

**Code
of the
Town of Benton**

COUNTY OF YATES

NEW YORK

SERIAL NO.

GENERAL CODE
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PREFACE

The Town of Benton 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.

Contents of Code

The various chapters of the Code contain currently effective legislation of a general and permanent nature enacted by the Town of Benton. Each piece of legislation has been included as a separate chapter, part or article, renumbered and stylized consistent with the style of the Code, without any substantive change.

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 are listed beneath the chapter title in order to facilitate the location of the individual item of legislation.

Reserved Chapters

Unassigned chapter numbers do not appear in the Table of Contents but are available for assignment to new enactments. In this manner, new subject matter can be included alphabetically.

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Pagination

A unique page-numbering system has been used in which each chapter forms an autonomous unit. The first page of each chapter is the number of that chapter followed by a colon and the numeral "1." Thus, Chapter 6 would begin on page 6:1. By the use of this system, it is possible to add or to change pages in any chapter, or add new chapters, without affecting the sequence of subsequent pages.

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 would be § 6-1, while the fourth section of Chapter 53 would be § 53-4.

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 text, under its title. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

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

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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.

Adding new sections. 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 §§ 65-5 and 65-6 should be designated § 65-5.1).

Adding new chapters. 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 166 and 167 should be designated Chapter 166A).

Adding new articles. 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 XVIA). The section numbers would be as indicated above (e.g., if the new Article XVIA contains six sections and existing Article XVI ends with § 166-30 and Article XVII begins with § 166-31, Article XVIA should contain §§ 166-30.1 through 166-30.6). NOTE: In chapters where articles appear on the Table of Contents, simply add new articles to the end of the chapter since they are not arranged by subject matter.

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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 the Town officials is gratefully acknowledged by the editor. The codification of the legislation of the Town of Benton 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 that this Code will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

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THE CODE

Chapter 1

GENERAL PROVISIONS

ARTICLE I Adoption of Code

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§ 1-12. When effective.

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

ARTICLE I Adoption of Code

[Adopted 9-10-2001 by L.L. No. 3-2001]

§ 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 Benton, as codified by General Code Publishers Corp., and consisting of Chapters 1 through 110, together with an Appendix, shall be known collectively as the "Code of the Town of Benton," 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 Benton" 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 Benton, 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.

§ 1-3. 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.

§ 1-4. 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 Benton 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 Benton 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.

§ 1-5. 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 Benton" 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.

§ 1-6. 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 Benton 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.

§ 1-7. Sale of Code book; supplementation.

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

§ 1-8. 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 Benton or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the Town of Benton to be misrepresented thereby or who violates any other provision of this local law shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-9. Changes in previously adopted legislation; new provisions.

In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Town of Benton, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. No such changes shall substantially change such legislation.

§ 1-10. 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 Benton, 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 1-11, inclusive.

§ 1-11. Local laws to remain effective.

All local laws, ordinances and resolutions adopted by the Town of Benton after the initial publication of the Code and before the enactment of this local law that are not included in the initial printing of the Code shall remain effective and the Town Clerk shall add to the Code all such local laws, ordinances, and resolutions that were adopted after the initial printing of the Code and before the enactment of this local law and were intended to become a part of the Code.

§ 1-12. When effective.

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

Chapter 6

ANIMALS

ARTICLE I Dog Licensing

- § 6-1. Title.
- § 6-2. Licensing of dogs.
- § 6-3. Application.
- § 6-4. Identification tag.
- § 6-5. License term.
- § 6-5.1. Transferability.
- § 6-5.2. (Reserved)
- § 6-5.3. (Reserved)
- § 6-5.4. Fees and surcharges.
- § 6-5.5. Exemptions.
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ARTICLE II Dog Control

- § 6-6. Title.
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- § 6-8. Statutory authority; state provisions to take precedence.
- § 6-9. Definitions; word usage.
- § 6-10. Restrictions on behavior; number of dogs on premises.
- § 6-11. Dog Control Officer.
- § 6-12. Seizure of dogs at large.
- § 6-13. Complaints.
- § 6-14. Enforcement procedure.
- § 6-15. Care and redemption of impounded dogs.
- § 6-16. Penalties for offenses.

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

ARTICLE I Dog Licensing [Adopted 12-8-2010 by L.L. No. 2-2010¹]

§ 6-1. Title.

This article shall be known and may be cited as the "Dog licensing law of the Town of Benton."

§ 6-2. Licensing of dogs.

All dogs in the Town of Benton, unless otherwise exempted by New York State Agriculture and Markets Law, must be licensed with the Town Clerk of the Town of Benton by the age of four months.

1. Editor's Note: This local law also repealed former Art. I, Dog License Fees, adopted 10-22-1979 by L.L. No. 2-1979, as amended.

§ 6-3. Application.

The owner of each dog required to be licensed shall, for new applications and renewal applications, obtain, complete and return to the Town Clerk:

- A. A dog license application;
- B. The license application fee;
- C. Any applicable license surcharges;
- D. Such additional fees as may be established by the Town Board of the Town of Benton;
- E. Proof that the dog has been vaccinated against rabies or a statement from a licensed veterinarian that such vaccination would endanger the dog's life, in which case vaccination shall not be required;
- F. In the case of a spayed or neutered dog, a certificate signed by a licensed veterinarian or an affidavit signed by the owner, showing that the dog has been spayed or neutered, provided such certificate or affidavit shall not be required if the same is already on file with the Town Clerk. In lieu of the spay or neuter certificate, an owner may present a statement certified by a licensed veterinarian stating that he or she has examined the dog and found that, because of old age or other reason, the life of the dog would be endangered by spaying or neutering. In such case, the license fee for the dog shall be the same as for a spayed or neutered dog.

§ 6-4. Identification tag.

Each dog licensed pursuant to this article shall be assigned, at the time the dog is first licensed, a municipal identification number. Such identification number shall be carried by the dog on an identification tag which shall be affixed to a collar on the dog at all times. No tag carrying an identification number shall be affixed to the collar of any dog other than the one to which that number has been assigned.

§ 6-5. License term.

All dog licenses will be for a period of one year and will expire at the end of the month one year from the date of issue.

§ 6-5.1. Transferability.

Any license issued pursuant to this article shall not be transferable. Upon the transfer of ownership of any dog, the new owner shall immediately make application for a new license for such dog.

§ 6-5.2. (Reserved)

§ 6-5.3. (Reserved)**§ 6-5.4. Fees and surcharges.**

The fees and surcharges for issuing dog licenses shall be fixed by the Town Board. Such fees and surcharges may from time to time be changed as the Town Board may determine. These fees and surcharges may include:

- A. The license fee for a spayed or neutered dog;
- B. The license fee for an unspayed or an unneutered dog (such fee having to exceed the fee for a license for a spayed or neutered dog by such amount as mandated by the New York State Agriculture and Markets Law);
- C. (Reserved)
- D. In addition to the license fee authorized by this article and established by the Town Board of the Town of Benton, a surcharge if the dog to be licensed is altered (such surcharge shall be, at a minimum, such amount as mandated by the New York State Agriculture and Markets Law);
- E. In addition to the license fee authorized by this article and established by the Town Board of the Town of Benton, a surcharge if the dog to be licensed is not altered (such surcharge shall be, at a minimum, such amount as mandated by the New York State Agriculture and Markets Law);
- F. In addition to the license fee authorized by this article and established by the Town Board of the Town of Benton, a surcharge to recover and defray the cost of an enumeration of dogs living with the Town of Benton.
- G. In addition to the license fee authorized by this article and established by the Town Board of the Town of Benton, a surcharge offsetting costs associated with the provision and replacement of identification tags.

§ 6-5.5. Exemptions.

- A. Excepted from payment of the license fee are applications submitted for a dog license for any of the following dogs, provided written documentation is provided with such application that certifies such dog as being any of the following:
 - (1) Guide dog;
 - (2) Hearing dog;
 - (3) Service dog;
 - (4) War dog;
 - (5) Working search dog;
 - (6) Detection dog;

- (7) Police work dog; and
 - (8) Therapy dog.
- B. At the time the Town Board of the Town of Benton fixes the license fees authorized pursuant to § 6-5.4 of this article, the Town Board may permit a partial or full exemption to senior citizens for the dog license fees fixed by the Town Board.
- C. A dog participating in a dog show within the Town of Benton shall be exempt, during such participation only, from the requirement, contained in § 6-2 of this article and in § 111, as amended, of the New York State Agriculture and Markets Law, of wearing its identification tag.

§ 6-5.6. Penalties.

A violation of this article shall be punishable by:

- A. A fine of \$25 for a first violation;
- B. A fine of \$50 for a second violation within five years of the first violation; and
- C. Where the person was found to have committed two or more such violations within the preceding five years, either a fine of \$100 or imprisonment for not more than 15 days, or both.

ARTICLE II **Dog Control** [Adopted 5-8-2000 by L.L. No. 1-2000]

§ 6-6. Title.

This article shall be known as the “Town of Benton Dog Control Law.”

§ 6-7. Legislative purpose and intent.

The Town Board of the Town of Benton finds that the running at large and other uncontrolled behavior of licensed and unlicensed dogs has created a risk of physical harm to persons, damage to property and nuisances within the Town. The purpose and intent of this article is to preserve the public peace and good order in the Town of Benton and to contribute to the public welfare, preservation and protection of the property and the person of the inhabitants of said Town by declaring and enforcing certain regulations and restrictions on activities of dogs and owners of dogs within the Town.

§ 6-8. Statutory authority; state provisions to take precedence.

- A. This article is enacted pursuant to the provisions of § 124 of the Agriculture and Markets Law of the State of New York and Articles 2 and 3 of the Municipal Home Rule of the State of New York.
- B. In the event that any provision hereof is determined to be in conflict with any law; statute, rule or regulation promulgated by the State of New York, such law, statute, rule or regulation shall take precedence over the contents hereof.

§ 6-9. Definitions; word usage.

- A. As used in this article, the following words shall have the following respective meanings:

DOG — Male or female, licensed or unlicensed, members of the species *Canis familiaris*.

OWNER — Person entitled to claim lawful custody and possession of a dog and who is responsible for purchasing the license for such dog, unless the dog is or has been lost and such loss was promptly reported to the Dog Warden and a reasonable search has been made. If a dog is not licensed, the term “owner” shall designate and cover any person or persons, firm, association or corporation who or which at any time owns or has custody or control of, harbors, or is otherwise responsible for any dog which is kept, brought or comes within the Town. Any person keeping or harboring a dog for a period of two weeks prior to the filing of any complaint charging a violation of this article shall be held, deemed and presumed to be the owner of such dog for the purpose of this article. In the event that the owner of any dog found to be in violation of this article shall be under 18 years of age, the head of the household in which said minor resides shall be deemed to have custody and control of said dog and shall be responsible for any acts of the said dog and violation of this article.

PUBLIC PLACE — Any street, sidewalk, park, school grounds with building or other buildings or lands owned or controlled by the United States of America, any agency or branch thereof, the State of New York or any agency or administration thereof, or any political and subdivision thereof.

RUNNING AT LARGE — To be in a public place or on private lands without the consent or approval of the owner and/or lawful occupant of such lands.

TOWN — Town of Benton.

- B. Unless specifically indicated otherwise, words used in the singular sense shall include the plural sense, and words used in the plural sense shall include the singular sense.
- C. The definition and interpretation of any other terms contained herein shall be the same as said terms are defined and interpreted in the New York State Agriculture and Markets Law.

§ 6-10. Restrictions on behavior; number of dogs on premises.

- A. It shall be unlawful for any owner of a dog or any person harboring any dog in the Town of Benton to permit or allow such dog to:
- (1) Engage in habitual, loud howling or barking or in conduct which habitually annoys any person other than the owner or person harboring such a dog.
 - (2) Cause damage or destruction to property or commit a nuisance upon the premises of a person other than the owner or person harboring the dog.
 - (3) Bite, chase or otherwise harass any person in such a manner as would possibly cause bodily harm or injury.
 - (4) Chase, continually run alongside of or bark at any form of transportation while on a public street, highway or private property.
 - (5) Run at large, if a female dog, when in heat, and such female dog shall be confined to the premises of the owner of such dog or any person harboring such dog during such period.
- B. With the exception of any incorporated humane society or similar incorporated dog protective association, any veterinary clinic or animal hospital and any approved kennel or boarding and grooming facility, it shall be unlawful to keep more than four dogs of the age of four months or more on any premises, regardless of the number of owners, unless there is a purebred License for that premises or an approved breeding facility or unless more than four licensed dogs have been kept there prior to the effective date of this article.

§ 6-11. Dog Control Officer.

The Dog Control Officer, to be designated by the Town Board as provided by § 114 of the Agriculture and Markets Law, shall enforce the provisions of this article and shall also investigate and file complaints with the Town Justice of the Town of Benton with respect to any dangerous dog, as described in § 121 of the Agriculture and Markets Law of the State of New York, and see that any order(s) of the Town Justice in such case are carried out. Any person so authorized pursuant to Article 7 of the Agriculture and Markets law of the State of New York may also carry out the provisions of this article.

§ 6-12. Seizure of dogs at large.

Any person so authorized pursuant to Article 7 of the Agriculture and Markets Law of the State of New York may seize any dog found at large within the Town of Benton.

§ 6-13. Complaints.

Any person who observes a dog causing damage or destruction to the property of a person other than its owner, committing a nuisance upon the premises of a person other than its owner, or otherwise violating the provisions hereof, may file a signed complaint with the Dog

Control Officer of the Town of Benton specifying the objectionable conduct of the dog, the date thereof, the damage caused or violation, a description of the dog and name and residence, if known, of the owner or other person harboring said dog. Such complaint may serve as the basis for enforcing the provisions of this article by the Dog Control Officer.

§ 6-14. Enforcement procedure.

Any violation of the provisions hereof shall be subject to prosecution pursuant to the Criminal Procedure Law of the State of New York and may be commenced by appearance ticket or as otherwise authorized by § 114 of the Agriculture and Markets Law of the State of New York.

§ 6-15. Care and redemption of impounded dogs.

- A. Every dog seized shall be properly fed and cared for until disposition thereof as herein provided and in accordance with the applicable provisions of the Agriculture and Markets Law of the State of New York.
- B. If the dog so seized bears a license tag, the Dog Control Officer shall ascertain the owner of the dog and shall give immediate notice by personally serving such owner, or an adult member of his family, with a notice, in writing, stating that the dog has been seized and will be disposed of pursuant to law unless redeemed as herein provided.
- C. The owner of the dog so seized may redeem the dog within the time limits specified by § 118 of the Agriculture and Markets Law of the State of New York by paying the prescribed impoundment fees. Impoundment fees shall be established by resolution of the Town Board of the Town of Benton.
- D. If not so redeemed, the owner shall forfeit all title to the dog, and the dog shall be made available for adoption or, if not adopted, euthanized in accordance with law.

§ 6-16. Penalties for offenses.

- A. A violation of this article shall constitute a violation as defined in the Penal Law of the State of New York and shall be punishable by a fine not exceeding \$250 or by a sentence of imprisonment not exceeding 15 days. or by both such fine and imprisonment.
- B. In the event of a continuous or ongoing circumstance which constitutes a violation of this article, each day that such circumstance continues or is ongoing shall constitute a separate offense of this article and may be penalized as a separate offense.
- C. The seizure of a dog shall not relieve any person from prosecution pursuant to this article.

Chapter 10

ASSEMBLIES, PUBLIC

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|---|---|
| § 10-1. Legislative intent and purpose. | § 10-5. Modification or revocation of permit. |
| § 10-2. Permit required. | |
| § 10-3. Application for permit. | § 10-6. Penalties for offenses. |
| § 10-4. Permit issuance. | |

[HISTORY: Adopted by the Town Board of the Town of Benton 9-14-1987 by L.L. No. 2-1987. Amendments noted where applicable.]

§ 10-1. Legislative intent and purpose.

The Town Board of the Town of Benton, Yates County, New York, is concerned with the effect that large assemblies or gatherings of persons shall have on the health, safety, public peace, good order and welfare of the residents of the Town of Benton and other persons within the Town of Benton. The concentration of large groups of persons for assemblies or gatherings may create problems and demands beyond the existing municipal services and facilities available for police and fire protection, the free flow of traffic, the sanitary conditions, noise and damage to person and property. The Town Board is also concerned with the adequate provision of sanitation, water supply, food services, garbage and refuse collection and disposal, medical and ambulance service, traffic control, parking facilities, communications systems, policing in general and all factors which are of concern to protecting the health, safety and welfare of the town.

§ 10-2. Permit required.

- A. No person, partnership, association, joint venture, corporation, or combination thereof shall organize, promote, conduct, operate or cause to be held an assembly or gathering of persons within the Town of Benton which shall consist of 400 persons or more unless a permit has first been obtained for the operation of the gathering or assembly pursuant to this chapter. Each separate event must have a separate permit.
- B. No owner, lessee or occupant of land shall permit the use of real property within the Town of Benton for a gathering or assembly of persons consisting of 400 or more unless a permit has been obtained pursuant to this chapter.

§ 10-3. Application for permit.

A written application for a permit shall be made to the Town Board at least 90 days prior to a gathering or assembly of persons in excess of 400 in number. Such application shall be

verified and be in triplicate. The application shall be accompanied by an application fee of \$25. The application shall consist of the following:

- A. Name, age, and residence of all persons or entities organizing, promoting, conducting, operating or causing to be held an assembly or gathering in excess of 400 persons. Any address utilizing a post office box must also include the actual residence or business address of the applicants.
- B. The date and time of the proposed event.
- C. A statement as to the purpose of such event and the proposed activities to occur at such gathering and admission fee to be charged.
- D. The names and addresses of the record owners of the real property on which the event is to occur, the lessees, tenants and other occupants of real property, and a statement from such persons or officers of entities that they consent to the use of the premises for these events.
- E. The number of persons reasonably believed to attend, both maximum and minimum.
- F. A scale map showing:
 - (1) The size of the property.
 - (2) The zoning district.
 - (3) The streets, highways and roads providing access to the property.
 - (4) All existing structures.
 - (5) Structures or buildings to be erected for the event.
 - (6) All parking areas.
 - (7) All means of entrance and exit to the property and the parking facilities.
 - (8) Placement of the proposed distribution system of water.
 - (9) Location of toilet facilities and other sanitation facilities.
 - (10) Location of garbage and refuse collection facilities.
 - (11) Areas for assembly of persons and/or entertainment or performance areas.
- G. A detailed statement and plan with drawings showing the supply, storage and distribution systems for drinking water. All proposed water supplies must conform to the state's sanitary code and evidence of potability of water must be submitted. A determination of the adequacy of the water supply shall be made by the Town Board with the advice and consent of the local health department official. If such consent is required, it shall be the obligation of the applicant to obtain such consent.
- H. A detailed plan and statement as to the method and location of toilet facilities and facilities for the disposal and treatment of sewage. The adequacy of such plan shall be determined by the Board with the advice and consent of the local health department

official. If such advice and consent is required, it shall be the obligation of the applicant to obtain such consent.

- I. A detailed plan for water for handwashing and other purposes.
- J. A detailed plan and layout of parking facilities and methods to be used for traffic control. Parking space must be adequate size for the maximum attendance permitted under the permit. One parking space shall be provided for every three persons attending.
- K. A detailed plan, contracts, license or permits showing the facilities for the preparation, storage, sale and distribution of food and beverages; and the names and addresses of the providers of such services. Approval of the local health department official shall be obtained by the applicant if required. No alcoholic beverages may be sold under town laws and ordinances.
- L. A detailed plan for the disposal and collection of all garbage, trash or other refuse.
- M. A statement fully describing all private security personnel who will be engaged by the applicant to serve for the event; the plan for security enforcement, including prevention of the unlawful use of alcohol, narcotics and dangerous drugs at the site; and the methods for limiting the number of attendees at the event.
- N. A detailed plan and statement specifying adequate facilities to be available for medical and ambulance service and emergency care.
- O. A detailed plan and statement showing provisions for fire protection, specifying the location of fire lanes, water supply and equipment or apparatus to be available for such purpose.
- P. A statement detailing any camping or housing facilities and the location thereof.
- Q. A detailed plan for the use of directional signs.
- R. A statement from local fire and ambulance authorities covering the area verifying that they are aware of the event and are willing to cooperate if needed.
- S. A verified authorization from the owner and occupant of the real property and from the applicants that the agents of the Town of Benton shall be authorized to enter upon the property for the purpose of determining compliance with this chapter, or any other law, ordinance, rule or regulation of the Town of Benton or the State of New York.
- T. A verified statement that the applicant will specify in all advertisements and promotional endeavors the limitation on the number of persons to be admitted.
- U. Detailed plans for amplifying equipment and other communications systems.
- V. Plan showing that the proposed activity adequately buffers all residential areas within 500 feet of the proposed activity, including but not limited to: noise, lighting and traffic.
- W. Insurance policies. The following policies must be provided prior to issuance of the permit:

- (1) A liability policy insuring the Town of Benton, the applicant, the owners, lessees and occupants of the premises against liability for damage to person or property with limits of at least \$1,000,000/\$5,000,000 for bodily injury or death and \$1,000,000 for property damage. The policy shall contain a provision that it shall not be cancelable without 30 days' prior written notice to the town. Failure to keep such a policy in effect shall automatically revoke any permit issued.
 - (2) The applicant must also sign an indemnity agreement whereby they agree to indemnify and save harmless the Town of Benton from any and all liability costs, attorneys fees and other disbursements due to claims, causes of actions or other damages arising out of the use of the premises by the applicant.
- X. Detailed plans for removal of all temporary structures, sanitary facilities, food service facilities and refuse removal from the premises.
- Y. Proof of financial resources showing finances sufficient to execute the plans submitted.

§ 10-4. Permit issuance.

The Town Board shall issue a permit if the requirements of § 10-3 are met and show plans which shall satisfactorily protect the public health, safety, welfare and order of the town. In making such a determination, the town may impose conditions necessary to maintain peace and order and to protect the persons and property within the town. If, for good cause shown, the town shall decide that certain requirements set forth herein are not applicable, it may waive that requirement. Written approval or denial shall be mailed to the applicant within 10 days after the Town Board meeting following submission of the application. An application must be received at least 10 days prior to a Town Board meeting to be heard at such a meeting. The Town Board may elect to have a special meeting to consider the application and such meeting shall be on notice to the applicant by mail seven days prior to the meeting.

§ 10-5. Modification or revocation of permit.

If, after a permit is issued, the Town Board determines that any of the representations or statements contained in the application or any of the conditions set forth in the permit have not been complied with or were false, the Town Board may serve upon the applicant by mail a notice of hearing specifying the manner in which the application or conditions were not complied with or were false, within two days prior to the hearing date. At the hearing, the Town Board may modify or revoke the permit absolutely or upon conditions for good cause shown.

§ 10-6. Penalties for offenses.

Any person, corporation, partnership, joint venture, or other business entity, who shall use, allow or permit to be used property for the assembly or gathering of persons in violation of this chapter shall be guilty of a misdemeanor which shall be punishable by a fine of \$100 or imprisonment not to exceed 15 days. Each day that a violation continues shall constitute a separate offense. In addition, the Town Board may institute an action or proceeding to prevent violation of this chapter and to compel compliance with this law, or seek any other

remedies available under the laws of the state or laws, ordinances and rules and regulations of the town.

Chapter 15

CANNABIS

ARTICLE I

Retail Dispensaries and On-Site Consumption Sites

§ 15-1. Legislative intent.

§ 15-2. Authority.

§ 15-3. Local opt-out.

§ 15-4. Severability.

§ 15-5. Permissive referendum/
referendum on petition.

§ 15-6. When effective.

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

ARTICLE I

Retail Dispensaries and On-Site Consumption Sites

[Adopted 8-11-2021 by L.L. No. 1-2021]

§ 15-1. Legislative intent.

It is the intent of this article to opt out of allowing cannabis retail dispensaries and on-site cannabis consumption sites in the Town of Benton that would otherwise be allowed under Article 4 of the Cannabis Law.

§ 15-2. Authority.

This article is adopted pursuant to Cannabis Law § 131 which expressly authorizes the Town Board to adopt a local law requesting the Cannabis Control Board to prohibit the establishment of cannabis retail dispensary licenses and/or on-site consumption licenses within the jurisdiction of the Town and is subject to a permissive referendum, the procedure of which is governed by Municipal Home Rule Law § 24.

§ 15-3. Local opt-out.

The Town Board of the Town of Benton hereby opts out of allowing cannabis retail dispensaries and on-site cannabis consumption sites from being established and operated within the Town's jurisdiction and requests the Cannabis Control Board to prohibit the establishment of cannabis retail dispensary licenses and on-site consumption licenses contained in Article 4 of the Cannabis Law, within the jurisdiction of the Town of Benton.

§ 15-4. Severability.

If any clause, sentence, paragraph, subdivision, or part of this article or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the

clause, sentence, paragraph, subdivision, or part of this article or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

§ 15-5. Permissive referendum/referendum on petition.

This article is subject to a referendum on petition in accordance with Cannabis Law § 131 and the procedure outlined in Municipal Home Rule Law § 24.¹

§ 15-6. When effective.

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

1. Editor's Note: No valid petition was filed.

Chapter 19

DEFENSE AND INDEMNIFICATION

§ 19-1. Legislative intent.

§ 19-3. Conferral of benefits.

§ 19-2. Definitions.

[HISTORY: Adopted by the Town Board of the Town of Benton 12-29-1986 by L.L. No. 4-1986. Amendments noted where applicable.]

§ 19-1. Legislative intent.

The purpose of this chapter is to confer the benefits of § 18 of the Public Officers Law of the State of New York upon the employees of the Town of Benton.

