¹¹ Editor's Note: Appendix C is on file in the Town offices.

¹² Editor's Note: Appendix C is on file in the Town offices.

¹³ Editor's Note: See Title 49, Part 40, of the Code of Federal Regulations.

¹⁴ Editor's Note: Appendix C is on file in the Town offices.

¹⁵ Editor's Note: Appendix A is on file in the Town offices.

¹⁶ Editor's Note: Appendix F is on file in the Town offices.

¹⁷ Editor's Note: Appendix A is on file in the Town offices.

¹⁸ Editor's Note: Appendix A is on file in the Town offices.

¹⁹ **Editor's Note: This local law also provided that a Board member's ability to serve or the validity of said member's actions would not be affected by said member's failure to attend necessary training programs, required meetings, work sessions or special meetings. Said local law also provided that the Town Board, upon application of a Board member, may, for good cause shown, waive the training and/or attendance requirement for any one year, but shall not grant such a waiver to any Board member two consecutive years.**

²⁰ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

²¹ Editor's Note: Original § 29-2, Residency requirement, which immediately followed, was repealed 5-21-1984 by L.L. No. 1-1984.

²² **Editor's Note: See Ch. 1, General Provisions, Art. I.**

²³ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

²⁴ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

²⁵ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

²⁶ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

²⁷ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

²⁸ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

²⁹ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

³⁰ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

³¹ Editor's Note: See Executive Law § 430 et seq.

³² **Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

³³ **Editor's Note: This local law was passed at referendum 6-4-1977.**

³⁴ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

³⁵ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

³⁶ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

³⁷ Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

³⁸ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

³⁹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁴⁰ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁴¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁴² Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁴³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁴⁴ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

⁴⁵ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

⁴⁶ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁴⁷ Editor's Note: Original § 47-6A, which immediately followed this subsection and provided for the duration of a building permit, was deleted at time of adoption of Code; see Ch. 1, General Provisions, Art. I. For current building permit procedures, see Ch. 155, Zoning.

⁴⁸ Editor's Note: Original § 47-7, Building permit fees, and § 47-8, Revocation of building permit, which immediately followed this subsection, were deleted at time of adoption of Code; see Ch. 1, General Provisions, Art. I. For current building permit procedures, see Ch. 155, Zoning.

⁴⁹ Editor's Note: Original Subsection D, which immediately followed this subsection and made reference to the applicability of the penalty provisions, was deleted 8-22-1994 by L.L. No. 2-1994.

⁵⁰ **Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

⁵¹ Editor's Note: For designation of zoning districts, see Ch. 155, Zoning.

⁵² Editor's Note: This local law was adopted as Ch. 154, but was renumbered to fit into the organizational structure of the Code.

⁵³ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.**

⁵⁴ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁵⁵ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General**

Provisions, Art. I.

⁵⁶ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General**

Provisions, Art. I.

⁵⁷ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁵⁸ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁵⁹ Editor's Note: The term "coastal high hazard area," which originally followed this definition, was deleted at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁶⁰ Editor's Note: The term "sand dunes," which originally followed this definition, was deleted at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁶¹ Editor's Note: See Ch. 130, Streets and Sidewalks.

⁶² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁶³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁶⁴ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

⁶⁵ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁶⁶ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General**

Provisions, Art. I.

⁶⁷ **Editor's Note: Amended at time of adoption of Code; see Ch. 1, General**

Provisions, Art. I.

⁶⁸ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁶⁹ Editor's Note: The definition of "improvement," which immediately followed this definition, was repealed 7-24-2000 by L.L. No. 2-2000. See now the definition of "sewer improvement area."

⁷⁰ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁷¹ Editor's Note: Former § 118-52B, Estimated first year operations and maintenance cost, was repealed 7-24-2000 by L.L. No. 2-2000.

⁷² Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁷³ **Editor's Note: See Ch. 1, General Provisions, Art. I.**

⁷⁴ **Editor's Note: This ordinance repealed former Art. I, Standards for Street Acceptance, adopted 3-28-1977 by L.L. No. 3-1997 as Ch. 91, Art. I, of the 1976 Code of the Town of Marlborough, as amended.**

⁷⁵ Editor's Note: See Ch. 134, Subdivision of Land.

⁷⁶ Editor's Note: See Ch. 134, Subdivision of Land.

⁷⁷ Editor's Note: Said figures are included at the end of this chapter.

⁷⁸ Editor's Note: Said figures are included at the end of this chapter.

⁷⁹ Editor's Note: Said figures are included at the end of this chapter.

⁸⁰ Editor's Note: Said figures are included at the end of this chapter.

⁸¹ Editor's Note: Said figure is included at the end of this chapter.

⁸² Editor's Note: Said figure is included at the end of this chapter.

⁸³ Editor's Note: See the Highway Law of the State of New York.

⁸⁴ Editor's Note: Said figures are included at the end of this chapter.