§ 19-2. Definitions.

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

EMPLOYEE — Any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment, or employment in the service of a public entity, whether or not compensated, but shall not include the sheriff of any county or an independent contractor. The term "employee" shall include a former employee, his estate, or judicially appointed personal representative.

PUBLIC ENTITY — The Town of Benton.

§ 19-3. Conferral of benefits.

The Town Board of the Town of Benton hereby confers the benefits of § 18 of the Public Officers Law of the State of New York upon its employees and shall be held liable for the costs incurred under those provisions.

Chapter 24

ETHICS, CODE OF

§ 24-1. Legislative intent.

§ 24-5. Filing of claims.

§ 24-2. Conflict with other provisions.

§ 24-6. Distribution of code.

§ 24-3. Definitions.

§ 24-7. Penalties for offenses.

§ 24-4. Standards of conduct.

[HISTORY: Adopted by the Town Board of the Town of Benton 12-28-1970. Amendments noted where applicable.]

§ 24-1. Legislative intent.

The Town Board of the Town of Benton, New York, recognizing 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, hereby establishes a Code of Ethics to promulgate rules of ethical conduct for the officers and employees of the Town of Benton to serve as a guide for official conduct of the officers and employees of the Town of Benton, as follows.

§ 24-2. Conflict with other provisions.

These rules of ethical conduct 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.

§ 24-3. 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 unless the context otherwise requires.

MUNICIPAL OFFICER AND EMPLOYEE — An officer or employee of the Town of Benton, 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 chief engineer or assistant chief engineer.

§ 24-4. Standards of conduct.

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

- A. He shall not directly or indirectly solicit any gift; or accept or receive any gift having a value of \$25 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.
- B. 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. 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 any officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.
- D. He shall not receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of his municipality, whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
- E. To the extent that he knows thereof, a member of the Town Board, any officer or employee of the Town of Benton, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation 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. 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. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.
- H. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Town of Benton 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.

§ 24-5. Filing of claims.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the Town of Benton 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.

§ 24-6. Distribution of code.

The Supervisor of the Town of Benton shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town of Benton within 60 days after the effective date of this chapter. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his office or employment.

§ 24-7. Penalties for offenses.

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this code may be fined, suspended or removed from office or employment, as the case may be, in the manner provided in § 27 of the Municipal Home Rule Law.

Chapter 30

FIRE PREVENTION, BUILDING CONSTRUCTION AND ENERGY CONSERVATION

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| § 30-1. Purpose and intent. | § 30-10. Operating permits. |
| § 30-2. Definitions. | § 30-11. Fire safety and property maintenance inspections. |
| § 30-3. Code Enforcement Officer and inspectors. | § 30-12. Complaints. |
| § 30-4. Building permits. | § 30-13. Condition assessments of parking garages. |
| § 30-5. Construction inspections. | § 30-14. Climatic and geographic design criteria. |
| § 30-6. Stop-work orders. | § 30-15. Recordkeeping. |
| § 30-7. Certificates of occupancy and certificates of compliance. | § 30-16. Program review and reporting. |
| § 30-8. Notification regarding fire or explosion. | § 30-17. Violations; penalties for offenses. |
| § 30-9. Unsafe buildings, structures, and equipment and conditions of imminent danger. | § 30-18. Fees. |
| | § 30-19. Intermunicipal agreements. |

[HISTORY: Adopted by the Town Board of the Town of Benton 3-8-2023 by L.L. No. 3-2023.¹ Amendments noted where applicable.]

§ 30-1. Purpose and intent.

This chapter provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Town. The local law adopting this chapter is adopted pursuant to § 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, the Energy Code, other state law, or other section of this chapter, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this chapter.

§ 30-2. Definitions.

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

ASSEMBLY AREA — An area in any building, or in any portion of a building, that is primarily used or intended to be used for gathering 50 or more persons for uses including, but not limited to, amusement, athletic, entertainment, social, or other recreational functions; patriotic, political, civic, educational, or religious functions; food or drink consumption; awaiting transportation; or similar purposes.

1. Editor's Note: This local law also repealed former Ch. 30, Fire Prevention and Building Construction, adopted 11-8-2006 by L.L. No. 3-2006, as amended.

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

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

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

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer appointed pursuant to § 30-3B of this chapter.

CODE ENFORCEMENT PERSONNEL — Includes the Code Enforcement Officer and all inspectors.

CODES — The Uniform Code and Energy Code.

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

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

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

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

INSPECTOR — An inspector appointed pursuant to § 30-3D of this chapter.

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

OPERATING PERMIT — A permit issued pursuant to § 30-10 of this chapter. The term "operating permit" shall also include an operating permit which is renewed, amended, or extended pursuant to any provision of this chapter.

ORDER TO REMEDY — An order issued by the Code Enforcement Officer pursuant to § 30-17A of this chapter.

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

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

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

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

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

STOP-WORK ORDER — An order issued pursuant to § 30-6 of this chapter.

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

TEMPORARY CERTIFICATE OF OCCUPANCY — A certificate issued pursuant to § 30-7D of this chapter.

TOWN — The Town of Benton.

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

§ 30-3. Code Enforcement Officer and inspectors.

- A. The office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code, and this chapter. The Code Enforcement Officer shall have the following powers and duties:
- (1) To receive, review, and approve or disapprove applications for building permits, certificates of occupancy, certificates of compliance, temporary certificates of occupancy, and operating permits, and the plans, specifications, and construction documents submitted with such applications;
 - (2) Upon approval of such applications, to issue building permits, certificates of occupancy, certificates of compliance, temporary certificates of occupancy, and operating permits, and to include in terms and conditions as the Code Enforcement Officer may determine to be appropriate building permits, certificates of occupancy, certificates of compliance, temporary certificates of occupancy, and operating permits;
 - (3) To conduct construction inspections; inspections to be made prior to the issuance of certificates of occupancy, certificates of compliance, temporary certificates of occupancy, and operating permits; fire safety and property maintenance inspections; inspections incidental to the investigation of complaints; and all other inspections required or permitted under any provision of this chapter;
 - (4) To issue stop-work orders;

- (5) To review and investigate complaints;
 - (6) To issue orders pursuant to § 30-17A (Violations) of this chapter;
 - (7) To maintain records;
 - (8) To collect fees as set by the Town Board of this Town;
 - (9) To pursue administrative enforcement actions and proceedings;
 - (10) In consultation with this Town's Attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code, and this chapter, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code, or this chapter; and
 - (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this chapter.
- B. The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training, and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.
- C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, another individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of their appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this chapter.
- D. One or more inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this chapter. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training, and other training as the State of New York shall require for code enforcement personnel, and each inspector shall obtain certification from the Department of State pursuant to the Executive Law and the regulations promulgated thereunder.
- E. The compensation for the Code Enforcement Officer and inspectors shall be fixed from time to time by the Town Board of this Town.

§ 30-4. Building permits.

- A. Building permits required. Except as otherwise provided in Subsection B of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation, or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning

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heating appliance, chimney, or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Town.

B. Exemptions. No building permit shall be required for work in any of the following categories:

- (1) Construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses), which are used for tool and storage sheds, playhouses, or similar uses, provided the gross floor area does not exceed 84 square feet;
- (2) Construction of temporary sets and scenery associated with motion picture, television, and theater uses;
- (3) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (4) Installation of partitions or movable cases less than five feet nine inches in height;
- (5) Painting, wallpapering, tiling, carpeting, or other similar finish work;
- (6) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (7) Replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
- (8) Repairs, provided that the work does not have an impact on fire and life safety, such as: i) any part of the structural system; ii) the required means of egress; or iii) the fire protection system or the removal from service of any part of the fire protection system for any period of time.

C. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection B of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

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

- (1) A description of the location, nature, extent, and scope of the proposed work;
- (2) The tax map number and the street address of any affected building or structure;
- (3) The occupancy classification of any affected building or structure;

- (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
 - (5) At least two sets of construction documents (drawings and/or specifications) which:
 - (a) Describe the location, nature, extent, and scope of the proposed work;
 - (b) Show that the proposed work will conform to the applicable provisions of the Codes;
 - (c) Show the location, construction, size, and character of all portions of the means of egress;
 - (d) Show a representation of the building thermal envelope;
 - (e) Show structural information including but not limited to braced wall designs, the size, section, and relative locations of structural members, design loads, and other pertinent structural information;
 - (f) Show the proposed structural, electrical, plumbing, mechanical, fire-protection, and other service systems of the building;
 - (g) Include a written statement indicating compliance with the Energy Code;
 - (h) Include a site plan, drawn to scale and drawn in accordance with an accurate boundary survey, showing the size and location of new construction and existing structures and appurtenances on the site, distances from lot lines, the established street grades and the proposed finished grades, and, as applicable, flood hazard areas, floodways, and design flood elevations; and
 - (i) Evidence that the documents were prepared by a licensed and registered architect in accordance with Article 147 of the New York State Education Law or a licensed and registered professional engineer in accordance with Article 145 of the New York State Education Law and practice guidelines, including but not limited to the design professional's seal which clearly and legibly shows both the design professional's name and license number and is signed by the design professional whose name appears on the seal in such a manner that neither the name nor the number is obscured in any way, the design professional's registration expiration date, the design professional's firm name (if not a sole practitioner), and, if the documents are submitted by a professional engineering firm and not a sole practitioner professional engineer, the firm's certificate of Authorization number.
- E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection D(5) of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp, or in the case of electronic media, an electronic marking. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for

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use by the Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.

- F. Issuance of building permits. An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.
- I. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.
- J. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate, or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that: 1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code; and 2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- K. Fee. The fee specified in or determined in accordance with the provisions set forth in § 30-18, Fees, of this chapter must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

§ 30-5. Construction inspections.

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an inspector authorized by the Code Enforcement Officer. The permit holder shall notify the Code

Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection.

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

- E. Fee. The fee specified in or determined in accordance with the provisions set forth in § 30-18, Fees, of this chapter must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 30-6. Stop-work orders.

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall: 1) be in writing; 2) be dated and signed by the Code Enforcement Officer; 3) state the reason or reasons for issuance; and 4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work orders, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit holder, on the permit holder) personally or by certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work orders, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work orders, personally or by certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work orders.
- D. Effect of stop-work order. Upon the issuance of a stop-work orders, the owner of the affected property, the permit holder, and any other person performing, taking part in, or assisting in the work shall immediately cease all work which is the subject of the stop-work orders, other than work expressly authorized by the Code Enforcement Officer to correct the reason for issuing the stop-work orders.
- E. Remedy not exclusive. The issuance of a stop-work orders shall not be the exclusive remedy available to address any event described in Subsection A of this section, and the authority to issue a stop-work orders shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 30-17, Violations, of this chapter or under any other applicable

local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work orders.

§ 30-7. Certificates of occupancy and certificates of compliance.

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

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- (4) If the certificate of occupancy or certificate of compliance is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy or certificate of compliance is issued;
 - (5) The use and occupancy classification of the structure;
 - (6) The type of construction of the structure;
 - (7) The occupant load of the assembly areas in the structure, if any;
 - (8) Any special conditions imposed in connection with the issuance of the building permit; and
 - (9) The signature of the Code Enforcement Officer issuing the certificate of occupancy or certificate of compliance and the date of issuance.
- D. Temporary certificate of occupancy. The Code Enforcement Officer shall be permitted to issue a temporary certificate of occupancy allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit. However, in no event shall the Code Enforcement Officer issue a temporary certificate of occupancy unless the Code Enforcement Officer determines: 1) that the building or structure, or the portion thereof covered by the temporary certificate of occupancy, may be occupied safely; 2) that any required fire and life safety components, such as fire protection equipment and fire, smoke, carbon monoxide, and heat detectors and alarms are installed and operational; and 3) that all required means of egress from the structure have been provided. The Code Enforcement Officer may include in a temporary certificate of occupancy such terms and conditions as he or she deems necessary or appropriate to ensure the health and safety of the persons occupying and using the building or structure and/or performing further construction work in the building or structure. A temporary certificate of occupancy shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate of occupancy. During the specified period of effectiveness of the temporary certificate of occupancy, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.
- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy, certification of compliance, or a temporary certificate of occupancy was issued in error or on the basis of incorrect information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 30-18, Fees, of this chapter must be paid at the time of submission of an application for a certificate of occupancy, certificate of compliance, or for temporary certificate of occupancy.

§ 30-8. Notification regarding fire or explosion.

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

§ 30-9. Unsafe buildings, structures, and equipment and conditions of imminent danger.

Unsafe buildings, structures, and equipment and conditions of imminent danger in this Town shall be identified and addressed in accordance with the following procedures:

A. The Unsafe Buildings Law of the Town of Benton.

- (1) Purpose. Unsafe buildings pose a threat to life and property in the Town of Benton. Buildings and structures may become unsafe by reason of damage by fire, the elements, age or general deterioration. Vacant buildings not properly secured at doorways and windows also serve as an attractive nuisance for young children who may be injured therein, as well as a point of congregation by vagrants and transients. A dilapidated building may also serve as a place of rodent infestation, thereby creating a health menace to the community. It is the purpose of this Unsafe Buildings Law to provide for the safety, health, protection and general welfare of persons and property in the Town of Benton by requiring that such unsafe buildings be repaired or demolished and removed.
- (2) Title. This subsection shall be known as the "Unsafe Buildings Law" of the Town of Benton.
- (3) Definitions. As used in the Unsafe Buildings Law, the following terms shall have the meanings indicated:

BUILDING — Any building, structure or portion thereof used for residential, business or industrial purpose.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer of the Town of Benton or such other persons appointed by the Town Board to enforce the provisions of the Unsafe Buildings Law.
- (4) Inspection and report. When, in his or her own opinion or upon receipt of information that a building is or may become dangerous or unsafe to the general public, is open at the doorways and windows making it accessible to and an object of attraction to minors under 18 years of age, as well as to vagrants and other trespassers, is or may become a place of rodent infestation, presents any other danger to the health, safety, morals and general welfare of the public or is unfit for the purposes for which it may lawfully be used, the Building Inspector shall cause or make an inspection thereof and report, in writing, to the Town Board his or her findings and recommendations in regard to its repair or demolition and removal.
- (5) Town Board order; notice. The Town Board shall thereafter consider such report and by resolution determine, if in its opinion the report so warrants, that such building is unsafe and dangerous and order its repair, if the same can be safely

repaired, or its demolition and removal and further order that a notice be served upon the persons and in the manner provided herein.

- (6) Contents of notice. This notice shall contain the following:
 - (a) A description of the premises.
 - (b) A statement of the particulars in which the building is unsafe or dangerous.
 - (c) An order outlining the manner in which the building is to be made safe and secure or demolished and removed.
 - (d) A statement that the securing or demolition and removal of such building shall commence within 30 days of the service of the notice and shall be completed within 60 days thereafter, unless for good cause shown such time shall be extended.
 - (e) A date, time and place for a hearing before the Town Board in relation to such dangerous or unsafe building, which hearing shall be scheduled not less than five business days from the date of service of the notice.
 - (f) A statement that, in the event of neglect or refusal to comply with the order to secure or demolish and remove the building, the Town Board is authorized to provide for its repair or securing or its demolition and removal, as the case may be, to assess all expenses thereof, including legal, engineering and other expenses, against the land on which it is located and/or to institute a special proceeding or action to collect the costs of repair or demolition and removal, including expenses.
- (7) Service of notice. The notice required by the Unsafe Buildings Law shall be served:
 - (a) By personal service upon the owner(s), an owner's executor, administrator, legal representatives or agent, a lessee, or any other person having a vested or contingent interest in such unsafe premises or building, as shown by the records of the Town Assessor or of the Yates County Clerk, or, if such person(s) cannot be reasonably found, service shall be made by registered or certified mail, addressed to the last known address, if any, of the owner(s), an owner's executor, administrator, legal representatives or agent, a lessee, or any other person having a vested or contingent interest in such unsafe premises or building as aforesaid identified.
 - (b) By personal service of a copy of such notice upon any adult person residing in or occupying said premises if such person can be reasonably found; and
 - (c) By securely affixing a copy of such notice upon the unsafe building.
- (8) Filing of copy of notice. A copy of the notice served as provided herein shall be filed in the office of the County Clerk of the County of Yates.
- (9) Conduct of public hearing.
 - (a) The public hearing shall be conducted before at least a quorum of the Town Board.

- (b) The Supervisor or his or her designee shall preside over the public hearing.
 - (c) The owner of the premises may be represented by counsel at the public hearing and shall have the right to call witnesses in his or her behalf and to otherwise present his or her case in opposition to the Town's case.
 - (d) The strict rules of evidence shall not apply to the public hearing. The Town must prove its case by a preponderance of the evidence.
 - (e) After both parties have presented their respective cases, the Town Board shall decide the case. Such decision shall be in writing and shall be filed with the Town Clerk and mailed to the property owner if the owner's identity is known, and any other person served with the notice under the Unsafe Buildings Law at his or her last known residence address within five days of the date of the public hearing. The decision shall be made by a simple majority of the Town Board.
 - (f) Failure of the property owner to appear, either in person or by representative, at the date and time specified for a public hearing shall not prevent the Town Board from rendering a decision.
- (10) Failure to comply; action by Town. In the event of the refusal or neglect of the person so notified to comply with said order of the Town Board and after the hearing, the Town Board shall provide for the repair or the demolition and removal, as the case may be, of such building or structure either by Town employees or by contract. Except in an emergency as provided for herein, any contract for repair or for demolition and removal, as the case may be, of a building shall be awarded in accordance with Town of Benton Procurement Policy² or through competitive bidding, as applicable.
- (11) Assessment of expenses. All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building, including the cost of actually correcting such condition or demolishing and removing such building, shall be assessed against the land on which such building is located and shall be levied and collected in the same manner as provided in the Town Law for levy and collection of a special ad valorem levy.
- (12) Emergency cases. Where it reasonably appears that there is present a clear and imminent danger to the life, safety or health of any person or property unless an unsafe building is immediately repaired or secured or demolished, the Town Board may, by resolution, authorize the Code Enforcement Officer to immediately cause the repair or demolition of such unsafe building. The expenses of such repair or demolition shall be charged against the land on which it is located and shall be assessed, levied and collected in the same manner as provided in the Town Law for the levy and collection of Town taxes or special ad valorem levies.

2. Editor's Note: See Ch. 74, Procurement Policy.

§ 30-10. Operating permits.

A. Operation permits required.

- (1) Operating permits shall be required for conducting any process or activity or for operating any type of building, structure, or facility listed below:
 - (a) Manufacturing, storing, or handling hazardous materials in quantities exceeding those listed in the applicable Maximum Allowable Quantity tables found in Chapter 50 of the FCNYS;
 - (b) Buildings, structures, facilities, processes, and/or activities that are within the scope and/or permit requirements of the chapter or section title of the FCNYS as follows:
 - [1] Chapter 22, "Combustible Dust-Producing Operations." Facilities where the operation produces combustible dust;
 - [2] Chapter 24, "Flammable Finishes." Operations utilizing flammable or combustible liquids, or the application of combustible powders regulated by Chapter 24 of the FCNYS;
 - [3] Chapter 25, "Fruit and Crop Ripening." Operating a fruit- or crop-ripening facility or conducting a fruit-ripening process using ethylene gas;
 - [4] Chapter 26, "Fumigation and Insecticidal Fogging." Conducting fumigation or insecticidal fogging operations in buildings, structures, and spaces, except for fumigation or insecticidal fogging performed by the occupant of a detached one-family dwelling;
 - [5] Chapter 31, "Tents, Temporary Special Event Structures, and Other Membrane Structures." Operating an air-supported temporary membrane structure, a temporary special event structure, or a tent where approval is required pursuant to Chapter 31 of the FCNYS;
 - [6] Chapter 32, "High-Piled Combustible Storage." High-piled combustible storage facilities with more than 500 square feet (including aisles) of high-piled storage;
 - [7] Chapter 34, "Tire Rebuilding and Tire Storage." Operating a facility that stores in excess of 2,500 cubic feet of scrap tires or tire byproducts or operating a tire rebuilding plant;
 - [8] Chapter 35, "Welding and Other Hot Work." Performing public exhibitions and demonstrations where hot work is conducted, use of hot work, welding, or cutting equipment, inside or on a structure, except an operating permit is not required where work is conducted under the authorization of a building permit or where performed by the occupant of a detached one- or two-family dwelling;
 - [9] Chapter 40, "Sugarhouse Alternative Activity Provisions." Conducting an alternative activity at a sugarhouse;

- [10] Chapter 56, "Explosives and Fireworks." Possessing, manufacturing, storing, handling, selling, or using, explosives, fireworks, or other pyrotechnic special effects materials except the outdoor use of sparkling devices as defined by Penal Law § 270;
 - [11] Section 307, "Open Burning, Recreational Fires and Portable Outdoor Fireplaces." Conducting open burning, not including recreational fires and portable outdoor fireplaces;
 - [12] Section 308, "Open Flames." Removing paint with a torch, or using open flames, fire, and burning in connection with assembly areas or educational occupancies; and
 - [13] Section 319, "Mobile Food Preparation Vehicles." Operating a mobile food preparation vehicle.
- (c) Energy storage systems, where the system exceeds the values shown in Table 1206.1 of the FCNYS or exceeds the permitted aggregate ratings in Section R327.5 of the RCNYS;
 - (d) Buildings containing one or more assembly areas;
 - (e) Outdoor events where the planned attendance exceeds 1,000 persons;
 - (f) Facilities that store, handle or use hazardous production materials;
 - (g) Parking garages as defined in § 30-13A of this chapter;
 - (h) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Town; and
 - (i) Other processes or activities or for operating any type of building, structure, or facility as determined by resolution adopted by the Town Board of this Town.
- (2) Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection A shall be required to obtain an operating permit prior to commencing such activity or operation.
- B. Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
 - C. This subdivision is intentionally omitted.
 - D. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an

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operating permit. Such inspections shall be performed either in-person or remotely. Remote inspections in lieu of in-person inspections may be performed when, at the discretion of the Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or inspector authorized by the Code Enforcement Officer that the premises conform with the applicable requirements of the Uniform Code and the code enforcement program. Should a remote inspection not afford the Town sufficient information to make a determination, an in-person inspection shall be performed. After inspection, the premises shall be noted as satisfactory and the operating permit shall be issued, or the operating permit holder shall be notified as to the manner in which the premises fail to comply with either or both of the Uniform Code and the code enforcement program, including a citation to the specific provision or provisions that have not been met.

- E. Multiple activities. In any circumstance in which more than one activity listed in Subsection A of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in their discretion, issue a single operating permit to apply to all such activities.
- F. Duration of operating permits.
 - (1) Operating permits shall be issued for a specified period of time consistent with local conditions, but in no event to exceed as follows:
 - (a) One hundred eighty days for tents, special event structures, and other membrane structures;
 - (b) Sixty days for alternative activities at a sugarhouse;
 - (c) Three years for the activities, structures, and operations determined per Subsection A(9) of this section; and
 - (d) One year for all other activities, structures, and operations identified in Subsection A of this section.
 - (2) The effective period of each operating permit shall be specified in the operating permit. An operating permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
- G. Revocation or suspension of operating permits. If the Code Enforcement Officer determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code, such operating permit shall be revoked or suspended.
- H. Fee. The fee specified in or determined in accordance with the provisions set forth in § 30-18, Fees, of this chapter must be paid at the time submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

§ 30-11. Fire safety and property maintenance inspections.

A. Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at the following intervals:

- (1) At least once every 12 months for buildings which contain an assembly area;
- (2) At least once every 12 months for public and private schools and colleges, including any buildings of such schools or colleges containing classrooms, dormitories, fraternities, sororities, laboratories, physical education, dining, or recreational facilities; and
- (3) At least once every 36 months for multiple dwellings and all nonresidential occupancies.

B. Remote inspections. At the discretion of the Code Enforcement Officer or inspector authorized to perform fire safety and property maintenance inspections, a remote inspection may be performed in lieu of in-person inspections when, in the opinion of the Code Enforcement Officer or such authorized inspector, the remote inspection can be performed to the same level and quality as an in-person inspection and the remote inspection shows to the satisfaction of the Code Enforcement Officer or such authorized inspector that the premises conform with the applicable provisions of 19 NYCRR Part 1225 and the publications incorporated therein by reference and the applicable provisions of 19 NYCRR Part 1226 and the publications incorporated therein by reference. Should a remote inspection not afford the Code Enforcement Officer or such authorized inspector sufficient information to make a determination, an in-person inspection shall be performed.

C. Inspections permitted. In addition to the inspections required by Subsection A of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an inspector authorized to perform fire safety and property maintenance inspections at any time upon:

- (1) The request of the owner of the property to be inspected or an authorized agent of such owner;
- (2) Receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- (3) Receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist;

Provided, however, that nothing in this subsection shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

D. OFPC inspections. Nothing in this section or in any other provision of this chapter shall supersede, limit, or impair the powers, duties and responsibilities of the New York

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State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator or other authorized entity under Executive Law § 156-e and Education Law § 807-b.

- E. Fee. The fee specified in or determined in accordance with the provisions set forth in § 30-18, Fees, of this chapter must be paid prior to or at the time each inspection performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

§ 30-12. Complaints.

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

- A. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- B. If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in § 30-17, Violations, of this chapter;
- C. If appropriate, issuing a stop-work orders;
- D. If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 30-13. Condition assessments of parking garages.

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

CONDITION ASSESSMENT — An on-site inspection and evaluation of a parking garage for evidence of deterioration of any structural element or building component of such parking garage, evidence of the existence of any unsafe condition in such parking garage, and evidence indicating that such parking garage is an unsafe structure.