⁸⁵ Editor's Note: Said figures are included at the end of this chapter.

⁸⁶ Editor's Note: Said figures are included at the end of this chapter.

⁸⁷ Editor's Note: Said figures are included at the end of this chapter.

⁸⁸ **Editor's Note: This local law superseded former Art. II, Prior Notice of Defects, adopted 7-28-1980 by L.L. No. 2-1980.**

⁸⁹ Editor's Note: See also Ch. 130, Art. III, Snow and Ice Removal.

⁹⁰ Editor's Note: See Chapter 155, Zoning.

⁹¹ Editor's Note: See ECL § 8-0101 et seq.

⁹² Editor's Note: See ECL § 8-0101 et seq.

⁹³ Editor's Note: Former Subsection G, Intersections, was repealed 2-9-2004 by L.L. No. 6-2003.

⁹⁴ Editor's Note: See Ch. 155, Zoning.

⁹⁵ Editor's Note: See Ch. 155, Zoning.

⁹⁶ Editor's Note: Original Subsections C and D, which immediately followed this subsection and contained specific requirements for the grant of an exemption, were repealed 8-22-1994 by L.L. No. 2-1994.

⁹⁷ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁹⁸ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

⁹⁹ Editor's Note: No specific powers were so delegated in the original local law. See Article 41 of the Vehicle and Traffic Law for enumeration of powers which may be so delegated by a Town.

¹⁰⁰ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹⁰¹ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹⁰² Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹⁰³ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹⁰⁴ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹⁰⁵ **Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.**

¹⁰⁶ Editor's Note: Original § 111-29, Schedule of water rates: Milton Water District, which immediately followed this section, was repealed 7-11-1983 by L.L. No. 6-1983.

¹⁰⁷ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

¹⁰⁸ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions,

Art. I.

¹⁰⁹ **Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions,**

Art. I.

¹¹⁰ **Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions,**

Art. I.

¹¹¹ Editor's Note: The former definition of "poultry raising, high density," which immediately followed this definition, was repealed 3-8-1999 by L.L. No. 1-1999.

¹¹² Editor's Note: The Zoning Map is included in a pocket at the end of this volume.

¹¹³ Editor's Note: A Table of Zoning Map amendments is also included at the end of this chapter.

¹¹⁴ Editor's Note: Schedule I is included at the end of this chapter.

¹¹⁵ Editor's Note: Former Subsection A(4)(d), Tourist homes and boarding- and rooming houses, was repealed 11-25-2002 by L.L. No. 8-2002.

¹¹⁶ Editor's Note: Former Subsection C(4)(d), High-density poultry raising, was repealed 3-8-1999 by L.L. No. 1-1999.

¹¹⁷ Editor's Note: Former Subsection C(4)(i), Boardinghouses, was repealed 11-25-2002 by L.L. No. 8-2002.

¹¹⁸ Editor's Note: Former Subsection E(2)(b), Motels, was repealed 3-8-1999 by L.L. No. 1-1999. See now Subsection E(4)(k).

¹¹⁹ Editor's Note: Former Subsection F(2)(c) through (h), regarding experimental laboratories, printing plants, cold storage, quarries, cement businesses and laundries and dry-cleaning plants, which immediately followed this subsection, were repealed 11-25-2002 by L.L. No. 8-2002. See now Subsection F(4).

¹²⁰ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

¹²¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

¹²² Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹²³ Editor's Note: Former Subsection A(2), requiring the applicant to submit two copies of the proposed plan of excavation, was repealed 3-8-1999 by L.L. No. 1-1999.

¹²⁴ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹²⁵ Editor's Note: Schedule I is included at the end of this chapter.

¹²⁶ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular business hours.

¹²⁷ **Editor's Note: This local law also provided that a Board member's ability to serve or the validity of said member's actions would not be affected by said member's failure to attend necessary training programs, required meetings, work sessions or special meetings. Said local law also provided that the Town Board, upon application of a Board member, may, for good cause shown, waive the training and/or attendance requirement for any one year, but shall not grant such a waiver to any Board member two consecutive years.**

¹²⁸ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹²⁹ Editor's Note: This plan is on file in the Town offices.

¹³⁰ Editor's Note: This map is on file in the Town offices.

¹³¹ Editor's Note: The current fees resolution is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹³² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

¹³³ Editor's Note: The current fees schedule is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹³⁴ Editor's Note: See Article 8 of the Environmental Conservation Law.

¹³⁵ Editor's Note: The current fees schedule is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹³⁶ Editor's Note: The current fees schedule is on file in the office of the Town Clerk and may be examined there during regular office hours.

¹³⁷ Editor's Note: The current fees schedule is on file in the office of the Town Clerk and may be examined there during regular office hours.