DETERIORATION — The weakening, disintegration, corrosion, rust, or decay of any structural element or building component, or any other loss of effectiveness of a structural element or building component.

PARKING GARAGE — Any building or structure, or part thereof, in which all or any part of any structural level or levels is used for parking or storage of motor vehicles, excluding:

- (1) Buildings in which the only level used for parking or storage of motor vehicles is on grade;
- (2) An attached or accessory structure providing parking exclusively for a detached one- or two-family dwelling; and
- (3) A townhouse unit with attached parking exclusively for such unit;

PROFESSIONAL ENGINEER — An individual who is licensed or otherwise authorized under Article 145 of the Education Law to practice the profession of engineering in the State of New York and who has at least three years of experience performing structural evaluations.

RESPONSIBLE PROFESSIONAL ENGINEER — The professional engineer who performs a condition assessment, or under whose supervision a condition assessment is performed, and who seals and signs the condition assessment report. The use of the term "responsible professional engineer" shall not be construed as limiting the professional responsibility or liability of any professional engineer, or of any other licensed professional, who participates in the preparation of a condition assessment without being the responsible professional engineer for such condition assessment.

UNSAFE CONDITION — Includes the conditions identified as "unsafe" in Section 304.1.1, Section 305.1.1, and Section 306.1.1 of the PMCNYS.

UNSAFE STRUCTURE — A structure that is so damaged, decayed, dilapidated, or structurally unsafe, or is of such faulty construction or unstable foundation, that partial or complete collapse is possible.

- B. Condition assessments — general requirements. The owner operator of each parking garage shall cause such parking garage to undergo an initial condition assessment as described in Subsection C of this section, periodic condition assessments as described in Subsection D of this section, and such additional condition assessments as may be required under Subsection E of this section. Each condition assessment shall be conducted by or under the direct supervision of a professional engineer. A written report of each condition assessment shall be prepared, and provided to the Town, in accordance with the requirements of Subsection F of this section. Before performing a condition assessment (other than the initial condition assessment) of a parking garage, the responsible professional engineer for such condition assessment shall review all available previous condition assessment reports for such parking garage.
- C. Initial condition assessment. Each parking garage shall undergo an initial condition assessment as follows:
 - (1) Parking garages constructed on or after August 29, 2018, shall undergo an initial condition assessment following construction and prior to a certificate of occupancy or certificate of compliance being issued for the structure.
 - (2) Parking garages constructed prior to August 29, 2018, shall undergo an initial condition assessment as follows:

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- (a) If originally constructed prior to January 1, 1984, then prior to October 1, 2019;
 - (b) If originally constructed between January 1, 1984, and December 31, 2002, then prior to October 1, 2020; and
 - (c) If originally constructed between January 1, 2003, and August 28, 2018, then prior to October 1, 2021.
- (3) Any parking garage constructed prior to the effective date of the local law enacting this provision that has not undergone an initial condition assessment prior to that effective date shall undergo an initial condition assessment prior to the passing of six months from the effective date of such local law.
- D. Periodic condition assessments. Following the initial condition assessment of a parking garage, such parking garage shall undergo periodic condition assessments at intervals not to exceed one year.
- E. Additional condition assessments.
- (1) If the latest condition assessment report for a parking garage includes a recommendation by the responsible professional engineer that an additional condition assessment of such parking garage, or any portion of such parking garage, be performed before the date by which the next periodic condition assessment would be required under Subsection C of this section, the owner or operator of such parking garage shall cause such parking garage (or, if applicable, the portion of such parking garage identified by the responsible professional engineer) to undergo an additional condition assessment no later than the date recommended in such condition assessment report.
 - (2) If the Town becomes aware of any new or increased deterioration which, in the judgment of the Town, indicates that an additional condition assessment of the entire parking garage, or of the portion of the parking garage affected by such new or increased deterioration, should be performed before the date by which the next periodic condition assessment would be required under Subsection C of this section, the owner or operator of such parking garage shall cause such parking garage (or, if applicable, the portion of the parking garage affected by such new or increased deterioration) to undergo an additional condition assessment no later than the date determined by the Town to be appropriate.
- F. Condition assessment reports. The responsible professional engineer shall prepare, or directly supervise the preparation of, a written report of each condition assessment, and shall submit such condition assessment report to the Town within three months of the condition assessment. Such condition assessment report shall be sealed and signed by the responsible professional engineer, and shall include:
- (1) An evaluation and description of the extent of deterioration and conditions that cause deterioration that could result in an unsafe condition or unsafe structure;
 - (2) An evaluation and description of the extent of deterioration and conditions that cause deterioration that, in the opinion of the responsible professional engineer,

should be remedied immediately to prevent an unsafe condition or unsafe structure;

- (3) An evaluation and description of the unsafe conditions;
 - (4) An evaluation and description of the problems associated with the deterioration, conditions that cause deterioration, and unsafe conditions;
 - (5) An evaluation and description of the corrective options available, including the recommended time frame for remedying the deterioration, conditions that cause deterioration, and unsafe conditions;
 - (6) An evaluation and description of the risks associated with not addressing the deterioration, conditions that cause deterioration, and unsafe conditions;
 - (7) The responsible professional engineer's recommendation regarding preventative maintenance;
 - (8) Except in the case of the report of the initial condition assessment, the responsible professional engineer's attestation that he or she reviewed all previously prepared condition assessment reports available for such parking garage, and considered the information in the previously prepared reports while performing the current condition assessment and while preparing the current report; and
 - (9) The responsible professional engineer's recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed. In making the recommendation regarding the time within which the next condition assessment of the parking garage or portion thereof should be performed, the responsible professional engineer shall consider the parking garage's age, maintenance history, structural condition, construction materials, frequency and intensity of use, location, exposure to the elements, and any other factors deemed relevant by the responsible professional engineer in their professional judgment.
- G. Review condition assessment reports. The Town shall take such enforcement action or actions in response to the information in such condition assessment report as may be necessary or appropriate to protect the public from the hazards that may result from the conditions described in such report. In particular, but not by way of limitation, the Town shall, by order to remedy or such other means of enforcement as the Town may deem appropriate, require the owner or operator of the parking garage to repair or otherwise remedy all deterioration, all conditions that cause deterioration, and all unsafe conditions identified in such condition assessment report pursuant to Subsection F(2) and (3). All repairs and remedies shall comply with the applicable provisions of the Uniform Code. This section shall not limit or impair the right of the Town to take any other enforcement action, including but not limited to suspension or revocation of a parking garage's operating permit, as may be necessary or appropriate in response to the information in a condition assessment report.
- H. The Town shall retain all condition assessment reports for the life of the parking garage. Upon request by a professional engineer who has been engaged to perform a condition assessment of a parking garage, and who provides the Town with a written

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statement attesting to the fact that he or she has been so engaged, the Town shall make the previously prepared condition assessment reports for such parking garage (or copies of such reports) available to such professional engineer. The Town shall be permitted to require the owner or operator of the subject parking garage to pay all costs and expenses associated with making such previously prepared condition assessment reports (or copies thereof) available to the professional engineer.

- I. This section shall not limit or impair the right or the obligation of the Town:
- (1) To perform such construction inspections as are required by § 30-5, Construction inspections, of this chapter;
 - (2) To perform such periodic fire safety and property maintenance inspections as are required by § 30-11, Fire safety and property maintenance inspections, of this chapter; and/or
 - (3) To take such enforcement action or actions as may be necessary or appropriate to respond to any condition that comes to the attention of the Town by means of its own inspections or observations, by means of a complaint, or by any other means other than a condition assessment or a report of a condition assessment.

§ 30-14. Climatic and geographic design criteria.

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

maintain such record within the office of the Code Enforcement Officer, and shall make such record readily available to the public.

§ 30-15. Recordkeeping.

- A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:
- (1) All applications received, reviewed and approved or denied;
 - (2) All plans, specifications and construction documents approved;
 - (3) All building permits, certificates of occupancy, certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;
 - (4) All inspections and tests performed;
 - (5) All statements and reports issued;
 - (6) All complaints received;
 - (7) All investigations conducted;
 - (8) All condition assessment reports received;
 - (9) All fees charged and collected; and
 - (10) All other features and activities specified in or contemplated by §§ 30-4 through 30-14, inclusive, of this chapter.
- B. All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by state law and regulation.

§ 30-16. Program review and reporting.

- A. The Code Enforcement Officer shall annually submit to the Town Board of this Town a written report and summary of all business conducted by the Code Enforcement Officer and the inspectors, including a report and summary of all transactions and activities described in § 30-15, Recordkeeping, of this chapter and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of this Town, on a form prescribed by the Secretary of State, a report of the activities of this Town relative to administration and enforcement of the Uniform Code.
- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, true and complete copies of the records and related materials this Town is required to maintain; true and complete copies of such portion of such records and related materials as may be requested by the Department of State; and/or such excerpts, summaries, tabulations,

statistics, and other information and accounts of its activities in connection with administration and enforcement of the Uniform Code and/or Energy Code as may be requested by the Department of State.

§ 30-17. Violations; penalties for offenses.

- A. Orders to remedy. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this chapter. An order to remedy shall be in writing; shall be dated and signed by the Code Enforcement Officer; shall specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter; shall specify the provision or provisions of the Uniform Code, the Energy Code, or this chapter which is/are violated by the specified condition or activity; and shall include a statement substantially similar to the following:

"The person or entity served with this Order to Remedy must completely remedy each violation described in this Order to Remedy by _____ [specify date], which is 30 days after the date of this Order to Remedy."

The order to remedy may include provisions ordering the person or entity served with such order to remedy: 1) to begin to remedy the violations described in the order to remedy immediately, or within some other specified period of time which may be less than 30 days; to continue diligently to remedy such violations until each such violation is fully remedied; and, in any event, to complete the remedying of all such violations within 30 days of the date of such order to remedy; and/or 2) to take such other protective actions (such as vacating the building or barricading the area where the violations exist) which are authorized by this chapter or by any other applicable statute, regulation, rule, local law or ordinance, and which the Code Enforcement Officer may deem appropriate, during the period while such violations are being remedied. The Code Enforcement Officer shall cause the order to remedy, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail within five days after the date of the order to remedy. The Code Enforcement Officer shall be permitted, but not required, to cause the order to remedy, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail within five days after the date of the order to remedy; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.

- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- C. Penalties. In addition to such other penalties as may be prescribed by state law:
- (1) Any person who violates any provision of this chapter or any term, condition, or provision of any building permit, certificate of occupancy, certificate of compliance, temporary certificate, stop-work orders, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision

of this chapter, shall be punishable by a fine of not more than \$250 per day of violation; and

- (2) Any person who violates any provision of the Uniform Code, the Energy Code or this chapter, or any term or condition of any building permit, certificate of occupancy, certificate of compliance, temporary certificate, stop-work orders, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be liable to pay a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of this Town.
- D. Injunctive relief. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this chapter, or any term or condition of any building permit, certificate of occupancy, certificate of compliance, temporary certificate, stop-work orders, operating permit, order to remedy, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this chapter, or any stop-work orders, order to remedy or other order obtained under the Uniform Code, the Energy Code or this chapter, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board of this Town.
- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 30-6, Stop-work orders, of this chapter, in any other section of this chapter, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § 30-6, Stop-work orders, of this chapter, in any other section of this chapter, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in Subdivision (2) of Section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in Subdivision (2) of Section 382 of the Executive Law.

§ 30-18. Fees.

A fee schedule shall be established by resolution of the Town Board of this Town. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth

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in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of building permits, amended building permits, renewed building permits, certificates of occupancy, certificates of compliance, temporary certificates, operating permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this chapter.

§ 30-19. Intermunicipal agreements.

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

Chapter 35

FLOOD DAMAGE PREVENTION

§ 35-1. Statutory authorization and purpose.

§ 35-2. Definitions.

§ 35-3. General provisions.

§ 35-4. Administration.

§ 35-5. Construction standards.

§ 35-6. Variance procedure.

[HISTORY: Adopted by the Town Board of the Town of Benton 5-14-2025 by L.L. No. 3-2025.¹ Amendments noted where applicable.]

§ 35-1. Statutory authorization and purpose.

- A. Findings. The Town Board of the Town of Benton finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Benton 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.
- B. Statement of purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
- (1) 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;
 - (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
 - (4) Control filling, grading, dredging and other development which may increase erosion or flood damages;
 - (5) Regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands; and
 - (6) Qualify and maintain for participation in the National Flood Insurance Program.
- C. Objectives. The objectives of this chapter are:
- (1) To protect human life and health;

¹ Editor's Note: This local law also repealed former Ch. 35, Flood Damage Prevention, adopted 4-11-1988 by L.L. No. 1-1988.

- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To provide that developers are notified that property is in an area of special flood hazard; and
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 35-2. Definitions.

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

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

APPEAL — Means 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 — Means a designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a 1% or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — Is the land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the base floodplain or 100-year floodplain. For purposes of this chapter, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

BASE FLOOD — Means the flood having a 1% chance of being equaled or exceeded in any given year.

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

BUILDING — See "structure."

CELLAR — Has the same meaning as "basement."

CRAWL SPACE — Means an enclosed area beneath the lowest elevated floor, 18 inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

DEVELOPMENT — Means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

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

FEDERAL EMERGENCY MANAGEMENT AGENCY — Means the federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — Means 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 water courses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY — Means an examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP (FHBM) — Means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM) — Means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See "flood elevation study."

FLOOD OR FLOODING

- A. Means a general and temporary condition of partial or complete inundation of normally dry land areas from:
- (1) The overflow of inland or tidal waters;
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- B. "Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1) above.

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

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

FLOODWAY — Has the same meaning as "regulatory floodway."

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

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

HISTORIC STRUCTURE — Means any structure that is:

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

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

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

LOWEST FLOOR — Means lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

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

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

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

MOBILE HOME — Has the same meaning as "manufactured home."

NEW CONSTRUCTION — Means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

ONE-HUNDRED-YEAR FLOOD or 100-YEAR FLOOD — Has the same meaning as "base flood."

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

RECREATIONAL VEHICLE — Means a vehicle which is:

- A. Built on a single chassis;
- B. 400 square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY — Means 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 § 35-4D(2) of this chapter.

START OF CONSTRUCTION

- A. Means the date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.
- B. Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — Means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. The term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

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

VARIANCE — Means a grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

VIOLATION — Means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

§ 35-3. General provisions.

- A. Lands to which this chapter applies. This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Benton, Yates County.

- B. Basis for establishing the areas of special flood hazard. The areas of special flood hazard for the Town of Benton, Community Number 360955 are identified and defined on the following documents prepared by the Federal Emergency Management Agency.
- (1) Flood Insurance Rate Map (FIRM) Panel Numbers:
36123C0065E, 36123C0070E, 36123C0090E, 36123C0155E, 36123C0160E,
36123C0162E, 36123C0165E, 36123C0166E, 36123C0170E, 36123C0177E,
36123C0180E,

whose effective date is June 18, 2025, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.
 - (2) A scientific and engineering report entitled "Flood Insurance Study, Yates County, New York, All Jurisdictions" dated June 18, 2025.
 - (3) The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at: Benton Town Clerk's Office, 1000 Route 14A. Penn Yan, NY 14527.
- C. Interpretation and conflict with other laws.
- (1) This chapter includes all revisions to the National Flood Insurance Program through October 27, 1997 and shall supersede all previous laws adopted for the purpose of flood damage prevention.
 - (2) In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.
- D. Severability. The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.
- E. Penalties for noncompliance. No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Benton from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under § 35-6 will be declared non-compliant and notification sent to the Federal Emergency Management Agency.
- F. Warning and disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and

engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Benton, 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 there under.

§ 35-4. Administration.

- A. Designation of the Local Administrator. The Code Enforcement Officer is hereby appointed Local Administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.
- B. The floodplain development permit.
 - (1) Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 35-3B, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.
 - (2) Fees. All applications for a floodplain development permit shall be accompanied by an application fee to be determined by separate resolution of the Town Board. In addition, the applicant shall be responsible for reimbursing the Town of Benton for any additional costs necessary for review, inspection and approval of this project. The Local Administrator may require a deposit of no more than \$500 to cover these additional costs.
- C. Application for a permit. The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.
 - (1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved residential structure to be located in a special flood hazard area. Upon completion of the lowest floor, the permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
 - (2) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved nonresidential structure to be located in Zones A1-A30, AE, or AH or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the

permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.

- (3) The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
 - (4) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 35-5B(3), Utilities.
 - (5) A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 35-5D, nonresidential structures.
 - (6) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 35-3B, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
 - (7) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
 - (8) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or five acres.
- D. Duties and responsibilities of the Local Administrator. Duties of the Local Administrator shall include, but not be limited to the following:
- (1) Permit application review. The Local Administrator shall conduct the following permit application review before issuing a floodplain development permit:
 - (a) Review all applications for completeness, particularly with the requirements of § 35-4C, application for a permit, and for compliance with the provisions and standards of this chapter.
 - (b) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial

improvements shall meet the applicable standards of § 35-5, Construction standards and, in particular, § 35-5A(1), subdivision proposals.

- (c) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination.
 - [1] If the proposed development may result in physical damage to any other property or fails to meet the requirements of § 35-5, Construction standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
 - (d) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.
- (2) Use of other flood data.
- (a) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 35-4C(7), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this chapter.
 - (b) When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this chapter.
 - (c) When an area of special flood hazard, base flood elevation, and/or floodway data are available from a federal, state or other authoritative source, but differ from the data in the documents enumerated in § 35-3B, the Local Administrator may reasonably utilize the other flood information to enforce more restrictive development standards.
- (3) Alteration of watercourses.
- (a) Notification to adjacent municipalities that may be affected and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submit evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.

- (b) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (4) Construction stage.
 - (a) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
 - (b) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.
- (5) Inspections. The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.
- (6) Stop-work orders.
 - (a) The Local Administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 35-3E of this chapter.
 - (b) The Local Administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 35-3E of this chapter.
- (7) Certificate of compliance.
 - (a) In areas of special flood hazard, as determined by documents enumerated in § 35-3B, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of this chapter.

- (b) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
 - (c) Issuance of the certificate shall be based upon the inspections conducted as prescribed in § 35-4D(5), inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.
- (8) Information to be retained. The Local Administrator shall retain and make available for inspection, copies of the following:
- (a) Floodplain development permits and certificates of compliance;
 - (b) Certifications of as-built lowest floor elevations of structures, required pursuant to § 35-4D(4)(a) and (b), and whether or not the structures contain a basement;
 - (c) Floodproofing certificates required pursuant to § 35-4D(4)(a), and whether or not the structures contain a basement;
 - (d) Variances issued pursuant to § 35-6, Variance procedures; and
 - (e) Notices required under § 35-4D(3), alteration of watercourses.

§ 35-5. Construction standards.

- A. General standards. The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 35-3B.
- (1) Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):
 - (a) Proposals shall be consistent with the need to minimize flood damage;
 - (b) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and
 - (c) Adequate drainage shall be provided to reduce exposure to flood damage.
 - (2) Encroachments.
 - (a) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - [1] The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated

development, will not increase the water surface elevation of the base flood more than one foot at any location, or

[2] The Town of Benton agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Benton for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Benton for all costs related to the final map revision.

(b) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § 35-3B, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:

[1] A technical evaluation by a licensed professional engineer demonstrates through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or

[2] The Town of Benton agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Benton for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Benton for all costs related to the final map revisions.

(c) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, if any development is found to increase or decrease base flood elevations, the Town of Benton shall as soon as practicable, but not later than six months after the date such information becomes available, notify FEMA and the New York State Department of Environmental Conservation of the changes by submitting technical or scientific data in accordance with standard engineering practice.

B. Standards for all structures. The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 35-3B.

(1) Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(2) Construction materials and methods.

(a) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.

- (b) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
 - (c) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE, AO or A, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - [1] A minimum of two openings of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - [2] The bottom of all such openings no higher than one foot above the lowest adjacent finished grade; and
 - [3] Openings not less than three inches in any direction.
 - (d) Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas sub-grade on all sides are considered basements and are not permitted.
- (3) Utilities.
- (a) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation, at least three feet above the highest adjacent grade in a Zone A without an available base flood elevation where permitted, or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
 - (b) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - (c) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and

- (d) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (4) Storage tanks.
- (a) Underground tanks shall be anchored to prevent flotation, collapse and lateral movement during conditions of the base flood.
 - (b) Above-ground tanks shall be:
 - [1] Anchored to prevent flotation, collapse or lateral movement during conditions of the base flood; or
 - [2] Installed at or above the base flood elevation as shown on the Flood Insurance Rate Map enumerated in § 35-3B plus two feet.
- C. Residential structures.
- (1) Elevation. The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in § 35-5A(1), subdivision proposals; § 35-5A(2), encroachments; and § 35-5B, standards for all structures.
 - (a) Within special flood hazard areas, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
 - (b) Within Zone A, if the base flood elevation is not specified, a base flood elevation shall be determined by either of the following:
 - [1] Obtain and reasonably use data available from a federal, state or other source plus two feet of freeboard; or
 - [2] Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering practices, plus freeboard. Determinations shall be undertaken by a registered design professional who shall be documented that the technical methods used reflect currently accepted engineering practice. Studies, analyses, and computations shall be submitted in sufficient detail to allow thorough review and approval.
 - (c) Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 35-3B, plus two feet of freeboard, or not less than three feet if a depth number is not specified.
 - (d) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.
- D. Nonresidential structures. The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of

special flood hazard, in addition to the requirements in § 35-5A(1), subdivision proposals; § 35-5A(2), encroachments; and § 35-5B, standards for all structures.

- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure shall either:
 - (a) Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (b) Be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
 - (2) Within Zone AO, new construction and substantial improvements of nonresidential structures shall:
 - (a) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus two feet (at least three feet if no depth number is specified); or
 - (b) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in § 35-5D(1)(b).
 - (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of § 35-5D(1)(b), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
 - (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.
 - (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.
- E. Manufactured homes and recreational vehicles. The following standards in addition to the standards in § 35-5A, general standards, and § 35-5B, standards for all structures, apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.
- (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
 - (a) Be on site fewer than 180 consecutive days;

- (b) Be fully licensed and ready for highway use; or
- (c) Meet the requirements for manufactured homes in § 35-5E(2), (3) and (4).

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

- (2) A manufactured home that is placed or substantially improved in Zones A1-A30, AE, AH and Zone A shall be elevated on a permanent foundation such that the bottom of the frame of the manufactured home chassis is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
 - (3) Within Zone AO, the bottom of the frame of the manufactured home chassis shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § 35-3B, plus two feet (at least three feet if no depth number is specified).
 - (4) The foundation and anchorage of manufactured homes to be located in identified floodways shall be designed and constructed in accordance with § 35-5B(1), anchoring.
- F. Accessory structures including detached garages. The following standards apply to new and substantially improved accessory structures, including detached garages, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 35-3B.
- (1) The accessory structure must meet the definition of structure, for floodplain management purposes, provided in 44 CFR § 59.1, where walled and roofed shall be interpreted as having two outside rigid walls and a fully secured roof.
 - (2) The accessory structure should be small, as defined by the community and approved by FEMA, and represent a minimal investment. Accessory structures of any size may be considered for a variance; however, FEMA considers accessory structures that meet the following criteria to be small and therefore not necessarily in need of a variance, if the community chooses to allow it:
 - (a) Located in an A Zone (A, AE, A1-A30, AR, A99) and less than or equal to the size of a one-story, two-car garage.
 - (3) Accessory structures must meet the standards of § 35-5B(1), anchoring.
 - (4) The portions of the accessory structure located below BFE plus two feet of freeboard must be constructed with flood-resistant materials.
 - (5) Mechanical and utility equipment for the accessory structure must be elevated or dry floodproofed to or above BFE plus two feet of freeboard.
 - (6) Within Zones AO and Zone A, if base flood elevation data are not available, areas below three feet above the highest adjacent grade shall be constructed using methods and practices that minimize flood damage.

- (7) The accessory structure must comply with the floodway encroachment provisions of the NFIP.
- (8) The accessory structure must be wet floodproofed to protect the structure from hydrostatic pressure. The design must meet the NFIP design and performance standards for openings per 44 CFR § 60.3(c)(5) and must allow for the automatic entry and exit of floodwaters without manual operation or the presence of a person (or persons).

§ 35-6. Variance procedure.

A. Appeals Board.

- (1) The Zoning Board of Appeals (ZBA) as established by the Town of Benton shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (2) The ZBA shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this chapter.
- (3) Those aggrieved by the decision of the ZBA may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- (4) In passing upon such applications, the ZBA, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (j) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - (l) 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.
- (5) Upon consideration of the factors of § 35-6A(4) and the purposes of this chapter, the ZBA may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- (6) 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.

B. Conditions for variances.

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a) - (l) in § 35-6A(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
- (a) The proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic structure"; and
 - (b) The variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) 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:
- (a) The criteria of Subsection B(1), (4), (5), and (6) are met; and
 - (b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- (4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (6) Variances shall only be issued upon receiving written justification of:
 - (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:
 - (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
 - (b) Such construction below the base flood level increases risks to life and property.
- (8) Such notification shall be maintained with the record of all variance actions as required in § 35-4D(8) of this chapter.

Chapter 46

INVESTMENT POLICY

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| <p>§ 46-1. Scope.</p> <p>§ 46-2. Objectives.</p> <p>§ 46-3. Delegation of authority.</p> <p>§ 46-4. Prudence.</p> <p>§ 46-5. Diversification.</p> <p>§ 46-6. Internal controls.</p> <p>§ 46-7. Designation of depositaries.</p> <p>§ 46-8. Collateralizing of deposits.</p> | <p>§ 46-9. Safekeeping and collateralization.</p> <p>§ 46-10. Permitted investments.</p> <p>§ 46-11. Authorized financial institutions and dealers.</p> <p>§ 46-12. Purchase of investments.</p> <p>§ 46-13. Repurchase agreements.</p> <p style="text-align: center;">Appendix A</p> |
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[HISTORY: Adopted by the Town Board of the Town of Benton 12-14-1998. Amendments noted where applicable.]

GENERAL REFERENCES

Procurement policy — See Ch. 74.

§ 46-1. Scope.

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

§ 46-2. Objectives.

The primary objectives of the local government's investment activities are, in priority order:

- A. To conform with all applicable federal, state and other legal requirements (legal);
- B. To adequately safeguard principal (safety);
- C. To provide sufficient liquidity to meet all operating requirements (liquidity); and
- D. To obtain a reasonable rate of return (yield).

§ 46-3. Delegation of authority.

The governing board's responsibility for administration of the investment program is delegated to the Supervisor, who shall establish written procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a database or records incorporating description and amounts of investments, transaction dates, and other relevant information, and regulate the activities of subordinate employees.

§ 46-4. Prudence.

- A. All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the town to govern effectively.
- B. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.
- C. All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

§ 46-5. Diversification.

It is the policy of the town to diversify its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

§ 46-6. Internal controls.

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

§ 46-7. Designation of depositories.

The banks and trust companies authorized for the deposit of moneys up to the maximum amounts are:

Depository Name	Maximum Amount	Officer
(Reserved) ¹		

§ 46-8. Collateralizing of deposits.

In accordance with the provisions of General Municipal Law § 10, all deposits of the town, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured by a pledge of "eligible securities" with an aggregate "market value" as provided by General Municipal Law

1. Editor's Note: The list of depositories is on file in the town offices.

§ 10, equal to the aggregate amount of deposits from the categories designated in Appendix A to the policy.²

§ 46-9. Safekeeping and collateralization.

- A. 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.
- B. 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 or its custodial bank.
- C. 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.

§ 46-10. Permitted investments.

- A. As authorized by General Municipal Law § 11, the town authorizes the Supervisor 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 of the United States of America;
 - (4) Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America;
 - (5) Obligations of the State of New York;

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

- (6) Obligations issued pursuant to Local Finance Law § 24.00 or 25.00 (with approval of the State Comptroller) by any municipality, school district or district corporation other than the town;
 - (7) Obligations of public authorities, public housing authorities, urban renewal agencies and industrial development agencies where the general state statutes governing such entities or whose specific enabling legislation authorizes such investments;
 - (8) Certificates of participation (COP's) issued pursuant to General Municipal Law § 109-b;
 - (9) Obligations of this local government, but only with any moneys in a reserve fund established pursuant to General Municipal Law §§ 6-c, 6-d, 6-e, 6-g, 6-h, 6-j, 6-k, 6-l, 6-m, or 6-n.
- B. All investment obligations shall be payable or redeemable at the option of the town 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 within two years of the date of purchase.

§ 46-11. Authorized financial institutions and dealers.

The town shall maintain a list of financial institutions and dealers approved for investment purposes and establish appropriate limits to the amount of investments which can be made with each financial institution or dealer. All financial institutions with which the local government conducts business must be credit worthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the town. Security dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers. The Supervisor is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians. Such listing shall be evaluated at least annually.

§ 46-12. Purchase of investments.

- A. The Supervisor is authorized to contract for the purchase of investments:
- (1) Directly, including through a repurchase agreement, from an authorized trading partner.
 - (2) By participation in a cooperative investment program with another authorized governmental entity pursuant to Article 5-G of the General Municipal Law where such program meets all the requirements set forth in the Office of the State Comptroller Opinion No. 88-46, and the specific program has been authorized by the governing board.
 - (3) By utilizing an ongoing investment program with an authorized trading partner pursuant to a contract authorized by the governing board.

- B. All purchased obligations, unless registered or inscribed in the name of the local government, shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the town by the bank or trust company. Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law § 10.
- C. The custodial agreement shall provide that securities held by the bank or trust company, as agent of and custodian for the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement shall describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to provide the local government a perfected interest in the securities.

§ 46-13. Repurchase agreements.

Repurchase agreements are authorized subject to the following restrictions:

- A. All repurchase agreements must be entered into subject to a master repurchase agreement.
- B. Trading partners are limited to banks or trust companies authorized to do business in New York State and primary reporting dealers.
- C. Obligations shall be limited to obligations of the United States of America and obligations guaranteed by agencies of the United States of America.
- D. No substitution of securities will be allowed.
- E. The custodian shall be a party other than the trading partner.

ZONING

46 Attachment 1

Appendix A Schedule of Eligible Securities

- A. Obligations issued by the United States of America, an agency thereof or a United States government sponsored corporation or obligations fully insured or guaranteed as to the payment of principal and interest by the United States of America, an agency thereof or a United States government sponsored corporation.
- B. Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.
- C. Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the market value of the obligation that represents the amount of the insurance or guaranty.
- D. Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of such state or obligations of any public benefit corporation which under a specific state statute may be accepted as security for deposit of public moneys.

Chapter 58

NOTIFICATION OF DEFECTS

§ 58-1. Notice required.

§ 58-3. Supersession of Town Law.

§ 58-2. Transmittal of notice.

[HISTORY: Adopted by the Town Board of the Town of Benton 11-10-1983 by L.L. No. 1-1983. Amendments noted where applicable.]

§ 58-1. Notice required.

No civil action shall be maintained against any town or Town Superintendent of Highways for damages or injuries to person or property sustained by reason of any highway, bridge or culvert being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge or culvert was actually given to the Town Clerk or Town Superintendent of Highways, and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of; but no such action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge or culvert, unless written notice thereof, specifying the particular place, was actually given to the Town Clerk or Town Superintendent of Highways and there was a failure or neglect to cause such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

§ 58-2. Transmittal of notice.

The Town Superintendent of Highways shall transmit in writing to the Town Clerk within five days after receipt thereof all written notices received by him pursuant to this chapter and Subdivision 2 of § 65-a of the Town Law. The Town Clerk shall cause all written notices received by him or her pursuant to this chapter 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.

§ 58-3. Supersession of Town Law.

This chapter shall supersede in its application to the Town of Benton Subdivisions 1 and 3 of § 65-a of the Town Law.

Chapter 63
ORDINANCES, PUBLICATION OF

§ 63-1. Legislative intent.

§ 63-2. When ordinances or amendments to take effect.

[HISTORY: Adopted by the Town Board of the Town of Benton 8-11-1986 by L.L. No. 2-1986. Amendments noted where applicable.]

§ 63-1. Legislative intent.

The Town Board intends to modify § 133 of the Town Law of the State of New York as it relates to the adoption of ordinances and amendments of ordinances in the Town of Benton so that it will no longer be necessary to publish the full text of adopted ordinances and amendments in order for them to become effective and they will become effective 10 days after publication of summaries of the ordinances or amendments.

§ 63-2. When ordinances or amendments to take effect.

Every ordinance and every amendment to an ordinance hereafter adopted or approved by the Town Board of the Town of Benton, Yates County, New York, to which the provisions of Article 9 of the Town Law of the State of New York are applicable, shall be entered in its minutes except that it shall not be necessary to enter in its minutes any map adopted or approved in connection with a zoning ordinance or amendment and a summary of the ordinance or amendment shall be published in the official newspaper of the town, or, if there is none, in a newspaper designated by the Board having general circulation in the town, once and the affidavit of such publication shall be filed with the Town Clerk. Such ordinance or amendment shall take effect 10 days after such publication; but such ordinance or amendment shall take effect from the date of its service as against a person served personally with a copy thereof certified by the Town Clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes. No ordinance or amendment previously adopted or approved by the Town Board to which the provisions of this chapter are applicable shall be void for failure of posting and/or filing of affidavits of posting.

Chapter 68

PERSONNEL POLICIES

ARTICLE I Employment Policy

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| § 68-1. Intent. | § 68-16. Personal leave/sick time. |
| § 68-2. Definitions of Town employee positions. | § 68-17. Retirement. |
| § 68-3. Work hours. | § 68-18. Vacation time. |
| § 68-4. Overtime. | § 68-19. Workers' compensation. |
| § 68-5. Paid holidays. | § 68-20. Unemployment insurance. |
| § 68-6. New employee probationary/introductory period. | § 68-21. Disability insurance. |
| § 68-7. Wage guidelines. | § 68-22. Health insurance. |
| § 68-8. Immigration law compliance. | § 68-23. Drug and alcohol use. |
| § 68-9. Equal employment opportunity. | § 68-24. Business travel expenses. |
| § 68-10. Attendance and punctuality. | § 68-25. Military leave. |
| § 68-11. Hiring of relatives. | § 68-26. Jury duty. |
| § 68-12. Personal appearance. | § 68-27. Resignation. |
| § 68-13. Employee conduct and work rules. | § 68-28. Terminated employees. |
| § 68-14. Progressive discipline. | § 68-29. Town vehicles. |
| § 68-15. Bereavement. | § 68-30. Mileage. |
| | § 68-31. Sexual harassment. |
| | § 68-32. Conflicts of interest. |
| | § 68-33. Smoke-free environment. |
| | § 68-34. Cell phone use. |
| | § 68-35. Amendments. |

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

ARTICLE I

Employment Policy

[Adopted 7-9-2008 by L.L. No. 2-2008¹]

§ 68-1. Intent.

- A. This document is intended as a guide for employees, department heads and supervisors. It is not to be construed as a contract of employment nor does it in any way limit the application of the provisions of federal, state and local statutes, rules, regulations or case law.

1. Editor's Note: This local law also superseded former Ch. 68, Personnel Policies, adopted June 1990.

- B. The Town retains the exclusive right to manage, supervise, and direct Town employees, including the right to determine the time, place and manner regarding the delivery of Town services. The Town Board retains the right to suspend, discharge or otherwise discipline employees, and to hire, lay off, assign, transfer, promote or determine the necessary qualifications for prospective or existing employees.

§ 68-2. Definitions of Town employee positions.

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

ELECTED OFFICIALS — Employees that are elected (voted by the Town residents) into a position within the Town.

INTRODUCTORY — Employees that are being evaluated to determine whether further employment with the Town is appropriate.

PART-TIME — Employees that are regularly assigned to work less than 20 hours per week but do not fall into the categories of "temporary" or "introductory."

REGULAR FULL-TIME — Employees that are regularly scheduled to work 40 hours per week.

REGULAR PART-TIME — Those that are regularly assigned to work less than 40 hours per week but at least 20 hours per week.

TEMPORARY — Employees that are hired to temporarily supplement the work force. Employment is of a limited duration.

§ 68-3. Work hours.

Highway Department. Highway workweek will consist of 40 hours per week with scheduled hours to be determined by the Highway Superintendent. Employees who work a minimum of 40 hours per week shall be deemed to be full-time employees for the purpose of this policy.

§ 68-4. Overtime. [Amended 5-8-2024 by L.L. No. 2-2024; 2-12-2025 by L.L. No. 2-2025]

- A. Time and a half for each hour worked, or fraction thereof, in excess of the normal scheduled workday or beyond a forty-hour workweek. For holidays, eligible employees will receive their normal shift rate of pay plus time and a half paid for any hours worked on that holiday.
- B. Call-in pay. Highway employees will be given 30 minutes overtime on top of hours worked per call in.

§ 68-5. Paid holidays. [Amended 5-8-2024 by L.L. No. 2-2024]

Full-time employees and elected officials shall have New Year's Day, Presidents' Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, Christmas Day and Columbus Day as a paid holiday. Part-time employees will have the above holidays off if they fall on a scheduled work day.

§ 68-6. New employee probationary/introductory period.

- A. The probationary period is intended to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of performance and to determine whether the new position meets their expectations. The Town uses this period to evaluate employee capabilities, work habits and overall job performance. Either the employee or the Town may end the employment relationship at will at any time during or after the introductory/probationary period, with or without cause or advance notice.
- B. All new employees work on a probationary basis for the first 26 weeks after their date of hire. If the Town determines that the designated probationary/introductory period does not allow sufficient time to thoroughly evaluate the employee's performance, this period may be extended for a specified period.
- C. Upon satisfactory completion of the probationary period, employees enter the regular employment classification.
- D. During the probationary/introductory period, new employees are eligible for any benefits that are required by law (workers' compensation, social security, unemployment insurance). They may also be eligible for other Town-provided benefits, subject to terms and conditions of each benefit program.
- E. Newly hired employees will normally be employed at rate which is within 25% of the established rate for the position. However, the Town Board reserves the right to employ individuals at a higher or lower rate depending on the applicant's qualifications, experience and the current employment market.

§ 68-7. Wage guidelines.

- A. Upon the Highway Superintendent's review and recommendation of a highway employee, the following wage guidelines are suggested:
 - (1) First year: 75% of the established wage for the position.
 - (2) Second year: 80% of the established wage for the position.
 - (3) Third year: 85% of the established wage for the position.
 - (4) Fourth year: 90% of the established wage for the position.
 - (5) Fifth year: 95% of the established wage for the position.
 - (6) Sixth year: 100% of the established wage for the position.
- B. Wage increases requested must have the final approval of the Town Board.

§ 68-8. Immigration law compliance.

- A. The Town is committed to employing only United States citizens and aliens who are authorized to work in the United States and does not unlawfully discriminate on the basis of citizenship or national origin.

- B. In compliance with the Immigration Reform and Control Act of 1986, each new employee must complete the Employment Eligibility Verification Form (I-9) and must provide documentation establishing identity and employment eligibility. Former employees rehired must also complete the I-9 form if it has been longer than three years or if it is no longer retained with the Town.
- C. Employees may raise questions or complaints about the immigration law without fear of reprisal.

§ 68-9. Equal employment opportunity.

- A. The Town of Benton does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law.
- B. The Town will make reasonable accommodations for qualified individuals with known disabilities to the extent required by law.
- C. Any employees with questions or concerns about any type of discrimination in the workplace are encouraged to bring these issues to the attention of their immediate supervisor or the Town Supervisor. Employees may raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

§ 68-10. Attendance and punctuality.

To maintain a safe and productive work environment, the Town expects employees to be reliable and to be punctual in reporting for scheduled work. Absenteeism and tardiness place a burden on other employees and on the Town. In the rare instances when employees cannot avoid being late to work or are unable to work as scheduled, they should notify their supervisor as soon as possible in advance of the anticipated tardiness or absence. Poor attendance and excessive tardiness are disruptive. Either may lead to disciplinary action, up to and including termination of employment.

§ 68-11. Hiring of relatives. [Amended 5-8-2024 by L.L. No. 2-2024]

The employment of relatives in the same area of an organization may cause serious conflicts and problems with favoritism and employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment can be carried into day-to-day working relationships. Therefore, the Town prohibits the hiring of relatives for full-time and part-time jobs. For the purpose of this policy, a relative is a spouse, parent, child, sibling, niece, nephew or anyone whose relationship with the employee is similar to that of a person who is related by marriage.

§ 68-12. Personal appearance.

When working or representing the Town of Benton, employees are expected to present a clean and neat appearance and to dress according to the requirements of their position.

§ 68-13. Employee conduct and work rules.

- A. To ensure orderly operations and to provide a positive work environment, the Town expects employees to follow rules of conduct that will protect the interests and safety of all employees and the organization.
- B. The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment; they are unacceptable in the workplace:
 - (1) Theft, inappropriate removal, possession or use of Town property.
 - (2) Falsification of timekeeping records or any and all business documents. [Amended 5-8-2024 by L.L. No. 2-2024]
 - (3) Working under the influence of alcohol or illegal drugs.
 - (4) Possession, use of, distribution, sale, or transfer of alcohol or illegal drugs in the workplace, while on duty, or while operating employer-owned vehicles or equipment.
 - (5) Fighting or threatening violence in the workplace.
 - (6) Negligence or improper conduct leading to damage of employer-owned or customer-owned property.
 - (7) Violation of safety or health rules.
 - (8) Sexual or other unlawful or unwelcome harassment.
 - (9) Possession of dangerous or unauthorized materials, such as explosives in the workplace. Firearms will not be allowed on Town property unless contained within their personal vehicle or allowed through hunting privileges.

§ 68-14. Progressive discipline.

- A. Progressive discipline means that, with respect to most disciplinary problems, these four steps will normally be followed:
 - (1) First offense will be a verbal warning.
 - (2) Second offense will be a written warning.
 - (3) Third offense: suspension with or without pay.
 - (4) Last offense may lead to termination of employment based on the severity of the problem or the number of occurrences.

- B. The Town recognizes that there are certain types of employee problems that are serious enough to justify either a suspension, or, in extreme circumstances, termination of employment without going through the progressive discipline steps.
- C. While it is impossible to list every type of behavior that may be deemed a serious offense, the employee conduct and work rules section² includes examples of problems that may result in immediate suspension or termination. However, the problems listed are not all necessarily serious offenses, but may be examples of unacceptable conduct that will trigger progressive discipline procedures.

§ 68-15. Bereavement. [Amended 5-8-2024 by L.L. No. 2-2024]

Full-time and part-time salary employees shall be entitled to:

- A. Three (workdays) days' leave, with pay, on the death of the employee's immediate family member; being spouse, parent, or child.
- B. One (workday) days' leave, with pay, on the death of an in-law, grandparents, or other close relative.
- C. Under unusual circumstances, additional unpaid bereavement days may be granted with approval of the Town Supervisor (personal leave may be used, if time is available to employee).

§ 68-16. Personal leave/sick time. [Amended 5-8-2024 by L.L. No. 2-2024; 2-12-2025 by L.L. No. 2-2025]

Pertains to full-time employees (based on scheduled work hours):

- A. Any employee's personal leave hours must be preapproved by the department head or the Town Supervisor.
- B. Employees with prior 12 months' employment with the Town shall receive 100 hours per year of personal leave/sick time, with pay. Any unused sick hours at the end of the year may be accumulated up to 240 hours maximum.
- C. The Town Board will review paid time off, vacation or other benefits upon the death of an employee.
- D. (Reserved)
- E. All Town employees absent for three or more consecutive workdays must acquire a physician's statement for their reason of absence and a health approval to return to work.

2. Editor's Note: See § 76-13.

§ 68-17. Retirement.

- A. Town Supervisor and Board members must receive written notification six months in advance of any employee's planned retirement date. The Town Board will address accumulated unused personal time payment options at the request of the employee up to one year prior to retirement. Final redemption or payment will be agreed upon through the Town Board and the employee. **[Amended 9-12-2012 by L.L. No. 3-2012]**
- B. Three options are available for redemption of accumulated hours:
- (1) The employee may redeem hours in return for equal payment toward extended health benefit coverage, after retirement.
 - (2) The employee may receive monetary reimbursement for each accumulated hour to be redeemed. The hourly dollar amount will be determined by averaging the regular hourly rate paid for the last five years of hourly employment; total payment will be made to the employee in 48 equal payments (one per two-week pay period) or on a twenty-four-month time schedule.
 - (3) The employee may request an alternative distribution to be determined and approved by the Town Board.
- C. New York State retirement is available to all eligible employees; depending on the date of hire (DOH), the employee may be required to contribute a portion of his/her wages to the New York State Retirement System.

§ 68-18. Vacation time. [Amended 5-8-2024 by L.L. No. 2-2024; 2-12-2025 by L.L. No. 2-2025]

- A. Based on the scheduled workday, non-elected full-time employees' vacation must be approved in advance by your supervisor. Vacations may be denied based on work load.
- (1) One full year of employment = one week.
 - (2) Two plus years of employment = two weeks.
 - (3) Ten plus years of employment = three weeks.
 - (4) Twenty plus years of employment = four weeks.
- B. Part-time employee vacation will be addressed by the Town Board.
- C. One week is the equivalent of one work week.

§ 68-19. Workers' compensation.

- A. Employees (hourly, salary or elected) who are injured or become ill as a direct result of their job are covered under the New York State Workers' Compensation Law. The carrier for the Town's claims is Yates County Workers' Compensation Insurance Program.

- B. If an employee is injured or becomes ill, he/she should report the injury or illness to the department head, and required reports will be forwarded to Yates County. Cash benefits are not paid for the first seven days of the disability. Necessary medical care is paid for no matter how short or long the length of disability.
- C. Employees who are unable to work for more than seven days receive cash benefits. The amount that an employee receives is based upon his/her average weekly wage, up to \$500 per week maximum. The employee may use any unused annual leave to cover any time that is not covered by workers' compensation.

§ 68-20. Unemployment insurance.

Unemployment insurance is paid by the Town. Employees subject to reduction in force, or reasons deemed other than misconduct, as determined by the New York State Department of Labor, are eligible for unemployment benefits.

§ 68-21. Disability insurance.

- A. The Town purchases, at Town expense, New York State disability insurance for all full-time and regular part-time employees, plus Highway Superintendent, Town Clerk, Assessor and Supervisor Bookkeeper.
- B. Over 20 hours average workweek, employees become eligible for disability coverage after five days of missed work and appropriate medical confirmation of the disability.
- C. When an employee qualifies for payment of New York State disability benefits for any day, the Town will supplement the difference between such benefit and the employee's regular daily pay for each day such day paid for under the contract of insurance. Employees shall receive 100% of regular salary during periods of disability for the first three months of each period and 80% for the remaining three months. Any money paid by the insurance company will be paid to the Town. Employees receiving disability benefits under this section shall not, during the time for which said benefits are paid, accrue paid leave of any type under this policy. Disability claims due to pregnancy will be processed in accordance with this section. When a permanent employee has received disability benefits as provided in this section for the maximum period permitted, said employee shall report for work within 10 days after the last day for which benefits were payable. If an employee does not report for work, his/her employment will be terminated on the 10th day after the cessation of benefits.

§ 68-22. Health insurance.

- A. The Town Board will annually review and select the health care insurance coverage plan for eligible Town employees.
 - (1) Highway Superintendent and Highway full-time employees: eligible for family coverage plan.
 - (2) Town Clerk, full-time: family plan.

- (3) Assessor, part-time: single plan; full-time eligible for a family plan. [**Amended 5-8-2024 by L.L. No. 2-2024**]
 - (4) Code Enforcement: single plan.
 - (5) Bookkeeper: single plan.
 - (6) Town Supervisor: single plan.
 - (7) Town Board: single plan.
- B. Personnel elected, appointed or hired on January 1, 2007, or after who qualify for health insurance benefits will be responsible for contributing a percentage of their eligible policy expense with such percentage to be fixed by the Town Board. Such percentage may from time to time be changed as the Town Board may determine. Additional family members may be added at participant's own expense. [**Amended 1-12-2011 by L.L. No. 1-2011**]
- C. Personnel elected, appointed or hired prior to January 1, 2007, who qualify for health insurance benefits will be responsible for contributing a percentage of their eligible policy expense with such percentage to be fixed by the Town Board. Such percentage may from time to time be changed as the Town Board may determine. Additional family members may be added at participant's own expense. [**Amended 1-12-2011 by L.L. No. 1-2011**]
- D. Some employees may be eligible for paid Town health insurance benefits, but have proven health coverage from another source or health group. If Town health insurance is waived, employees may be compensated in a monetary amount consisting of \$2,500 per year. Compensation will be included in regular pay, payments as an insurance credit. [**Amended 5-8-2024 by L.L. No. 2-2024**]
- E. Eligible classification of each participant will be reviewed by the Town Board annually.

§ 68-23. Drug and alcohol use.

- A. It is the Town's desire to provide a drug-free, healthful and safe workplace. To promote this goal, all employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner.
- B. While on Town premises and while conducting business-related activities off Town premises, no employee may use, possess, distribute, sell or be under the influence of alcohol or illegal drugs. The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace.
- C. Violations of this policy may lead to disciplinary action or immediate termination of employment and/or required participation in a substance abuse rehabilitation or treatment program. Such violations may also have legal consequences.
- D. Reference updated Amtek "Substance-Free Workplace Policy and Substance Testing Policy."

§ 68-24. Business travel expenses.

- A. The Town will reimburse employees for reasonable business travel expenses incurred while on assignments away from the normal work location. All business travel must be approved in advance by the immediate supervisor.
- B. When approved, the actual cost of travel, meals, lodging and other expenses directly related to accomplishing business travel objectives will be reimbursed by the Town. Employees are expected to limit expenses to reasonable amounts.
- C. When travel is completed, employees should submit completed travel expenses to their immediate supervisor. Vouchers must be accompanied by receipts from the individual to be accepted for reimbursement. No receipts; no reimbursement.
- D. Abuse of this travel expense policy, including falsifying expenses that were not incurred by the employee, can be grounds for disciplinary action, up to and including termination of employment.
- E. Employees who are involved in an accident while traveling on business must promptly report the accident to their supervisor.
- F. Vehicles owned, leased or rented by the Town may not be used for personal use.
- G. Additionally, employees who use their own vehicles for Town purposes will be reimbursed for mileage at a rate set by the Town Board. Mileage records should be kept. The mileage reimbursement request must be submitted to the supervisor for approval prior to submission to the Town Board.
- H. For off-site mandatory training, the Town will cover an hourly employee's time, mileage and course fees, if prior approval was received by their supervisor. Reimbursement hours will be calculated based on the actual travel time plus the actual classroom schooling time. Voluntary training will be dealt with on a case-by-case basis.

§ 68-25. Military leave.

All employees will be covered for military leave in accordance with the Military Law of the State of New York. Employees shall notify their supervisors as far in advance as possible of the required military assignments and no later than the workday following receipt of the official notice.

§ 68-26. Jury duty.

- A. An employee selected for jury duty shall receive paid leave when attendance as a juror is required for any regularly scheduled workdays while on jury duty.

- B. Employees on jury duty leave shall remit to the employer all remuneration received as a juror.
- C. To be eligible for the above benefit, the employee will cooperate with the Town by notifying the Town through the department head immediately upon being summoned as a juror; and may possibly request a one-time deferral of jury duty if and whenever, in the Town's judgement, such a request is necessary.

§ 68-27. Resignation.

- A. Resignation is a voluntary act initiated by the employee to terminate employment with the Town. Although advance notice is not required, the Town requests at least two weeks' written resignation notice from the employee.
- B. Prior to an employee's departure, an exit interview will be scheduled to discuss the reasons for resignation and the effect of the resignation on the employee's benefit package with the Town.
- C. Upon resignation of an employee, accumulated annual vacation time will be forfeited.

§ 68-28. Terminated employees.

All terminated employees shall report to the supervisor on their last day of employment. Employees who leave the employment of the Town of Benton, for whatever reason, shall be required to turn in all keys, uniforms, and Town equipment before he/she is issued his/her last paycheck.

§ 68-29. Town vehicles.

No personal use of Town vehicles will be allowed. Vacationing employees will leave Town vehicles at the Town's highway garage. Only personnel required to be on twenty-four-hour call are permitted to take Town vehicles for Town use.

§ 68-30. Mileage.

Mileage shall be paid for travel relating to Town business at the discretion of the Town Board.

§ 68-31. Sexual harassment.

- A. It is the policy of the Town of Benton that all employees have a right to work in an environment free of sexual harassment.
- B. Harassment on the basis of sex is a violation of Section 703 of Title VII. Unwelcome sexual advances, unwanted touching, or other verbal or physical contact constitutes sexual harassment when submission to such conduct is made, either explicitly or implicitly. This conduct by an individual may be used as a basis for an employment

decision of possible termination; as this behavior may interfere with other employees' work performance and create an intimidating, hostile or offensive work environment.

§ 68-32. Conflicts of interest.

- A. Employees and representatives of the Town have an obligation to conduct business within guidelines that prohibit actual or potential conflicts of interest. An actual or potential conflict of interest occurs when an employee or representative is in a position to influence a decision that may result in a personal gain for that employee or for a relative as a result of the Town's business dealings. For the purpose of this policy, a relative is a spouse, parent, child, sibling, niece or nephew, or person who is related by blood or marriage.
- B. If employees have any influence on transactions involving purchases, contracts, or leases, it is imperative that they disclose to an officer of the Town as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.
- C. Personal gain may result not only in cases where an employee or relative has a significant ownership in a firm with which the Town does business, but also when an employee or relative receives a kickback, bribe, substantial gift, or special consideration as a result of any transaction or business dealings involving the Town.

§ 68-33. Smoke-free environment.

- A. All buildings and vehicles owned/leased by the Town of Benton shall be smoke-free.
- B. Employees will not be permitted to use tobacco products of any kind in any building or vehicle owned by the Town.
- C. Any violation of this rule by employees will be subject to disciplinary action.

§ 68-34. Cell phone use.

Cell phones may not be used while operating any Town vehicles.

§ 68-35. Amendments.

The Town Board reserves the right to further amend the Employee Policy from time-to-time and shall resolve any disputes arising from this Town Employment Policy. If changes are necessary, the changes shall be authorized by resolution of the Town Board.

Chapter 74

PROCUREMENT POLICY

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|---|---|
| § 74-1. Applicability of policy. | § 74-6. Award of contract to other than lowest bidder; documentation required. |
| § 74-2. Determination of nature of contract. | § 74-7. Circumstances where solicitation of alternative proposals or quotations not required. |
| § 74-3. Bidding requirements; exempt purchases. | § 74-8. Purchases by Highway Superintendent. |
| § 74-4. Method of purchase. | § 74-9. When effective; annual review. |
| § 74-5. Documentation of purchase required. | |

[HISTORY: Adopted by the Town Board of the Town of Benton 10-12-1992. Amendments noted where applicable.]

GENERAL REFERENCES

Investment policy — See Ch. 46.

§ 74-1. Applicability of policy.

This policy is for purchases and contracts for services that are not subject to competitive bidding (General Municipal Law § 104-b).

§ 74-2. Determination of nature of contract.

- A. Every purchase to be made must be initially reviewed to determine whether it is a purchase contract or a public works contract. Once that determination is made, a good faith effort will be made to determine whether it is known or can reasonably be expected that the aggregate amount to be spent on the item of supply or service is not subject to competitive bidding; taking into account past purchases and the aggregate amount to be spent in a year. The following items are not subject to competitive bidding pursuant to § 103 of the General Municipal Law: purchase contracts under \$10,000 and public works contracts under \$20,000; emergency purchases; certain municipal hospital purchases; goods purchased from agencies for the blind or severely handicapped; goods purchased from correctional institutions; purchases under state and/or county contract; and/or surplus and secondhand purchases from another governmental entity.
- B. The decision that a purchase is not subject to competitive bidding will be documented in writing by the individual making the purchase. This documentation may include written or verbal quotes from the vendor; a memo from the purchaser indicating how the decision was arrived at; a copy of the contract indicating the source which makes the item or service exempt; a memo from the purchaser detailing the circumstances

which led to an emergency purchase, or any other written documentation deemed appropriate.

§ 74-3. Bidding requirements; exempt purchases.

All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other methods that assure goods will be purchased at the lowest price, and that favoritism or conflicts will be avoided, except in the following circumstances:

- A. Purchase agreements/contracts over \$10,000 and public works contracts over \$20,000; goods purchased from agencies for the blind or severely handicapped pursuant to § 175-b of the State Finance Law.¹
- B. Goods purchased from correctional institutions pursuant to § 186 of the Correction Law.
- C. Purchases under state contracts pursuant to § 104 of the General Municipal Law.
- D. Purchases under county contract pursuant to § 103, Subdivision 3, of the General Municipal Law.
- E. Purchases pursuant to § 74-7 of this policy.

§ 74-4. Method of purchase.

- A. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

- (1) Purchase contracts.

Estimated Amount of Purchase Contract	Method Used
\$250 to \$2,999	Verbal quotations
\$3,000 to \$9,999	Written quotations/requests

- (2) Public works contracts.

Estimated Amount of Public Works Contract	Method Used
\$250 to \$2,999	Verbal quotations
\$3,000 to \$4,999	Written quotations
\$5,000 to \$19,999	Written quotations Written request for proposals

- B. A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or

¹ Editor's Note: Former § 175-b of the State Finance Law was repealed by L. 1995, c. 83, § 33. See now State Finance Law § 162.

quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement.

§ 74-5. Documentation of purchase required.

Documentation is required of each action taken in connection with each procurement.

§ 74-6. Award of contract to other than lowest bidder; documentation required.

Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the award will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the purchaser and may not be challenged under any circumstances.

§ 74-7. Circumstances where solicitation of alternative proposals or quotations not required.

Pursuant to General Municipal Law § 104-b, Subdivision 2f, the procurement policy may contain circumstances when, or types of procurement for which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotations will not be in the best interest of the municipality. In the following circumstances it may not be in the best interests of the Town of Benton to solicit quotations or document the basis for not accepting the lowest bid:

- A. Professional services or services requiring special or technical skill, training or expertise.
- (1) The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity, and moral worth. These qualifications are not necessarily found in the individual or company that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.
 - (2) In determining whether a service fits into this category, the Town Board shall take into consideration the following guidelines:
 - (a) Whether the services are subject to state licensing or testing requirements;
 - (b) Whether substantial formal education or training is necessary prerequisite to the performances of the services; and
 - (c) Whether the services require a personal relationship between the individual and municipal officers.
 - (3) Professional or technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing servicing involving

extensive writing, editing or art work; management of municipally owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of prepackaged software.

- B. Emergency purchases pursuant to § 103, Subdivision 4, of the General Municipal Law. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the residents. This section does not preclude alternate proposals if time permits.
- C. Purchases of surplus and secondhand goods from any source. If alternate proposals are required, the Town of Benton is precluded from purchasing surplus and secondhand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try compare prices of used goods and a lower price may indicate an older product.
- D. Goods or services under \$250. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on favoritism.

§ 74-8. Purchases by Highway Superintendent.

The Town Highway Superintendent may make purchases of up to \$1,500 without approval of the Town Board so long as the cumulative effect of each of those purchases is not otherwise violative of the bidding requirements of General Municipal Law § 103, or any other pertinent statute.

§ 74-9. When effective; annual review.

This policy shall go into effect immediately and will be reviewed annually.

Chapter 76

PROPERTY MAINTENANCE

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|---|---|
| § 76-1. Title. | § 76-7. Performance of work by Town; assessment of costs. |
| § 76-2. Purpose. | § 76-8. Penalties for offenses. |
| § 76-3. Definitions. | § 76-9. Compliance with other provisions. |
| § 76-4. Prohibited actions; exceptions. | § 76-10. Administration and enforcement. |
| § 76-5. Maintenance of lots. | |
| § 76-6. Notice of violation. | |

[HISTORY: Adopted by the Town Board of the Town of Benton 9-8-2010 by L.L. No. 1-2010. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 30. Zoning — See Ch. 110.

§ 76-1. Title.

This chapter shall be known and may be cited as the "Property Maintenance Law."

§ 76-2. Purpose.

The purpose of this chapter is to create Town-wide, uniform property maintenance standards which give the Town Code Enforcement Officer another tool to preserve the health, safety and general welfare of the residents, businesses and guests of the Town of Benton by controlling the spread of weeds and allergy-irritating pollen to surrounding lots, by protecting property values, by preventing blight, by prohibiting the outdoor placement or storage of abandoned or junked motor vehicles and by keeping lots free from nuisances, hazards, litter, vermin and the debris and hazards resulting from lots, buildings or structures damaged by fire, wind, weather or neglect.

§ 76-3. Definitions.

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

ABANDONED MOTOR VEHICLE — Any motor vehicle defined as an "abandoned vehicle" pursuant to § 1224 of the Vehicle and Traffic Law of the State of New York, as amended, and/or an unregistered, uninspected or inoperable automobile, snowmobile, lawn mower, go-cart, motorcycle or other motor vehicle which is openly stored or situated on property within the Town of Benton.

JUNK VEHICLE — Any automobile, snowmobile, lawn mower, go-cart, motorcycle or other motor vehicle, including component parts thereof, which is stored in open, outdoor storage

and which, for any reason, is incapable of moving by its own power in the manner in which it was designed to move, and which is not intended for or in condition for safe and legal use on public highways.

NUISANCE, HAZARD AND LITTER — Includes, but shall not be limited to, abandoned motor vehicles or junk vehicles or any part thereof unless such party has a license to store the same, any waste metal or materials, garbage, refuse, rubbish, old refrigerators, stoves or like products, used bottles or cans, glass, wood, lumber or vegetable matter of any kind or any other matter which is flammable or capable of fermentation, evaporation or decay, abandoned building or construction materials or supplies, discarded paper or material of junk substance, tree stumps or matter attractive to vermin or likely to breed disease, cause fire or be a health hazard.

§ 76-4. Prohibited actions; exceptions.

- A. No person, business or other entity shall place, deposit, store or allow to remain upon any property within the Town of Benton two or more abandoned motor vehicles or two or more junk vehicles for a period of more than four weeks, except in a garage or other similar enclosure.
- B. The provisions of Subsection A of this section shall not apply to new or used car sales dealers at their place of business or to motor vehicle repair garages.
- C. No person, business or other entity shall abandon, leave, dump, store or keep any nuisance, hazard or litter or matter attractive to vermin upon any public street, public place or privately owned property within the Town of Benton and all properties within the Town of Benton shall be kept free and clear of nuisances, hazards and litter.

§ 76-5. Maintenance of lots.

- A. The owner, tenant or occupant of every improved lot within the Town of Benton and the owner of every vacant lot that is within a subdivision approved by the Town of Benton Planning Board shall maintain such lot by cutting or mowing such property as frequently as is necessary to ensure that no growth of weeds or grass shall exceed 10 inches in length or height and shall ensure that there is no accumulation of dead weeds, grass or brush.
- B. The owner, tenant or occupant of every lot or parcel of land in the Town of Benton shall maintain hedges, shrubs and trees so as to keep the same from encroaching onto public sidewalks and into lines of sight of public roadways. It shall also be unlawful for the owner of any lot or parcel of land in the Town of Benton to cause, suffer or allow poison ivy, ragweed or other poisonous plants or plants detrimental to health to grow on any such lot or plot of land in such manner that any part of such ivy, ragweed, other poisonous weed or other plants detrimental to the health shall extend upon, overhang or border a public sidewalk, public right-of-way, public highway or any other public place.
- C. The owner, tenant or occupant of property located in the Town of Benton is hereby required to remove all nuisances, hazards and litter or matter attractive to vermin, as

hereinabove defined, when ordered to do so by the Town of Benton Code Enforcement Officer within five days of written notice therefor.

- D. The owner of any property within the Town of Benton which has been damaged by fire, weather or neglect shall clean up said property within six months of when the damage occurred so that any debris or materials resulting from the fire, weather or neglect or by the efforts to extinguish the fire are wholly removed from said property and so that any building or structure damaged by the fire, weather or neglect is either demolished and removed or repaired so that such building or structure has no visible signs of the damage caused by the fire, weather or neglect taking place thereat and is in full compliance with all New York State and local building codes.

§ 76-6. Notice of violation.

If the provisions of this chapter are not complied with, the Town of Benton Code Enforcement Officer shall serve within the Town of Benton written notice of the violation upon the owner of the property that is the subject of the violation or shall post a copy of the violation on the property if an owner cannot be found to personally serve. If the owner of said property is a nonresident of the Town of Benton or if the Code Enforcement Officer was unable to personally serve the owner, a notice to cure the violation shall also be mailed to such owner by registered mail, addressed to his or her last known address.

§ 76-7. Performance of work by Town; assessment of costs.

- A. If the person upon whom a notice to cut and/or remove grass, weeds and other vegetation is served fails, neglects or refuses to cure the violation within the time frame specified in the notice, the Town of Benton Code Enforcement Officer shall cause such weeds, grass and other vegetation on such lot or land to be cut and removed, and the actual cost of such cutting and removal plus a service charge of 50% thereof or \$50, whichever is greater, to cover the cost of supervision, inspection, administration and other additional costs in connection therewith, shall be certified by the Town of Benton Code Enforcement Officer to the Town Supervisor and such certified amount shall thereupon be charged and assessed against the owner, tenant or occupant of the property that was the subject of the violation. The expense, so assessed, shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected and enforced in the same manner and at the same time as other Town taxes and charges.
- B. The owner of any lot, land or property found in violation of Subsections A, B or C of § 76-5 of this chapter shall be notified in writing only once in any given calendar year for a particular violation. Subsequent violations of a similar nature at the same location during the same season shall be corrected by the Town or its agent without notice to the owner of said property. After initial notification, such owner, occupant or person having control of said property will be presumed to have been given sufficient notice of infraction for the entire season. The costs incurred by the Town in curing any subsequent violations shall be collected in the same manner as set forth in Subsection A of this section.

- C. The Town Board of the Town of Benton, by resolution, may cause any nuisance, hazard or litter to be removed from any property within the Town of Benton upon the failure of such owner, tenant or occupant to comply with the written notice aforementioned within the time limit specified on the notice. Said removal may be performed by the Town itself or the Town may contract with a private entity or contractor. The Town Board shall ascertain the cost of such removal, and such cost shall be charged and assessed against the owner of the property. The expense so assessed shall constitute a lien and charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time as other Town charges.
- D. The removal of any nuisance, hazard or litter by the Town of Benton or its designee or agent shall not operate to excuse such owner from properly maintaining his or her property as required by this chapter, and such owner, tenant or occupant shall, notwithstanding, be subject to the penalties set forth in this chapter.

§ 76-8. Penalties for offenses.

Any person found guilty of violating any provision of this chapter, and the owner of any premises on which a violation is committed, shall be punished by a fine not to exceed \$250 or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate, additional violation.

§ 76-9. Compliance with other provisions.

The provisions of this chapter shall be subject to and subordinate to the provisions of the New York State Agriculture and Markets Law.

§ 76-10. Administration and enforcement.

The Town of Benton Code Enforcement Officer is hereby charged with the responsibility and duty to administer and enforce this chapter.

Chapter 81

RECORDS

ARTICLE I
Retention and Disposition

§ 81-2. Conditions for disposal of records.

§ 81-1. Adoption of schedule.

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

ARTICLE I
Retention and Disposition
[Adopted 2-13-1989]

§ 81-1. Adoption of schedule.

Records Retention and Disposition Schedule MU-1, issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, and containing legal minimum retention periods for municipal government records, is hereby adopted for use by all municipal officers in disposing of municipal government records listed therein.

§ 81-2. Conditions for disposal of records.

In accordance with Article 57-A:

- A. Only those records will be disposed of that are described in Records Retention and Disposition Schedule MU-1 after they have met the minimum retention period prescribed therein.
- B. Only those records will be disposed of that do not have sufficient administrative, fiscal, legal or historical value to merit retention beyond established time periods.

Chapter 85

RESIDENCY REQUIREMENTS

ARTICLE I

Building Inspector and Deputy Building Inspector

§ 85-1. Residence in Yates County or adjoining county required.

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

GENERAL REFERENCES

Personnel policies — See Ch. 68.

Salaries and compensation — See Ch. 88.

ARTICLE I

Building Inspector and Deputy Building Inspector

[Adopted 10-29-1990 by L.L. No. 2-1990]

§ 85-1. Residence in Yates County or adjoining county required.

The person holding the office of Town Building Inspector or Deputy Town Building Inspector of the Town of Benton shall be a resident of Yates County or an adjoining county within the State of New York.

ARTICLE II

Constable

[Adopted 12-9-1991 by L.L. No. 1-1991]

§ 85-2. Residence in county required.

The person holding the office of Town Constable of the Town of Benton shall be a resident of Yates County.

Chapter 88

SALARIES AND COMPENSATION

ARTICLE I Deputy Clerk

§ 88-2. Compensation of Deputy Town Clerk.

§ 88-1. Legislative intent.

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

GENERAL REFERENCES

Personnel policies — See Ch. 68.
Residency requirements — See Ch. 85.

ARTICLE I Deputy Clerk [Adopted 6-8-1987 by L.L. No. 1-1987]

§ 88-1. Legislative intent.

The Town Board intends to provide for compensation of the Deputy Town Clerk to be determined on an hourly rate which shall be set from time to time by the Town Board. The Town Board takes this action pursuant to § 10 of the Municipal Home Rule Law.

§ 88-2. Compensation of Deputy Town Clerk.

The Town Board of the Town of Benton hereby fixes the compensation of all Deputy Town Clerks appointed pursuant to § 30, Subdivision 10, of the Town Law at an hourly rate, which rate shall be set from time to time by resolution of the Town Board. This article shall supersede § 27 of the Town Law of the State of New York.

Chapter 91

SHORT-TERM RENTALS

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|---|--|
| § 91-1. Title. | § 91-10. Procedure upon filing application. |
| § 91-2. Purpose. | § 91-11. Conformity and display of permit. |
| § 91-3. Authority. | § 91-12. Application for renewal of permit. |
| § 91-4. Definitions. | § 91-13. Short-term residential rental license fees. |
| § 91-5. Presumption of dwelling unit as a short-term rental property. | § 91-14. Grounds for suspension or revocation of permit. |
| § 91-6. Required permit. | § 91-15. Enforcement, compliance and penalties. |
| § 91-7. Short-term rental permit application requirements. | § 91-16. Appeals and hearings. |
| § 91-8. Short-term rental standards. | |
| § 91-9. Rental contract. | |

[HISTORY: Adopted by the Town Board of the Town of Benton 2-12-2025 by L.L. No. 1-2025. Amendments noted where applicable.]

§ 91-1. Title.

This chapter shall be known and may be cited as the "Town of Benton Short-Term Rental Law."

§ 91-2. Purpose.

The purpose of this chapter is to:

- A. Regulate the business involving the short-term rental of residential properties to ensure such rentals do not create public safety hazards nor become disruptive to the quality of life for other residents in the neighborhood where the property is located.
- B. Protect the residents and neighborhoods in which rental units are located from excess noise and lighting, disruption of normal traffic patterns, overcrowding, and trash accumulation, and to preserve the residential character of the neighborhoods;
- C. Ensure that the short-term rental and the short-term rental property meet minimum safety and regulatory requirements, thereby protecting property owners, occupants, the neighborhood, and the water quality of Keuka Lake and Seneca Lake;
- D. Establish provisions for the administration and enforcement thereof.

§ 91-3. Authority.

This chapter is adopted pursuant to § 10 of the New York State Municipal Home Rule Law, which empowers the Town of Benton Town Board to adopt local laws relating to the government, protection, order, conduct, safety, health and well-being of persons or property within the Town, and outside any village, to include the power to adopt local laws providing for the regulation or licensing of occupations or businesses, which such power includes the power to adopt a local law regulating the use of buildings for short-term rentals.

§ 91-4. Definitions.

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

BEDROOM/SLEEPING AREA — Any room that has a bed, bunk beds, daybed, or other furniture for sleeping, including, and without limitation, pull out couch or futon or any area advertised for sleeping. To be a valid sleeping area, the sleeping area shall meet the requirements of a habitable area as defined by the most current version of the New York State Uniform Fire Prevention Code. It shall have its own entrance and escape window.

CLERK — The Clerk of the Town of Benton or his/her designee.

CODE ENFORCEMENT OFFICER — The Code Enforcement Officer of the Town of Benton.

IMMEDIATE FAMILY — A person's spouse, children, step-children, parents and spouse of parents, siblings and the spouse, children and step-children of siblings.

OWNER — Person(s) and/or entity(ies) that hold(s) legal title to the short-term rental property.

PERMIT — The short-term rental permit issued pursuant to this chapter.

SHORT-TERM RENTAL — A dwelling unit that is offered for rent for compensation for less than 30 consecutive nights without any meals served or provided by the owner or agent of the owner. For the purpose of this chapter, the term "short-term rental" shall not include a bed-and-breakfast, boarding/lodging house, hotel, motel, or ongoing month-to-month tenancies.

§ 91-5. Presumption of dwelling unit as a short-term rental property.

- A. The presence of the following shall create a presumption that all or a part of the property is being used as a short-term rental:
- (1) All or a part of the property is offered for lease on a short-term rental website, including but not limited to Airbnb, Home Away and VRBO, for a rental period of less than 30 days; and/or
 - (2) All or a part of the property is offered for lease for a period of 30 days or less through any form of advertising.
- B. The foregoing presumptions may be rebutted by evidence presented to the Code Enforcement Officer (CEO) that the premises is not operated as a short-term rental.

§ 91-6. Required permit.

Owners shall not use their property as a short-term rental without obtaining a revocable short-term rental permit.

- A. Maximum number of permits.
 - (1) The maximum number of short-term rental permits that shall be issued at any time shall not exceed a number established by resolution of the Town Board but, if the Town Board fails to adopt a resolution establishing such maximum number, the maximum number of short-term rental permits that shall be issued at any time shall not exceed 50 short-term rental permits.
 - (2) In the event the maximum limit is reached, applicants may be placed on a waiting list by contacting the Code Enforcement Officer. As permits become available, new applicants will be contacted in order on the waiting list.
- B. Term. A short-term rental permit shall be valid for two years and shall expire bi-annually on December 31. It must be renewed by January 31 of the following year if the premises is to continue to operate as a short-term rental.
- C. Fees. An initial application or a renewal application for a permit to operate a short-term rental unit must be accompanied by the appropriate fee as indicated in the current Town of Benton Fees and Fines Schedule.
- D. Transferability.
 - (1) The short-term rental permit is only transferable to a member of the immediate family of an owner when title to the short-term rental property has been conveyed to such immediate family member by an instrument recorded in the Yates County Clerk's Office, in which case the transferred short-term rental permit is subject to all terms and conditions as when initially issued.
 - (2) The short-term rental permit is not otherwise transferable when the ownership of the subject property on which the short-term rental is located changes in any way. The short-term rental permit shall automatically terminate when the ownership changes, except when the ownership changes to a member of the immediate family of an owner, and the new owner(s) of the subject property shall submit a new permit application pursuant to § 91-7 of this chapter.
- E. Previous commitments. Notwithstanding the foregoing, those properties with a short-term rental permit that was issued by the Town pursuant to prior Town regulations may continue to operate the short-term rental pursuant to such short-term rental permit, but must apply for a new permit pursuant to this chapter when such current short-term rental permit expires for all future short-term rental commitments beyond such current short-term rental permit's expiration date. In the event such application is denied, all commitments shall be cancelled.

§ 91-7. Short-term rental permit application requirements.

Applications for a short-term rental permit may be obtained from the Town of Benton Code Enforcement Officer (CEO). The short-term rental permit application shall be submitted to

the CEO, accompanied by payment of a nonrefundable permit fee as indicated in the Town of Benton Fees and Fines Schedule in effect at the time of application. The application shall include the following:

- A. The notarized signatures of all owners and their designated agents. If any owner is an entity, proof that the person signing for the entity has authority to sign must also be submitted with the application.
- B. A statement authorizing the Code Enforcement Officer to inspect the property to ensure compliance with all requirements and standards contained within this chapter.
- C. An acknowledgement of present compliance with and a statement assuring continued compliance with the short-term rental standards as defined in this chapter, including, but not limited to, the demonstration of adequate off-road parking spaces for the proposed short-term rental.
- D. A list of each property owner and the name of any manager or management agency managing the property, including names, addresses, telephone numbers and email addresses of each. If any owner is an entity, all such information shall be provided for each owner of such entity (i.e., shareholder of a corporation, member of an LLC, partner of a partnership) or for each fiduciary of such entity (i.e., trustee, executor, administrator, etc.).
- E. Local manager. The name, address, telephone number and email address of a contact person, who shall be responsible for the day-to-day operation of the short-term rental and be authorized to act on the owners' behalf to promptly remedy any violation of the standards outlined in this chapter. The contact person may be an owner, or an agent designated by the owner(s). If the local manager is not the property owner, the local manager must be designated as the agent of the property owner for service of process.
- F. An accurate suitable floor plan for each level of the dwelling measuring at least 8.5 inches by 11 inches, drawn to scale and certified by the applicant. The floor plan does not need to be prepared by a professional, but must include the following:
 - (1) The location of buildings and required parking.
 - (2) Basement: location of any house utilities and all rooms including bedrooms/sleeping areas, windows, exits and any heating/cooling units.
 - (3) First floor: location of any house utilities and all rooms including bedrooms/sleeping areas, windows, exits and any heating/cooling units.
 - (4) Second floor: location of any house utilities and all rooms including bedrooms/sleeping areas, windows, exits and any heating/cooling units.
 - (5) Attic (if present): location of any house utilities and all rooms including bedrooms/sleeping areas, windows, exits and any heating/cooling units.
- G. All completed applications are subject to a floor plan review and approval by the Code Enforcement Officer.

- H. A statement that none of the owners of the subject property have had a short-term rental permit revoked in New York State within the previous year for any rental properties owned individually or together with others.

§ 91-8. Short-term rental standards.

A. Property requirements.

- (1) Property must comply and meet all New York State (NYS) Uniform Building Codes in effect at the time of construction. It shall also meet current NYS Property Maintenance Code and, if applicable, any Town of Benton Maintenance Law or regulations.
- (2) There shall be one working smoke detector in each bedroom/sleeping area and one additional smoke detector on each floor. Carbon monoxide detectors shall be installed as required by the New York State Uniform Fire Prevention and Building Code.
- (3) Evacuation procedures must be posted in each bedroom/sleeping area on each floor to be followed in the event of a fire or smoke condition or upon activation of a fire or smoke-detecting or other alarm device.
- (4) There shall be an ABC fire extinguisher on each floor and in the kitchen. Fire extinguishers shall be inspected prior to a renter occupying the property and no less than monthly by the permit holder(s) or property manager to ensure each contains a full charge. A record of the date inspected initialed by the permit holder or property manager shall be maintained and made available to the Code Enforcement Officer upon request. A tag attached to each fire extinguisher shall be acceptable for this purpose.
- (5) The house number shall be located both at the road and on the dwelling unit so that the house number is clearly visible from both the road and the driveway.
- (6) Exterior doors shall be operational and all passageways to exterior doors shall be clear and unobstructed.
- (7) Electrical systems shall be in good operating condition, labeled, unobstructed and shall be visible for the Code Enforcement Officer during the permitting process. Any defects found shall be corrected prior to permit issuance.
- (8) The property must have a minimum of one off-road parking space for every bedroom bedroom/sleeping area shown on the floor plan included with the application. Parking area must be all-season surface. Parking on the lawn is prohibited. A parking space is an area at least 10 feet by 20 feet with direct access or legal right-of-way to a public street.
- (9) On-street parking at short term rentals is prohibited at all times.

B. Occupancy.

- (1) The maximum overnight occupancy shall be the lesser of:

- (a) The number of people allowed based on the septic system design; or
 - (b) The maximum number of people calculated on the basis of the NYS Building Code.
 - (c) The Code Enforcement Officer may limit occupancy to fewer based on the number, size, configuration, and furnishings of the bedrooms and/or sleeping areas, the number of available parking spaces on the short-term rental property and according to provisions of New York State statutes.
- (2) Separately housed persons. No accessory structures, tents, campers, trailers, recreational vehicles (RVs), or other housing shall be permitted on the short-term rental property as a means of providing additional accommodations for paying guests or other invitees.
- C. Septic system.
- (1) A septic system at the property must meet all state and local requirements and be approved for the number of bedrooms. The maximum occupancy will be determined by the capabilities of the septic system.
 - (2) The septic system must be pumped by a NYS DEC licensed waste haul contractor and inspected by the Town of Benton Watershed Inspector as required per the Town of Benton Wastewater Law and Policies & Procedures, as amended, prior to the issuance of a short-term rental permit. The "comprehensive" inspection protocol shall be followed.
 - (3) Once a short-term rental permit is issued, the septic system must be pumped and inspected at least once every five years.
- D. Water. The rental unit must have a potable water supply and must meet all state requirements. If not connected to a public water supply or if an existing water well is not available nor adequate, available water must be treated by an approved sterilization system to ensure potability. The Code Enforcement Officer shall require documentation from a certified laboratory to prove the potability of the water at time of application. Thereafter, potability tests must be conducted bi-annually and lab results shall be submitted to the Code Enforcement Officer with permit renewal application. No other sources for potable water are permitted.
- E. Signs. See § 110-51 (Signs), as amended, of the Town of Benton Zoning Law. Any signs shall include the Town of Benton short-term rental permit number. No off-premises signs are allowed.
- F. Insurance standards. All applicants and permit holders must provide "evidence of property insurance" and a "certificate of liability insurance" indicating the premises is rated as a short-term rental and maintain such insurance throughout the term of the short-term rental permit.
- G. Garbage/trash. Provisions shall be made for weekly garbage and trash removal. Garbage containers shall be secured with tight-fitting covers at all times to prevent leakage, spilling or odors, and placed where they are not clearly visible from the road except at approximate pick-up time.

- H. Advertising. All advertising, including but not limited to physical signs, mailings, and internet advertisements, shall include the Town of Benton short-term rental permit number.

§ 91-9. Rental contract.

All applicants and permit holders must have a rental contract which includes the following:

- A. The Town of Benton short-term rental permit number;
- B. Maximum property occupancy;
- C. Maximum on-site parking provided; and
- D. Good neighbor statement stating.
 - (1) The short-term rental is in a residential area in the Town of Benton and that renters should be considerate of the residents in neighboring homes.
 - (2) Guests are required to observe quiet hours from 10:00 p.m. through 7:00 a.m.
 - (3) All renters will be subject to New York Penal Law § 240.20 or any successor statute regarding disorderly conduct.
 - (4) Littering is illegal.
 - (5) Dogs are required to always be on leashes. A dog's excrement shall be cleaned up and properly disposed of.
 - (6) Recreational campfires must be in suitable fire pit and located such that it will not cause a smoke nuisance to neighboring properties. Fires must be attended at all times, or extinguished.

§ 91-10. Procedure upon filing application.

- A. Short-term rental permit applications shall be filed with the Town of Benton Code Enforcement Officer with all supporting documentations and the nonrefundable permit fee. Only completed applications will be accepted by the Town's Code Enforcement Officer. The Code Enforcement Officer may decline to accept an application for consideration for any of the following reasons:
 - (1) The application and/or documentation required by this chapter was not included or the full permit fee was not paid.
 - (2) A short-term rental permit previously issued to any owner of the short-term rental or to any owner of an entity that is an owner of the short-term rental was revoked within the past year and/or defects and/or violations have not been corrected and inspected by the Code Enforcement Officer.
- B. Upon the Code Enforcement Officer's acceptance of the completed permit application, all documents and information required by this chapter and the permit fee, the Code

Enforcement Officer shall have 30 days to conduct a property inspection to certify and approve that all short-term rental requirements have been met.

- C. Upon approval of the short-term rental application by the Code Enforcement Officer, a short-term rental permit will be issued. Short-term rental permits issued pursuant to this chapter shall state the following:
- (1) The names, addresses and phone numbers of each person or entity that has an ownership interest in the short-term rental property. If any owner is an entity, all such information shall be provided for each owner of such entity (i.e., shareholder of a corporation, member of an LLC, partner of a partnership) or for each fiduciary of such entity (i.e., trustee, executor, administrator, etc.).
 - (2) The name, address and phone number of a primary contact person who shall be available during the entire time the short-term rental property is being rented.
 - (3) The maximum occupancy and vehicle limits for the short-term rental property.
 - (4) Identification of the number of and location of parking spaces available.
 - (5) Any reasonable conditions imposed by the Zoning Board of Appeals and/or Code Enforcement Officer.

§ 91-11. Conformity and display of permit.

- A. Short-term rental permits are subject to continued compliance with the requirements of this chapter. If the Code Enforcement Officer has probable cause to believe that the owner of the short-term rental is not in compliance with the provisions of this chapter, the Code Enforcement Officer may request permission from an owner or designated agent of the short-term rental permit to enter the premises and to conduct an inspection of the short-term rental property for purposes of ensuring compliance with this chapter. If the property owner refuses to permit the Code Enforcement Officer to inspect the property or refuses to permit the Code Enforcement Officer to conduct such inspection within a reasonable time from when the request is made, the permit may be revoked. If an inspection authorized herein is conducted, the Code Enforcement Officer shall use the results of such inspection in determining whether to suspend or revoke the permit.
- B. The short-term rental permit, maximum occupancy limit, maximum parking, contact form and standards shall be prominently displayed inside and near the front entrance of the short-term rental; and
- C. The short-term rental permit holder shall ensure that current and accurate information is provided to the Code Enforcement Officer and that they notify the Code Enforcement Officer immediately of any change in the information displayed on the permit. If, based on such changes, the Code Enforcement Officer issues an amended short-term rental permit; the owners must immediately post the amended permit inside and near the front entrance of the short-term rental.
- D. The short-term rental permit and property-specific information must include:
- (1) Name, address and phone number of the local manager;

- (2) The manner and method of trash and garbage removal;
- (3) The prohibition of noise audible outside of the short-term rental between 10:00 p.m. and 7:00 a.m.;
- (4) The maximum occupancy of the short-term rental property;
- (5) A tax map or similar map clearly showing the short-term rental property boundaries;
- (6) Emergency phone numbers for police, fire and ambulance.

§ 91-12. Application for renewal of permit.

Renewal permits shall be granted for an additional two-year term if the following conditions are met:

- A. Application for renewal of the short-term rental permit shall be submitted no later than January 30 of the following year. The application must be accompanied by payment of the renewal fee per the current Town of Benton Fee schedule.
- B. At the time of application for renewal, the owner or designated agent must present the previous permit for short-term rental.
- C. The property must have undergone an inspection performed by the Code Enforcement Officer.
- D. Property taxes for the short-term rental property are paid current.
- E. Any violations must be remedied prior to renewal of a permit for short-term rental.

§ 91-13. Short-term residential rental license fees.

The application fee, annual renewal fee, and any charges for late renewal shall be set by resolution of the Town Board.

§ 91-14. Grounds for suspension or revocation of permit.

- A. The Code Enforcement Officer may immediately suspend or revoke a short-term rental permit based on any of the following grounds:
 - (1) Applicant has falsified or failed to provide information in the application for a permit or the application for permit renewal.
 - (2) Applicant failed to meet or comply with any of the requirements of this chapter.
 - (3) Owner is in violation of any provision of the Code of the Town of Benton.
 - (4) Owner has violated any provision of the Penal Code of the State of New York, which violation occurred at, or related to the occupancy of the short-term rental.

- (5) Any conduct on the premises which disturbs the health, safety, peace or comfort of the neighborhood or which otherwise creates a public nuisance.
 - (6) Removal or disrepair of any safety devices such as, but not limited to, smoke and carbon monoxide detectors, fire extinguishers, and egresses.
- B. The Zoning/Code Enforcement Officer determines that the health or safety of the occupants or others is at risk.
 - C. The property owner has violated regulations as set forth in this chapter on three separate occasions in a period of one year.
 - D. Violations related to health and safety issues for renters or neighbors shall result in immediate revocation of the short-term rental permit and no further rentals shall be allowed.

§ 91-15. Enforcement, compliance and penalties.

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this chapter.
- B. Owners of short-term rental units shall obey all applicable laws, ordinances, and regulations of the Town of Benton, Yates County, New York State and the United States of America, and shall be subject to the enforcement and penalty proceedings contained in this chapter. The following process shall be followed in the event of a complaint alleging a violation of these regulations or a short-term rental permit issued under these regulations:
 - (1) The complaining party shall first attempt to contact the local property manager designated on the permit, describe the problem and indicate the desired remedy.
 - (2) The local property manager shall, within two hours of receiving the complaint, respond to the complaint and remedy as soon as reasonably possible any situation that is out of compliance with these regulations or with the permit for the property.
 - (3) If the response is not satisfactory to the complaining party (including the inability to reach the local property manager), the complaining party may file a complaint with the Code Enforcement Officer by submitting a written complaint, including the date, time and nature of the alleged violation as well as a statement that the complainant either unsuccessfully attempted to contact the local property manager, or did contact the local property manager but the complaint was not adequately resolved. A failure to attempt to contact the local property manager will not excuse a violation.
 - (4) If the Code Enforcement Officer either witnesses or determines there is a violation of this code, the owners shall be notified in writing by first class mail and certified return receipt mail of said violations and the Code Enforcement Officer may take any or all of the following actions:
 - (a) Attach conditions to the existing short-term rental permit;

- (b) Suspend the short-term rental permit. The notice of suspension shall be provided to the property owner and a copy filed with the Town Clerk. The suspension shall remain in effect until all infractions/violations are corrected to the satisfaction of the Town Code Enforcement Officer;
- (c) Require corrective action that remedies the violation(s). The corrective action must be completed and approved within 30 days of notice from the Code Enforcement Officer or the Code Enforcement Officer may revoke the short-term rental permit.
- (d) Issue a court appearance ticket for violation of this chapter.
- (e) Revoke the short-term rental permit. Should a permit be revoked, all owners of the short-term rental are prohibited from obtaining a short-term rental permit on the property for one year after the date of revocation. The Code Enforcement Officer shall send notices of revocation to property owners and shall file a copy with the Town Clerk;
- (f) In addition to any other actions this chapter permits the Code Enforcement Officer to take upon finding a violation of the permit or of this chapter, if the Code Enforcement finds three or more violations of the permit or this chapter within one year, the Code Enforcement shall revoke the short-term rental permit.

C. Penalties for offenses.

- (1) A violation of this chapter or of any short-term rental permit issued pursuant to this chapter is hereby declared to be a criminal offense, punishable by a fine not exceeding \$250. Each day's continued violation shall constitute a separate additional violation.
- (2) If any building, structure, dwelling, dwelling unit, lot, parcel, recreational vehicle, or part thereof is used in violation of this chapter or of any short-term rental permit issued pursuant to this chapter, the Town, in addition to other remedies, penalties or enforcement measures, may institute any appropriate action or proceeding to enjoin, stop, restrain, correct or abate such violation.
- (3) Civil penalties. In addition to those penalties prescribed by state law, any person who violates any provision of this chapter or of any short-term rental permit issued pursuant to this chapter, shall be liable to a civil penalty, of not more than \$500, for each day or part thereof during which such violation continues. The civil penalties provided by this section shall be recoverable in an action instituted in the name of the Town.
- (4) Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in any other section of this chapter or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of

any other remedy or penalty specified in this section or in any other section of this chapter, or in any other applicable law.

§ 91-16. Appeals and hearings.

The property owner is entitled to appeal the Code Enforcement Officer's determinations to the Zoning Board of Appeals (ZBA) when a property owner's application for a short-term rental permit or a short-term rental permit renewal is denied or a short-term rental permit is suspended or revoked. A notice of appeal shall be filed with the Town Clerk and the ZBA within 60 days of the Code Enforcement Officer's filing of the denial or revocation with the Town Clerk. A hearing shall be held by the Zoning Board of Appeals not more than 45 days after the filing of the notice of appeal. After the hearing is closed, the Zoning Board of Appeals may reverse or affirm, wholly or partly, with or without conditions, or may modify the determination appealed from and shall make such determination as in its opinion ought to have been made in the matter by the Code Enforcement Officer and to that end shall have all the powers of the Code Enforcement Officer from whose determination the appeal is taken.

Chapter 94

SNOWMOBILES

§ 94-1. Legislative intent.

§ 94-2. Legislative authority.

§ 94-3. Title.

§ 94-4. Definitions.

§ 94-5. Operation of snowmobiles on town highways.

§ 94-6. Conditions and restrictions on snowmobile operation.

§ 94-7. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Benton 4-12-1971 by L.L. No. 1-1971. Amendments noted where applicable.]

§ 94-1. Legislative intent.

The purpose of this chapter is to protect the public health, welfare and safety by regulating the operation of snowmobiles on town highways within the Town of Benton in a manner which will promote their safe and proper use for recreation and commerce, compatible with the use for vehicular and pedestrian travel and other uses.

§ 94-2. Legislative authority.

This chapter is enacted pursuant to the provisions of Article 8 of the Conservation Law, as enacted by Chapter 459 of the Laws of 1970.¹

§ 94-3. Title.

This chapter shall hereafter be known and cited as the "Town of Benton Snowmobile Local Law."

§ 94-4. Definitions.

- A. For the purpose of this chapter, the definition of words, phrases and terms adopted by § 8-0105 of the Conservation Law² or by rules and regulations of the Office of Parks and Recreation supplemental thereto are incorporated herein.
- B. As used in this chapter, the following term shall have the meaning indicated:

TOWN — The Town of Benton.

1. Editor's Note: Former Article 8 of the Conservation Law was repealed by L. 1972, c. 661, § 50. See now Parks, Recreation and Historic Preservation Law § 21.01 et seq.

2. Editor's Note: Former § 8-0105 of the Conservation Law was repealed by L. 1972, c. 661, § 50. See now Parks, Recreation and Historic Preservation Law § 21.05.

§ 94-5. Operation of snowmobiles on town highways.

- A. Snowmobile travel and operation on the shoulders of all town highways is hereby permitted subject to the rules, restrictions and conditions set forth herein.
- B. In addition to snowmobile travel and operation on the shoulders of town highways, a snowmobile may be operated on the roadway or inside bank of town highways whenever the shoulders, slopes or areas outside the guard rails or on the back side of the snow embankments are nonexistent or impassable, provided that such travel and operation can be made without endangering or interfering with other vehicular traffic.
- C. No person shall operate a snowmobile within the town highway right-of-way, including roadway, shoulders, banks and slopes thereof, except on the right side of the center line of the roadway and in the same direction as the highway traffic or the nearest lane of the roadway adjacent thereto.

§ 94-6. Conditions and restrictions on snowmobile operation.

Whenever the operation of a snowmobile is permitted on any town highway as herein provided, the following conditions and restrictions are hereby established and shall be applicable to all such snowmobile operation:

- A. No snowmobile shall be operated on any lands owned or occupied by the town, except town highways.
- B. It shall be unlawful to operate a snowmobile on any town highway at a rate of speed greater than reasonable or proper under the surrounding circumstances, and all other registered motor vehicles shall have the right-of-way over snowmobiles.
- C. It shall be unlawful to operate snowmobiles on any town highways between the hours 1:00 a.m. and 7:00 a.m.
- D. It shall be unlawful to operate a snowmobile in any manner which creates a loud or unnecessary or unusual noise which disturbs or interferes with the peace and quiet of other persons or in any other manner which constitutes a public nuisance or a noise, injures or endangers the health, safety, comfort or repose of the public. No person shall use a muffler cut-out, bypass or any other device to defeat the operation of a muffler in good working condition.
- E. It shall be unlawful for any person less than 16 years of age to operate a snowmobile on any town highway, except to the extent and in the manner otherwise permitted by the Conservation Law in respect to a snowmobile crossing a highway.
- F. It shall be unlawful for any person to operate a snowmobile on any town highway unless such person is insured against public liability in an amount not less than \$10,000 per person and \$20,000 per accident for bodily injury and not less than \$5,000 per accident for property damage. Such person must carry with him proof of such financial responsibility in said amounts, such as a certificate of liability insurance of the type required of owners and operators of motor vehicles by the Vehicle and Traffic Law of the State of New York. Such proof shall be displayed by the operator of any

snowmobile, upon request, to have suffered either personal injury or damage to property as a result of the operation of such snowmobile.

§ 94-7. Penalties for offenses.

Failure to comply with any of the provisions of this chapter shall be deemed a violation and the violator shall be liable to a fine of not less than \$5 nor more than \$100, or one to five days in jail, or both, for each violation.

Chapter 98

SUBDIVISION REGULATIONS

ARTICLE I Declaration of Policy

- § 98-1. Legislative authority.
- § 98-2. Approval of plats.
- § 98-3. Planning Board policy.
- § 98-4. Short title; adoption of regulations.
- § 98-5. Conservation subdivision development.
- § 98-6. Reconsideration of plats filed with County Clerk.

ARTICLE II Definitions

- § 98-7. Definitions and word usage.

ARTICLE III Procedure for Filing Subdivision Applications

- § 98-8. Major subdivision approval required prior to sale.
- § 98-9. Submission of sketch plan.
- § 98-10. Administrative review.
- § 98-11. Preliminary plat.
- § 98-12. Subdivision plat (or final plat).
- § 98-13. Required improvements.
- § 98-14. Filing of approved subdivision plat.

- § 98-15. Resubdivision.
- § 98-16. Public streets; recreation areas.
- § 98-17. Start of construction.
- § 98-18. Residential cluster development.

ARTICLE IV Development Standards for Subdivisions

- § 98-19. General.
- § 98-20. Streets; lots; easements; landscaping; floodplain; recreational space.

ARTICLE V Improvements

- § 98-21. Improvements required.

ARTICLE VI Specifications for Sketch Plans, Preliminary Plats, and Subdivision Plats

- § 98-22. Sketch plan for major and minor subdivisions.
- § 98-23. Preliminary plats for major subdivisions.
- § 98-24. Additional information required.
- § 98-25. Final subdivision plat for major subdivisions.
- § 98-26. Construction detail sheets.
- § 98-27. Certificates and bonds.
- § 98-28. Approvals needed.

[HISTORY: Adopted by the Town Board of the Town of Benton 1-14-2009 by L.L. No. 1-2009. Amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 35.

Zoning — See Ch. 110.

ARTICLE I
Declaration of Policy

§ 98-1. Legislative authority.

The Town of Benton Planning Board has the power and authority to approve plans for subdivisions within its corporate limits, exclusive of that part of the Town within the limits of any incorporated village pursuant to the provisions of Article 16, § 262, of the Consolidated Town Laws of New York State, as amended.

§ 98-2. Approval of plats.

The Planning Board of the Town of Benton is authorized and empowered to approve 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 Yates County, and to approve preliminary plats with or without modifications within that part of the Town of Benton outside the limits of any incorporated Village.

§ 98-3. Planning Board policy.

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, that land to be subdivided shall be of such character that it can be safely used for building purposes without danger to health, or peril from fire, flood or other menace; that proper provision shall be made for drainage, erosion control, water supply, sewerage and other needed improvements; that all proposed lots and improvements therein shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall compose a convenient system conforming to the Official Map, if such exists, and shall be properly related to the proposals shown on the Comprehensive Plan, if such exists, and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of fire-fighting equipment to buildings; and that proper provision shall be made for open spaces for parks and playgrounds.

§ 98-4. Short title; adoption of regulations.

In order that land subdivision may be made in accordance with this policy, these regulations, which will be known and cited as the "Subdivision Regulations of the Town of Benton," have been adopted by the Town of Benton Planning Board and approved by resolution of the Benton Town Board.

§ 98-5. Conservation subdivision development.

The Town Planning Board has been granted the authority to permit a developer to propose a conservation subdivision development layout, or to require that a developer provide a conservation subdivision development layout as provided in § 278 of the Town Law of the State of New York by resolution of the Benton Town Board.

§ 98-6. Reconsideration of plats filed with County Clerk.

The Town Planning Board has been granted the authority to review plats already filed in the office of the County Clerk if such plats are entirely or partially undeveloped as provided in § 276 of the Town Law of the State of New York. Said plats shall be reviewed in accordance with the Subdivision Regulations of the Town of Benton. Only plats where 20% or more of the lots are undeveloped shall be subject to reconsideration under this section. Reconsideration shall be commenced upon a majority vote of the Town Planning Board at a regularly scheduled meeting of said Board. Any resident, officer, or duly established board of the Town may initiate a request for reconsideration which shall be voted upon by the Town Planning Board within 45 days of the date when the request is first presented to the Town Planning Board.

**ARTICLE II
Definitions****§ 98-7. Definitions and word usage.**

- A. Word usage. Words in the singular include the plural, and words in the plural include the singular. The word "person" includes a corporation, unincorporated association, and a partnership as well as an individual. The word "lot" includes "parcel" or "plot." The word "building" includes "structure" and shall be construed as if followed by the words "or part thereof." The word "street" includes "road," "highway," and "lane"; while "watercourse" includes "drain," "ditch," and "stream." The word "may" is permissive.
- B. Definitions. Unless otherwise expressly stated, the following terms shall, for the purposes of these regulations, have the meanings indicated:

ACCESS MANAGEMENT — Controlling the location, spacing, and geometry of curb cuts (driveway intersections with public road rights-of-way) with the goal of maintaining traffic safety while preserving existing speed limits on public streets and roads.

ACCESS MANAGEMENT MAP — The map included in the State of New York Department of Transportation Policy and Standards booklet.

ACCESS MANAGEMENT PLAN — The access management plan as it pertains to the Town of Benton, Yates County and New York State.

ACCESS, NONCONFORMING (or NONCONFORMING ACCESS) — Access to a property or property that is not in compliance with the access management plan of the Town of Benton. This shall include access, proposed roads, or lack thereof that do not comply with the access management map.

APPLICANT — The owner of land proposed to be subdivided or his or her agent. Proof of agency shall be required from the legal owner of the land proposed to be subdivided. See definition of “subdivider.” Proof of ownership may be a copy of the deed submitted by the owner, or a copy of the deed and a letter of permission from the owner if submitted by someone other than the owner (lawyer).

ARCHITECT — A person licensed as an architect by the State of New York.

BOARD — The Town of Benton Planning Board created pursuant to Article 271 of the Town Law of New York State statutes.

BOND — Any form of security including a cash deposit, surety bond, collateral, property, or letter of credit in an amount and form satisfactory to the Attorney for the Town. All bonds shall be approved by the Town Board wherever a bond is required by these regulations, or as a condition imposed by the Planning Board.

BUILDING PERMIT — An authorization issued by the Town Building Inspector or Town of Benton Zoning Officer to commence work on a structure in accordance with approved plans and specifications and in compliance with the New York State Uniform Fire Prevention and Building Code.¹

CERTIFICATE OF OCCUPANCY — A document which certifies that a structure is habitable.

CLUSTERING — See definition for “conservation subdivision development.”

CONDITIONAL APPROVAL OF A FINAL PLAT — The approval by the Planning Board of a final plat subject to conditions set forth in a resolution. Such conditional approval does not qualify a final plat for recording in the office of the Yates County Clerk nor does it provide authorization for the issuance of building permits.

CONSERVATION SUBDIVISION DEVELOPMENT — Also known as “cluster development” in § 278 of the Town Law of New York State. This type of development shall mean a subdivision plat or plats in which the Town Planning Board permits the modification of the Zoning Code to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands. The modification must occur at the same time the plat or plats are approved pursuant to this chapter. The purposes of such authorization will be to enable and encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of the land.

CONSTRUCTION DETAIL — The maps or drawings accompanying a subdivision plat and showing the specific location and design of improvements to be installed in the subdivision pursuant to the requirements of these regulations.

CUL-DE-SAC — A minor street having but one end open to traffic and pedestrian access, and the other end being permanently terminated by a vehicular turnaround.

1. Editor's Note: See Ch. 30, Fire Prevention and Building Construction.

DEDICATION — The deliberate unconditional appropriation of real property by its owner for any general and public use. Offers of dedication are subject to approval by the Town Board and/or the Highway Superintendent.

DEVELOPER — An individual, partnership or corporation or its agent holding title to a parcel of land to be developed or subdivided.

DOUBLE FRONTAGE LOT — A lot having at least two sides fronting on separate streets which do not intersect while adjoining the lot.

DRAINAGE DISTRICT — A special district established or extended pursuant to the Town Law of New York State statutes for the purpose of constructing or maintaining stormwater drainage facilities.

DRAINAGE EASEMENT or DRAINAGE RIGHT-OF-WAY — The lands or easements required for the installation of stormwater sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

EASEMENT — Authorization granted by a property owner for the use by another of any designated part of his or her property for a specified purpose not inconsistent with the general property rights of the owner.

ENGINEER — A person licensed as a professional engineer (P.E.) by the State of New York.

ENGINEER FOR THE TOWN or TOWN ENGINEER — The duly designated engineer working on behalf of the Town of Benton.

ENVIRONMENTALLY SENSITIVE AREAS — Land or land features critical to the maintenance of ecosystems.

ENVIRONMENTAL REVIEW — See “State Environmental Quality Review (SEQR).”

FINAL SUBDIVISION PLAT — See “subdivision plat.”

FLOODPLAIN — Areas subject to a one-percent-or-greater chance of flooding in any given year, as shown on the United States Department of Housing and Urban Development (HUD) Flood Insurance Rate Map.

GRADING PLAN — A plan showing all present and proposed grades for stormwater drainage and final site design.

IMPROVEMENTS — Those physical additions and changes to the land that may be necessary to produce functional lots, including, but not limited to, grading, paving, curbing, fire hydrants, water mains, sanitary sewers and drains, sidewalks, pedestrian access walkways and required plantings which may or may not be offered for dedication.

INDIVIDUAL SEWERAGE SYSTEM — A single system of piping, tanks or other facilities serving only a single lot and disposing of sewage or other liquid wastes into the soil of the lot.

LETTER OF CREDIT — A letter taken out by the owner from a bank which guarantees the Town that a specific amount of money will be kept available for the completion of construction of facilities to be dedicated. This security can be drawn on only by the Town and guarantees that certain or all improvements will be made in accordance with the approved plans.

LOT — A piece, parcel, or plot of land or other real property identified by legal description and/or tax account number which is filed or proposed to be filed in the County Clerk's office, and is intended as a unit for transfer of ownership or for development.

MONUMENT — A permanent reference marker set at points as may be required in this chapter.

MULTIPLE DWELLING — A dwelling consisting of three or more separate living units.

OFFICIAL MAP — The map, established by the Town Board under § 270 of the Town Law, showing the streets, highways, and parks heretofore laid out, adopted, and established by law, and any amendments thereto adopted by the Town Board or additions thereto resulting from the approval of subdivision plats by the Planning Board, acceptance of dedication by the Town Board where appropriate, and the subsequent filing of such approved plats with the Clerk of Yates County.

OFFICIAL SUBMISSION DATE — The date when a subdivision plat shall be considered submitted to the Planning Board, as provided in § 276 of the Town Law, and is hereby defined to be the date of the meeting of the Planning Board at which all required surveys, plans, and data described in accordance with Article VI of these regulations are submitted. The official submission date shall in no instance be prior to the date when all relevant procedures have been completed under the New York State Environmental Quality Review Act, where applicable.

OPEN SPACE — Space dedicated to the Town of Benton or set aside by easement or other manner in a form acceptable to the Town of Benton for use as a park, recreation area, wildlife preserve, forest area, or other similar use deemed acceptable by the Town of Benton.

OWNER — Any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided under these regulations.

PARENT PARCEL — A parcel of land as it existed on the effective date of these regulations.

PEDESTRIAN ACCESS WALKWAY — A right-of-way, municipally or privately owned, at least 12 feet in width, which cuts across a block to furnish access for pedestrians to adjacent streets or properties.

PERFORMANCE BOND OR GUARANTEE — Any security which may be accepted in lieu of a requirement that certain improvements be made before the Planning Board

approves a plat, including performance bonds, escrow agreements, and other instruments acceptable in form to the Town.

PERMANENT HIGHWAY EASEMENT — A strip of land adjacent to an existing street right-of-way used for any public purpose. The front lot line shall be considered to be coincident with the permanent highway easement boundary. Front setbacks and other necessary lot measurements shall be measured from the permanent highway easement line. Where there is no requirement for a permanent highway easement, the front line shall be considered to be coincident with the existing right-of-way line, with front setbacks and any other necessary lot measurements being measured from the existing right-of-way line.

PIN — A metal, concrete or granite reference marker set at final grade as may be required in this chapter.

PLANNING BOARD — The Town of Benton Planning Board as established pursuant to the provisions of Article 16 of the Town Law of the State of New York.

PREAPPLICATION PROCESS — An informal meeting between the Town Planning Board and a subdivider to develop an understanding of the general design and layout of the subdivision. Matters to be discussed include Town policies and procedures on the subdivision of land, a timetable for review, general agreement concerning the project design and on the statement of intent of the proposed subdivision.

PRELIMINARY PLAT — The preliminary drawing or drawings indicating the proposed manner or layout of the subdivision to be submitted to the Planning Board for its consideration and meeting the requirements of Article VI of these regulations.

PRIMARY OR MAJOR THOROUGHFARE — A dedicated major road intended as a route for traffic between other major roads, communities, shopping centers, or other such major generators. Major thoroughfares can usually serve to collect traffic from minor roads.

PRIVATE DRIVE — An undedicated access point serving three or four lots and providing ingress or egress to a road or street. Private drives must have reciprocal easements and a common maintenance agreement.

PRIVATE ROAD — An undedicated thoroughfare used as an ingress or egress to five or more properties with reciprocal easements and a common maintenance agreement.

RECORD SHEET — A map or plat which provides information concerning the actual location of improvements as built.

RESUBDIVISION — Revision of all or part of an existing plat previously filed with the Clerk of Yates County including consolidation of lots.

RIGHT-OF-WAY — See below.

- (1) **PRIVATE RIGHT-OF-WAY** — Existing land owned by a nonpublic agency or organization and occupied or intended to be occupied by transmission mains, gas pipe lines, rails, or other special use.

- (2) PUBLIC RIGHT-OF-WAY — Existing land owned by public agencies for use as a street or other public purpose.

SERVICE DRIVE — Minor ways which are used primarily for vehicular service to the back or side of properties otherwise abutting on a street.

SETBACK — The required space between any street or highway line and the wall of the main structure, including any attachment thereto, with the exception only of cornices or entrance steps.

SIGNIFICANCE DETERMINATION — A decision made by the lead agency at one or more points in the approval process. The decision establishes the degree to which the proposed project is likely to affect the environment.

SKETCH PLAN — A drawing prepared in accordance with Article VI of these regulations showing in general form the manner in which a tract of land is to be subdivided or developed.

STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) — A formal review pursuant to Part 617 of the New York Code Book of Rules and Regulations which encourages productive and enjoyable harmony between man and his environment and enhance human and community resources; and to enrich the understanding of the ecological systems, and natural, human and community resources important to the people of the Town of Benton.

STREET — Any street, avenue, boulevard, road, lane, parkway, alley or other way which is an existing state, county, or municipal roadway or way shown upon a plat heretofore approved pursuant to law or approved by official action or a street or way on a plat duly filed and recorded in the office of the Clerk of Yates County prior to the appointment of a Planning Board and the granting to such Board of the power to review plans, and includes the land between the street lines whether improved or unimproved and may comprise pavement, shoulders, gutters, sidewalks, parking area, and other areas within the street lines. For the purpose of these regulations, streets shall be classified as follows:

- (1) Collector streets are those which carry traffic from minor streets to the major system of arterial streets including the principal entrance streets of a residential development and streets for circulation within such a development.
- (2) Minor streets or local residential streets are those which are used primarily for access to the abutting properties.
- (3) Marginal service streets are streets which are parallel to and adjacent to arterial streets and highways and which provide access to abutting properties and protection from through traffic.
- (4) Alleys are minor ways which are used primarily for vehicular service to the back or side of properties otherwise abutting on a street.

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

SUBDIVIDER, DEVELOPER — Any person, firm, corporation, partnership, or association, who shall lay out, for the purpose of sale or development, any subdivision or part thereof as defined herein, either for himself or others.

SUBDIVISION — The division of any parcel of land into two or more lots, plats or sites, or any other division of land, for the purpose, whether immediate or future, to transfer ownership or building development rights, and shall include both resubdivision and any other movement or adjustment of the location of any existing lot line.

- (1) **MAJOR SUBDIVISION** — Any subdivision not comprising a minor subdivision under these regulations.
- (2) **MINOR SUBDIVISION** — Any subdivision of a single parcel existing at the effective date of these regulations and containing not more than four lots (over a ten-year period from the date of filing of a final subdivision plat at the office of the Yates County Clerk regardless of ownership) fronting on an existing street, not involving any new street or road nor the extension of municipal facilities and, in the opinion of the Planning Board, not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the Comprehensive Plan, Official Map, or Zoning Ordinance, if such exists, or these regulations.

SUBDIVISION PLAT or FINAL PLAT or PLAT — A drawing, in final form, showing a proposed subdivision containing all information or detail required by law and by these regulations to be presented to the Planning Board for review under these regulations, and which, if approved, may be duly filed or recorded by the applicant in the office of the Clerk of Yates County.

SURVEYOR — A person licensed as a land surveyor by the State of New York.

TOWN BOARD — The municipal governing board of the Town of Benton.

TOWN DEVELOPMENT PLAN, COMPREHENSIVE PLAN, TOWN PLAN or MASTER PLAN — A composite of the mapped and written proposals recommending the physical development of the Town prepared by the Planning Board pursuant to § 272-a of the Town Law which indicates the general locations recommended for various public works and reservations and for the general physical development of the Town and includes any part of such plan separately adopted and any amendment to such plan or parts thereof.

WETLANDS — Freshwater wetlands including lands and submerged lands, commonly called marshes, swamps, sloughs, bogs, and flats supporting aquatic and semi-aquatic types identified in Article 24 of the New York State Conservation Law.

ZONING MAP — The officially adopted map of the Town of Benton which shows the boundaries of the zoning districts.

ZONING OFFICER — The officer of the Town of Benton appointed and designated by the Benton Town Board. This official may also be referred to as the Building Inspector or Code Enforcement Officer as title and duties may be assigned by the Benton Town Board.

ZONING ORDINANCE — The officially adopted Zoning Ordinance or Zoning Local Law of the Town of Benton together with any and all amendments thereto.²

ARTICLE III
Procedure for Filing Subdivision Applications

§ 98-8. Major subdivision approval required prior to sale.

Whenever any major subdivision of land is proposed to be made, and before any contract for the sale of, or any offer to sell, any lots in such subdivision or any part thereof is made, and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or his or her duly authorized agent shall apply in writing for approval of such proposed subdivision in accordance with the procedures contained in this article as follows.

§ 98-9. Submission of sketch plan.

Any owner of land shall, prior to subdividing or resubdividing land, submit to the Town of Benton Zoning Officer, or other officer duly appointed by resolution of the Town Board, at least 14 days prior to the regular meeting of the Board nine copies of a sketch plan of the proposed subdivision which shall comply with the requirements of Article VI, § 98-22, for the purposes of classifying the application as constituting a major or minor subdivision and for preliminary discussion. Said sketch plan shall be submitted accompanied by an application on forms available from the Town of Benton Zoning Officer.

- A. Discussion of requirements and classification. The subdivider, or his or her duly authorized representative, shall attend the meeting of the Planning Board to discuss the requirements of these regulations for street improvements, drainage, sewerage, water supply, fire protection, and similar aspects, as well as the availability of existing services and other pertinent information. The Planning Board shall determine at this time the classification of the subdivision as major or minor, shall discuss the requirements of the New York State Environmental Quality Review Act, and shall inform the applicant of such decision. Subdivisions approved under § 98-12 shall be exempt from this section.
- B. Study of sketch plan. The Planning Board shall determine whether the sketch plan meets the purposes and submission requirements of these regulations and shall, where it deems necessary, make specific recommendations in writing of items or modifications to be incorporated by the applicant in the next submission to the Planning Board.

§ 98-10. Administrative review.

- A. Applicability. This section shall apply only where the proposed subdivision is not subject to any other review under the Zoning Ordinance of the Town of Benton.³ In addition, all the lots shown on a proposed subdivision application shall comply with all subdivision and zoning requirements in that all lots and all the buildings thereon meet all applicable

2. Editor's Note: See Ch. 110, Zoning.

3. Editor's Note: See Ch. 110, Zoning.

lot size, frontage, width, depth, area, setback, use, and number of primary uses. Further, the subdivision must be in compliance with the access management plan, and the Official Map, if any, of the Town of Benton, and which comply with one or more of the following:

- (1) Combining of two or more existing tax parcels into a single parcel.
- (2) The creation of parcels all of which are 20 acres or more in size for agricultural use in a zoning district where agricultural uses are allowed.
- (3) The moving of a lot line between two adjacent properties not affecting the location of curb cuts or access to the property, drainage, nor any buildings situate on either parcel.

B. Review.

- (1) Upon submission of a subdivision application, the Zoning Officer shall initially determine eligibility of the subdivision application for administrative approval under this section within five calendar days of submission of the subdivision application.
- (2) Upon initial determination of eligibility by the Zoning Officer, said subdivision application shall be reviewed by the Planning Board Chairman within five calendar days of the date of initial determination of eligibility by the Zoning Officer. If the Planning Board Chairman concurs that the subdivision application is eligible for administrative approval under this section, the applicant shall be so notified by the Zoning Officer.
- (3) Notice to the applicant shall include any modifications or clarifications to the application to ensure compliance with this section. Said notice shall also include the need to prepare final subdivision plats in accordance with the requirements of Article VI herein. Said notice shall be made within five calendar days of final determination of eligibility of the subdivision application for approval under this section.
- (4) All administrative review information will be brought before the Benton Town Planning Board for informative purposes.

C. Submission of final plat.

- (1) Upon receipt of notice, the applicant shall submit a final subdivision plat to the Zoning Officer within six months of the date of the notice.
- (2) If, after review, both the Zoning Officer and the Planning Board Chairman ascertain that the final plat meets all requirements of this section, the final plat shall be deemed approved.
- (3) If, for any reason, either the Zoning Officer or the Planning Board Chairman ascertain that the submitted plat does not conform to the requirements of this section, including but not limited to the requirements for final plats found in Article VI herein, the plat shall be returned to the applicant for correction or

submission as a regular subdivision application to the Planning Board under § 98-12 herein, and shall not be deemed approved under this section.

- (4) The Planning Board Chairman shall, upon determination that the final plat is in full compliance with this section, witness said approval by affixing his/her signature to the following statement to the plat:

This plat has been reviewed and is approved as a final subdivision plat by the Town of Benton as being exempt from review under the Subdivision Regulations of the Town of Benton. Any change, erasure, modification, or revision of this subdivision plat, as approved, shall void this approval.

Signed this ____ day of _____, 20__ by

Chairman, Town of Benton Planning Board

- (5) Copies. The applicant shall furnish one paper copy of the approved final plat to the Town Planning and Zoning Office at the time of signature as described in Subsection C(4) above.

- D. Filing of plat. Upon approval and signing of the final subdivision plat by the Planning Board Chairman under this section, the applicant shall have 30 calendar days with which to file copies of the signed, approved, final subdivision plat at the office of the Yates County Clerk.

§ 98-11. Preliminary plat.

The following procedures apply to both major and minor subdivisions:

- A. Application and fee.

- (1) Prior to the filing of an application for the approval of a subdivision plat, the subdivider shall file an application for the consideration of a preliminary plat, which shall in all respects comply with the requirements set forth in the provisions of §§ 276 and 277 of the Town Law, and Article VI, § 98-23, of these regulations.
- (2) The application for approval of the preliminary plat shall be accompanied by a fee as established by the Town Board.
- (3) Application for preliminary plat approval is to be submitted to the Town of Benton Zoning Officer, or other officer duly appointed by resolution of the Town Board, on forms provided by said officers at least 14 days prior to the regular monthly meeting of the Planning Board. Said application shall be accompanied by rendering of the application fee as described above, and is to be accompanied by such other material as specified in Article III, § 98-11B below.

- B. Other application requirements. Nine copies of the preliminary plat and nine copies of the draft environmental assessment form are to be submitted at the time of application for preliminary plat approval as specified in Article III, § 98-11A above. More copies of the

preliminary plat and draft environmental assessment form may be requested of the applicant by the Planning Board if the Planning Board determines that other agencies, employees of the Town, or consultants should review said plat, or if additional agencies or individuals should review the draft environmental assessment form under the provisions of the New York State Environmental Quality Review Act.

- C. Official submission date of preliminary plat application. The official submission date of the preliminary plat application shall be the date of the next regular monthly meeting of the Planning Board which occurs after a preliminary plat application is made in compliance with these regulations and the procedures of Article III, § 98-11A and B. The official submission date shall in no instance be prior to the date when all relevant procedures have been completed under the New York State Environmental Quality Review Act, where applicable. The Planning Board shall deem incomplete any application not made in compliance with these regulations, and the procedures of § 98-11A and B.
- D. Subdivider to attend Planning Board meeting. The subdivider, or his or her duly authorized representative, shall attend the meeting of the Planning Board to discuss the preliminary plat.
- E. Study of preliminary plat. The Planning Board shall study the practicability of the preliminary plat taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location, and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands as yet unsubdivided, and the Town Comprehensive Plan, the Official Map, the access management plan, and the Zoning Local Law,⁴ if such exist.
- F. County official map, referral to County Planning Board. The Planning Board will also notify Yates County Commissioner of Public Works if the subdivision plat proposes structures or new streets having frontage on, access to, or is otherwise directly related to any existing County road, or if the county has adopted an Official Map, on any proposed county road. The Planning Board at its regular monthly meeting shall determine if the location of the property proposed for subdivision must be referred to the Yates County Planning Board under § 239-n of the General Municipal Law of New York State.
- G. County Planning Board notification, action, impact. Under the requirements of Section 239-n of the New York State General Municipal Law, whenever a proposed subdivision lies within a distance of 500 feet from the boundary of a municipality, or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or drainage channel owned by the county or for which the county has established channel lines, or from the existing or proposed boundary of any county- or state-owned land on which a building is situated or the boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law, then the proposed subdivision shall be referred to the County Planning Board for review. The Town Planning Board shall determine if a preliminary plat

4. Editor's Note: See Ch. 110, Zoning.

application must be referred to the County Planning Board, and will direct the Town of Benton Zoning Officer or other duly appointed officer to file said preliminary plat application with the County Planning Board for review at its next regular monthly meeting. No action shall be taken on the preliminary plat application by the Town Planning Board until such time as a recommendation is received from the County Planning Board, although a public hearing may be held pursuant to § 98-11H of these regulations. If no recommendation is received from the County Planning Board within 30 days, the preliminary plat shall be deemed approved by the County Planning Board. If the County Planning Board disapproves or recommends modification of a proposed preliminary subdivision plat, the Town Planning Board shall not act contrary to such disapproval or recommendation of modification except by a vote of a majority plus one of all its members and then only after the adoption of a resolution fully setting forth the reasons for such contrary action.

- H. Public hearing on preliminary plat application. Within 62 days of the official submission date of a preliminary plat application, the Planning Board shall hold a public hearing. This time may be extended upon mutual consent of the Planning Board and subdivider. The hearing notice shall be advertised at least once in the official newspapers of the Town at least five days prior to the date of the hearing. If the Planning Board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within 62 days of filing the notice of completion.
- I. Action of Planning Board on preliminary plat application.
- (1) Within 62 days of the date of the public hearing, the Planning Board shall approve, approve with modification, or disapprove the preliminary plat. This time may be extended upon mutual consent of the Planning Board and subdivider. The Planning Board shall adopt a resolution stating its findings and grounds for its decision on the preliminary plat. If the Planning Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the state environmental quality review act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the preliminary plat. Within 30 days of the filing of such final environmental impact statement, the Planning Board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.
 - (2) When approving with modifications a preliminary plat, the Planning Board shall by resolution and in writing to the subdivider state said modifications it deems necessary for submission of the final plat.

- (3) A certified copy of the Planning Board's action on a preliminary plat application shall be mailed to the subdivider within five business days.
- (4) If the Planning Board fails to act upon the preliminary plat application within the time period herein stated, the preliminary plat shall be deemed approved, and the Town Clerk shall issue a certificate specifying the official submission date and failure of the Planning Board to act upon the preliminary plat application at the request of the subdivider. This certificate shall be considered sufficient proof in lieu of any other evidence of approval of the preliminary plat.
- (5) In the case of a minor subdivision as determined by the Planning Board, the Planning Board may grant final approval or approval with modifications of the subdivision, subject to preparation of a final plat as defined in § 98-12.

§ 98-12. Subdivision plat (or final plat).

A subdivider proposing a minor subdivision as determined by the Planning Board shall, within six months of approval by the Planning Board of the preliminary plat, present to the Chairperson or Acting Chairperson of the Planning Board a final subdivision plat prepared as required in Article VI of these regulations and conforming to any modifications imposed by the Planning Board in its review, and containing such other approvals as may be required as defined in Article VI of these regulations. The Chairperson or Acting Chairperson of the Planning Board shall then be empowered to sign such final plat evidencing its approval by the Planning Board. In the case of a major subdivision, the following procedures shall apply:

- A. Application for approval, final plat. The subdivider shall, within six months after the approval of the preliminary plat, file with the Planning Board an application for approval of the subdivision plat in final form. Applications for final plat approvals are to be submitted to the Town of Benton Zoning Officer or other duly appointed officer on forms provided by said officers at least 14 days prior to the regular monthly meeting of the Planning Board. Said application shall be accompanied by submission of the number of copies of the final plat, an original final plat and other materials as specified in Article III, § 98-12B, below.
- B. Other application requirements. Eight copies of the final plat and one original final plat are to be submitted at the time of application for final plat approval as specified in Article III, § 98-12A, above. Additional copies of the final plat may be requested of the applicant by the Planning Board if the Planning Board determines that other agencies, employees of the Town, or consultants should review said plat. The subdivider shall also provide the original and one true copy of all offers of cession, covenants, and agreements, and three prints of all construction drawings.
- C. Endorsement of state, county, and local agencies. Water and sewer facility proposals contained in the final plat shall be properly endorsed and approved by the New York State Department of Health and the Department of Environmental Conservation in areas applicable to their jurisdiction. Application for approval of plans for sewer or water facilities will be filed by the subdivider with all requisite Town, county, and state agencies. See Article VI, § 98-28, for a list of additional approvals which may be required.

- D. Official submission date of final plat application. The official submission date of the final plat application shall be the date of the next regular monthly meeting of the Planning Board which occurs after a final plat application is made in compliance with these regulations and the procedures of Article III, § 98-12A and B. Any application not made in compliance with this section shall be deemed incomplete by the Planning Board.
- E. Public hearing.
- (1) Within 62 days of the official submission date of a final subdivision plat application, the Planning Board shall hold a public hearing. This time may be extended upon mutual consent of the Planning Board and the subdivider. The hearing notice shall be advertised at least once in the official newspapers of the Town at least five days prior to the date of the hearing.
 - (2) The Planning Board may waive the requirement for this second public hearing if it deems the final plat to be in substantial agreement with the preliminary plat previously approved and modified according to any modifications required by the Planning Board during its review of the preliminary plat.
- F. Action of Planning Board.
- (1) Within 62 days of the date of the public hearing, the Planning Board shall by resolution approve, approve with modification, conditionally approve with or without modifications, or disapprove the subdivision plat. This time may be extended upon mutual consent of the Planning Board and subdivider. The Planning Board shall adopt a resolution stating its findings and grounds for its decision on the final plat. If the Planning Board waives the public hearing on the final plat, the final decision will be made within 62 days of submission of such final plat.
 - (2) Conditional approval of a final subdivision plat is defined as the approval of the final plat subject to conditions set forth by the Planning Board in its resolution conditionally approving the final plat. Conditions may be, but are not limited to, some, all, or any of the following:
 - (a) Approval of Town, county, or state agencies having jurisdiction over sewer, water, roads, or other municipal service;
 - (b) Review and approval of some element of the design by a New York State licensed engineer or architect;
 - (c) Review by the State Attorney General's Office where a homeowners' association is involved;
 - (d) Review by the Town's Attorney of the adequacy of and performance bond or other surety required by the Planning Board;
 - (e) Issuance of a road cut permit by the County Commissioner of Public Works where access from the subdivision is onto a County road.

- (3) A certified copy of the Planning Board's action on a final subdivision plat application shall be mailed to the subdivider within five business days of the date of the Planning Board's action.
- (4) If a final subdivision plat is conditionally approved with or without modifications, or is approved with modifications, the Chairman of the Planning Board shall be empowered and required to sign the final subdivision plat when all requirements stated in the Planning Board's resolution concerning the final plat have been satisfactorily met.
- (5) The subdivider shall have 180 days to satisfy the requirements specified in the Planning Board's resolution concerning the final plat and to obtain the signature of the Chairman of the Planning Board as required herein. Upon failure to obtain such approval, the Planning Board may at its first meeting after such time frame has elapsed vote to extend by not more than two additional periods of 90 days each. Such time extension may be granted only at the written request of the subdivider. If such time frame has elapsed and no extension has been granted, the subdivider must reapply for review under these regulations beginning with the preliminary subdivision plat review stage and including the submission of the fees required therein.

G. Signing of the final subdivision plat.

- (1) Every subdivision plat submitted to the Planning Board for approval shall carry the following endorsement:

"Approved by Resolution of the Planning Board of the Town of Benton, New York, on the ____ day of _____, 20____, subject to all requirements and conditions of said Resolution. Any change, erasure, modification, or revision of this Subdivision Plat, as approved, shall void this approval."

Signed this ____ day of _____, 20____ by

Chairman, Town of Benton Planning Board

- (2) In the absence of the Chairman, the Acting Chairman may sign the subdivision plat. If there is a County Official Map, such endorsement shall stipulate that the subdivision plat does not conflict with the County Official Map, or in cases where the subdivision does front on, or have access to, or is otherwise related to roads or drainage systems shown on the County Map, that subdivision has been approved by the County Planning Board, in the manner specified by § 239-n of the New York State General Municipal Law. If the subdivision falls within the jurisdiction of the County Planning Board as set forth in § 239-n of the New York State Municipal Law, then such endorsement shall stipulate that the requirements of said law have been satisfied.

§ 98-13. Required improvements.

- A. Improvements and performance bond. Before the Planning Board passes a resolution approving with or without modifications, or conditionally approving with or without modifications, a subdivision plat, the subdivider shall follow the procedure set forth in the following:
- (1) In an amount set by the Town Board, the subdivider shall either file with the Town Clerk a certified check to cover the full cost of the required improvements or the subdivider shall file with the Town Clerk a performance bond or other surety instrument acceptable to the Town Board to cover the full cost of the required improvements. Any such bond or other surety shall comply with the requirements of § 277 of the Town Law, and further shall be satisfactory to the Town Board and the Town Attorney as to form, sufficiency, manner of execution and surety. A period of one year, or such other period as the Town Board may require, shall be set forth in the bond within which time required improvements must be completed. The bond or other surety instrument shall provide that an amount determined adequate by the Town Board shall be retained for a period of one year after the date of completion of the required improvements to assure their satisfactory condition.
 - (2) If a subdivider shall be authorized to file the approved final plat in sections, approval of the final plat may be granted upon the posting of a performance bond or other surety instrument to cover the full cost of all required improvements of each section as authorized or as outlined in Subsection A(1) above.
 - (3) The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Town Highway Superintendent and, where applicable, the Town Water Supervisor, and the Wastewater District Supervisor. A map satisfactory to the Planning Board has been submitted indicating the location of monuments marking all underground utilities as actually installed. The performance bond or other surety instrument shall not be released until such a map is submitted and approved by the Planning Board.
 - (4) If utilities or roads are offered for dedication to the Town, the subdivider shall be required to post a maintenance bond in an amount, form, and term acceptable to the Town Board to pay for repair or maintenance of dedicated utilities or roads which prove defective following dedication.
- B. Inspection of improvements.
- (1) At least five days prior to commencing construction of required improvements, the subdivider shall notify the Town of Benton Zoning Officer or other duly appointed officer in writing of the time when the subdivider proposes to commence construction of such required improvements.
 - (2) The Town may employ an inspector to act as agent of the Planning Board for the purpose of assuring the satisfactory completion of improvements required by the Planning Board and shall determine an amount sufficient to defray costs of such

inspection. The applicant shall pay the costs of such inspection to the Town Clerk before the subdivision plat is signed for filing.

C. Proper installation of improvements.

- (1) If the Town Highway Superintendent or Water and Wastewater Superintendent or other inspector hired by the Town finds upon inspection of the improvements performed before the expiration date of the performance bond or other surety instrument that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, the applicant and the bonding company will be severally and jointly liable for the costs of completing said improvements according to specifications previously filed by the subdivider.
- (2) No final plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved subdivision plat.

§ 98-14. Filing of approved subdivision plat.

- A. Final approval and filing. Upon completion of all requirements set forth in the resolution approving the final subdivision plat, inclusion of a notation to that effect upon the subdivision plat, and submission of the completed subdivision checklist available from the Code Enforcement Office, it shall be deemed to have final approval and shall be signed by the Chairman of the Planning Board. The owner shall file in the office of the Yates County Clerk such approved final plat or a section of such plat within 62 days from the date of final approval, as such term is defined in New York State Town Law § 276, Subdivision 11, as amended, or such approval shall expire. In addition, the subdivider shall furnish one paper copy of the signed final subdivision plat to the Town of Benton Zoning Officer.
- B. Subdivision plat void if revised after approval. No building permits shall be issued until a certified copy of the final subdivision plat, filed at the office of the County Clerk, has been delivered to the Town of Benton Zoning Officer. No changes, erasures, modifications, or revisions shall be made in any final subdivision plat after approval has been given by the Planning Board and endorsed in writing on the final subdivision plat, unless the said final subdivision plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such final subdivision plat is recorded without complying with this requirement, said recorded final subdivision plat shall be considered null and void, and the Planning Board shall institute proceedings to have said subdivision plat stricken from the records of the Clerk of Yates County.

§ 98-15. Resubdivision.

For a resubdivision, the same procedure, rules and regulations shall apply as for a subdivision.

§ 98-16. Public streets; recreation areas.

- A. Public acceptance of streets or other real property rights offered for dedication to the Town. The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance on the part of the Town of Benton of any street, easement, or other open space shown on any such subdivision plat.
- B. Ownership and maintenance of recreation areas. When a park, playground, or other recreation area shall have been shown on a subdivision plat, the approval of said subdivision plat shall not constitute an acceptance by the Town of said area. The Planning Board shall require the subdivision plat to be endorsed with appropriate notes to the effect. The Planning Board may require the filing in the office of the Clerk of Yates County of a written agreement between the applicant and the Town Board covering future title, dedication, equipment, and maintenance of any park or playground area.

§ 98-17. Start of construction.

Upon positing of an acceptable performance bond or other surety instrument in accordance with Article III, § 98-13A, of these regulations, and after approval and filing in the office of the Clerk of Yates County of the subdivision plat, the subdivider may initiate land sales or construction of the subdivision itself. The subdivider is required to give five days' notice to the Town of the construction of any required improvements.

§ 98-18. Residential cluster development.

- A. Intent. The intent of this section is to permit variation in lot size and housing type in suitable areas in order to encourage flexibility of design, to enable land to be developed in such a manner as to promote its most appropriate use, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open space, in accordance with § 278 of the New York State Town Law. This purpose is achieved by permitting lot sizes to be reduced in a subdivision tract if the overall density does not exceed that which otherwise is permitted in the applicable zoning district, and the land thus gained is preserved as permanent open space for the use and enjoyment of the residents of the area and Town.
- B. Authorization to grant or deny residential cluster development. In accordance with § 278 of the New York State Town Law, the Town Board authorizes the Planning Board to permit variations in the dimensional requirements under its subdivision review powers. The Planning Board shall comply with all procedures and standards set forth in this regulation when implementing such power.
- C. Standards governing residential cluster development. Any residential cluster development shall conform to the following requirements:
 - (1) This procedure shall apply only to parcels of land that are a minimum of 10 acres in size. In addition, it shall be determined that such development will not be detrimental to the health, safety, or general welfare of persons residing in the vicinity, or injurious to property or improvements in close proximity, and that the proposed development creates an attractive residential environment which is in

conformance with the Town's Comprehensive Plan, and that the gross density will be no greater than if the tract were developed in accordance with the existing zoning requirements, and that the permanent retention of open space areas along with their care and maintenance is guaranteed.

- (2) When such development is proposed adjacent to any existing residence or residential area, a buffer area of at least 30 feet in width from existing lot lines shall be maintained within the proposed development along any lot line that abuts an existing residential development area or in a conventionally platted residential map that has been filed with the Yates County Clerk.
- (3) The size of lots in a residential cluster development may vary from the normal requirements of the district, but no dimensional or area requirement of the district shall be reduced by more than 50%.
- (4) Single-family detached houses shall be subject to the following minimum setback requirements:
 - (a) Front yard: 25 feet.
 - (b) Rear yard: 25 feet.
 - (c) Side yard: 15 feet.
- (5) All residential cluster development plans shall be prepared with competent professional assistance and shall be consistent with the spirit and intent of this chapter.
- (6) In areas without public water and sewer, any reduction in lot size allowed under this article shall be dependent on approval of water and sewer provisions by the New York State Department of Health and the New York State Department of Environmental Conservation.
- (7) Land not contained in lots or road rights-of-way.
 - (a) All the land not contained in the lots or road rights-of-way, if provided, shall be contiguous or on either side of a watercourse and of such size and shape as to be usable for recreation, open space or agriculture.
 - (b) Such land shall either be deeded to the Town or be held in corporate ownership by the owners of lots within the development, and, if held in corporate ownership, the developer shall incorporate into the deeds of all property within the development a clause giving to the owners an interest in such open land which shall be used for recreation, open space or agricultural purposes. No structure save those incidental to the recreational, open space or agricultural use shall be permitted thereon.
 - (c) The open space lands shall be subject to taxation unless deeded to the Town. In the case of such tracts, the developer may petition the Town to take over the land to be used in perpetuity as open space.
- (8) Special designs.

- (a) In cases where a developer has proposed a special design for groups of dwellings and garages, the Town Planning Board, after inspecting the plans and elevations, may recommend approval of smaller minimum lot sizes than those specified in § 110-18, Density Control Schedule, provided that the sanitary systems are approved by the New York State Departments of Health and Environmental Conservation, that the gross density does not exceed that normally permitted within the zoning district in which the property is located, and the layout is not detrimental to the health, general welfare, and aesthetic character of the community.
- (9) Construction shall start within one year of the date of approval and shall be completed within a time frame agreed to by the developer and the Planning Board. If such time frame is not met by the developer within the agreed-upon time frame, the residential cluster development approval may be revoked by the Planning Board.
- (10) Notice and hearing.
 - (a) In the event that the organization established to own and maintain common property or a successor organization shall fail to maintain the common property in reasonable order and condition in accordance with the plan, the Town may serve written notice upon such organization or upon the residents and owners of the development setting forth the manner in which the organization has failed to maintain the common property in reasonable condition. Said notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof, and shall state the date and place of a hearing thereon which shall be held within 14 days of the notice.
 - (b) At such hearing, the Town may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within 30 days or any extension thereof, the Town, in order to preserve the taxable values of the properties within the development and to prevent the common property from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common property, call a public hearing upon notice to such organization or to the residents and owners of the development to be held by the Town, at which hearing such organization or the residents and owners of the development shall show causes why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year.
 - (c) If the Town shall determine that such organization is ready and able to maintain said common property in reasonable condition, it shall cease to maintain said common property at the end of said year. If the Town shall

determine such organization is not ready and able to maintain said common property in a reasonable condition, the Town may at its discretion continue to maintain said common property during the next succeeding year, subject to a similar hearing and determination in each year thereafter.

- (d) The cost of such maintenance by the Town shall be assessed at the same proportion as each unit's assessed value bears to the total assessment of the development.
- D. Review of residential cluster development. The applicant shall submit at successive stages a concept plan, preliminary plan, and final plan in accordance with the requirements of these subdivision regulations. The applicant at each stage shall provide the following information:
- (1) Proposed number of dwelling units and computation of overall residential density per gross acre.
 - (2) A tabulation of the total number of acres in the proposed project; the percentage designated for each use area.
 - (3) Proposed location and acreage for parks, playgrounds, natural watercourses and other open space.

ARTICLE IV

Development Standards for Subdivisions

The Planning Board, in considering an application for the subdivision of land, shall be guided by the following considerations and standards.

§ 98-19. General.

- A. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace.
- B. Land subject to flooding, and land deemed by the Planning Board to be otherwise uninhabitable, shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life, or property or aggravate the flood hazard on this or other property.
- C. Subdivisions shall conform to the streets and parks shown on the Official Map of the Town as may be adopted as it is developed and adopted by the Town Planning Board.
- D. Required improvements shall conform to Town specifications, on file at the Town Clerk's office.
- E. All major subdivisions will require review by Yates County Soil and Water Conservation District and the Agricultural and Farmland Protection Board.

§ 98-20. Streets; lots; easements; landscaping; floodplain; recreational space.

A. Streets. The following regulations shall govern the layout of streets:

- (1) Subdivisions shall be so designed as to provide a street pattern which is curvilinear in design. The design of the street pattern shall be based upon a local residential or minor street pattern connected to a residential collector street system.
- (2) The arrangement of streets in new subdivisions shall make provisions for the continuation of existing streets in adjoining areas, or their proper protection where adjoining land is not subdivided, at the same or greater width insofar as such may be deemed necessary for public requirements.
- (3) Local residential streets shall be designed so as to discourage through traffic.
- (4) All right-of-way street widths and street pavements shall be measured at right angles or radial to the center line of the street and shall not be less than the following:
 - (a) All streets: 50 feet.
 - (b) Pavement: 20 feet.
- (5) Whenever possible, streets should intersect at right angles, and in no case shall they intersect at angles of less than 60°.
- (6) The grades of streets shall be in accordance with specifications established by the Town Highway Superintendent and Planning Board Chair and such grades as submitted on subdivision plats shall be approved by him or her prior to final approval by the Planning Board.
- (7) All proposed subdivisions shall be designed to provide access to adjacent properties. When a proposed subdivision abuts an existing subdivision, the subdivider shall make every attempt to design the street system of the proposed subdivision to connect with dead-end or "stub" streets of the existing subdivision.
- (8) The following standards shall apply to cul-de-sac streets:
 - (a) A cul-de-sac should be located, if possible, so that it drains toward its entrance.
 - (b) Unless there is an expectation of extending the street through to the adjoining property, a cul-de-sac street should never be brought to the property boundary line, but should be placed so that the lots can back on the property line of the subdivision.
 - (c) There must be either a cul-de-sac or turnaround every 500 feet.
 - (d) All culs-de-sac shall have a turnaround at the end of the street which shall have a minimum right-of-way radius of 100 feet, the outer curb at the turnaround shall have a minimum radius of 75 feet, and minimum paving

width of 20 feet which creates a minimum turning radius of 55 feet at the inside curb.

- (9) If a dead-end street is of a temporary nature, a similar turnaround shall be provided as specified above, and provisions made for future extension of the street through to adjacent property and reversion of the excess right-of-way to the adjoining properties.
- (10) New half or partial streets shall not be permitted, except that wherever a proposed subdivision borders a half or partial street, the Town Planning Board may require that the other part of the street be platted in the proposed tract if it is found that such a requirement would increase the effectiveness of the circulation system in the area.
- (11) Multiple intersections involving a junction of more than two streets shall be prohibited.
- (12) Local residential streets and residential collector streets shall not intersect with arterial streets at a distance of less than 800 feet, measured from center line to center line, unless so indicated in the access management plan.
- (13) The minimum distance between center line offsets at street jogs shall comply with § 110-49 of the Town of Benton Zoning Ordinance.
- (14) No street shall have a name which will duplicate or so nearly duplicates as to be confused with the names of existing streets within the county. The continuation of an existing street shall have the same name.
- (15) The minimum radius of horizontal curves, minimum length of vertical curves, and minimum length of tangents between reverse curves, and the location of curb cuts on Town roads shall be in accordance with specifications established by the Town Highway Superintendent, and said items shall be approved by him or her prior to final approval of the subdivision plat by the Planning Board.
- (16) The Highway Superintendent shall approve of highway plans including road sides in writing, and shall have the right to inspect during construction of same.
- (17) Adequate street rights-of-way providing future points of access shall be provided as necessary where lots in the proposal are large enough to permit resubdivision or if a portion of the tract is not subdivided.
- (18) Where a subdivision abuts or contains an existing or proposed major traffic street, the Planning Board may require marginal access streets, rear service alleys, reverse frontage lots, or such other design elements as will provide protection for abutting properties, reduction in the number of intersections with the major street, and separation of local and through traffic.
- (19) Upon completion of a side, access, or service street abutting a lot with a driveway connection to a public street, the Town Planning Board may require a driveway or driveways to the side, access, or service street and closure of the driveway connection to the public street.

- (20) Planned access shall be provided for parcels which are the result of subdivisions occurring after the effective date of these regulations.
 - (21) Planned access shall address the provisions of this chapter, other state and local requirement, and the following:
 - (a) Parcels which are the result of a subdivision do not have the right of individual and exclusive access to state and local roads. The number of driveways or other connections shall be the minimum number necessary to provide reasonable access to these parcels, not the maximum available for the frontage.
 - (b) Access shall be provided to the road with the lowest functional classification serving the proposed development.
 - (c) Access should be internalized. Access to residential parcels within a subdivision should be obtained from an access road or an interior road.
 - (d) If the parcel which is proposed to be subdivided has frontage on two or more roads, internal parcels should share access to such roads.
 - (e) The access system for the proposed subdivision should be coordinated with existing, proposed, and planned streets outside the subdivision.
 - (f) Where potential subdivisions abut other undeveloped parcels, cross-access easements linking the internal circulation system to the abutting properties shall be provided, consistent with the § 110-49 of Town of Benton Zoning Ordinance.
 - (22) To the fullest extent possible, intersections with major traffic streets shall be located according to the adopted § 110-49 of the Benton Zoning Ordinance.
 - (23) Where a subdivision abuts or contains an existing street of inadequate right-of-way width, additional right-of-way width in conformance with Town Code § 110-49 of the Town of Benton Zoning Ordinance shall apply.
 - (24) Shared driveways, cross-access driveways, interconnected parking, and private roads constructed to provide access to parcels internal to a subdivision shall be recorded as an easement and shall constitute a covenant running with the land. Operation and maintenance agreements for these facilities should be recorded with the deed.
- B. Lots. The following regulations shall govern the layout of lots:
- (1) The lot size, width, depth, shape, orientation, and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.

- (2) All lots shown on the subdivision plat must conform to the minimum requirements of the Town of Benton Zoning Ordinance⁵ as to area and dimensions for the zone in which the subdivision is located.
- (3) Each lot shall front on a street built to specification of the Town of Benton.
- (4) Corner lots shall have extra width sufficient for maintenance of required building lines on both streets as required in the Town of Benton Zoning Ordinance.
- (5) Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra width line, and all setbacks shall be measured from such line.
- (6) Side lines of lots shall be at right angles to the center line of straight streets, and radial to the center line on curved streets.
- (7) Where there is a question as to the suitability of a lot or lots for their intended use due to factors such as rock formations, flood conditions, or similar circumstances, the Town Planning Board may, after reviewing pertinent information supplied by the subdivider or the subdivider's engineer, require the modification of such lots.
- (8) Block length and width or acreage within bounding roads shall be such as to accommodate the size of lots required in the area by the Town of Benton Zoning Ordinance⁶ and to provide for convenient access, circulation control and safety of street traffic, including both vehicular and pedestrian modes.
- (9) Blocks intended for commercial or industrial use shall be designed specifically for such purposes with adequate space set aside for off-street parking and delivery facilities.
- (10) Lot sizes and dimensions in excess of the minimum standards of the Zoning Law⁷ shall be required by the Planning Board should the Board find that the size and dimensions of lots as proposed endanger the health, safety, or welfare of the community or the environment.
- (11) Depth and width of parcels laid out or reserved for nonresidential use shall be sufficient to provide satisfactory space for off-street parking and unloading, or such other use as is proposed, consistent with the provisions of the Town Zoning Local Law.⁸
- (12) If remnants of land exist after subdividing, they shall be incorporated into existing or proposed lots or, if acceptable to the Town, proposed for dedication to the Town for public use where they are found to have value to the public.
- (13) All subdivisions shall contain a variety of lot sizes to avoid monotonous development. The Planning Board shall have the right to require the applicant to

5. Editor's Note: See Ch. 110, Zoning.

6. Editor's Note: See Ch. 110, Zoning.

7. Editor's Note: See Ch. 110, Zoning.

8. Editor's Note: See Ch. 110, Zoning.

change proposed lot sizes to avoid every lot in a subdivision being the minimum lot size or the same lot size. Refer to Town of Benton Zoning Law Density Control Schedule⁹ for minimum lot sizes.

- C. Easements. An easement shall be provided for all natural drainageways and all utility lines when such utility line or lines do not fall within a dedicated right-of-way. All easements shall be plotted on the preliminary plat and final subdivision plat. A clause shall be inserted in the deed of each lot affected by an easement indicating that the easement exists and its purpose. Except as further required in this section, easements shall have a minimum width of 20 feet. Where a subdivision is traversed by a drainageway, channel, or stream, a drainageway easement conforming substantially with the lines of such watercourse shall be provided. The easement shall be a minimum of 20 feet wide or such width as will be adequate to preserve natural drainage and provide sufficient width for maintenance. Where it is found that additional easement width is needed, such width shall be determined by the Town Planning Board in consultation with the Highway Superintendent and such other parties as the Planning Board deems appropriate. To the fullest extent possible, easements shall be centered on or adjacent to rear or side lot lines. All utility lines which are primarily intended to provide service to the lots within the subdivision shall be installed underground at a depth and at such locations as will minimize risk of interruption of services.
- D. Landscaping and ground cover.
- (1) All lot areas which are not covered by structures or paving shall be properly seeded by the developer.
 - (2) The developer shall provide a liberal and functional landscaping scheme for the entire subdivision. Each lot shall be provided with a minimum of two trees which shall be in addition to the street shade trees. This requirement may be waived by the Town Planning Board in wooded areas where the subdivider intends to maintain existing trees.
 - (3) Individual homeowners may, by written agreement with the subdivider and builder, seed and landscape their yards independently.
 - (4) When a proposed subdivision borders upon an existing commercial or industrial establishment, or any other use which, in the opinion of the Town Planning Board, may be visually detrimental to the tranquility of the future residents of the subdivision, the Town Planning Board may require a landscape screen to buffer the subdivision from the visually noncompatible use.
- E. Preservation of natural features.
- (1) Topsoil shall be removed and stockpiled during construction from all areas where soil is to be either cut or filled. Said stockpile is to be seeded if it is not reused as specified herein within 14 days. After construction all areas not built or paved upon shall be covered with topsoil applied to a depth of not less than six inches. All said covered areas shall be established by seeding or planting. At no time shall

9. Editor's Note: See § 110-18, Density Control Schedule.

topsoil be removed from the subdivision without written permission from the Town Planning Board.

- (2) To the fullest extent possible, all existing trees and shrubbery shall be conserved by the subdivider. Special consideration shall be given to the arrangement and ultimate improvement or development of the lots to this end. Precautions shall also be taken to protect existing trees and shrubbery during the process of grading the lots and roads. No tree with a circumference of 25 inches or more as measured three feet above the base of the trunk shall be removed unless such tree is within the right-of-way of a street or in a construction area as shown on the final subdivision plat.
 - (a) Where there is a question as to the desirability of removing a tree or group of trees which serve to add interest and variety to the proposed subdivision, in order to allow for use of the land for a lot or lots, the Town Planning Board may, after proper investigation, require modification of such lots.
 - (b) Where any land other than that included in public rights-of-way is to be dedicated to the public use, the developer shall not remove any trees from the site without written permission from the Town Planning Board.
 - (3) Where a subdivision is traversed by a natural lake, pond, or stream, the boundaries or alignment of said watercourse shall be preserved unless, in the opinion of the Town Planning Board, a change or realignment will enhance the development and beauty of the subdivision or the utilization of such features by the future residents of the subdivision. All proposed changes shall be in accordance with the New York State Stream Conservation Law in affect at the time of the approval of the final subdivision plat.
 - (4) Unique physical features such as historic landmarks sites, rock outcroppings, hilltop lookouts, desirable natural contours, and similar features shall be preserved if possible.
 - (5) The subdivider shall remove all stockpiles of dirt or any other material within six months of completion of each section or phase of the subdivision.
- F. Floodplain. If any portion of the land within the subdivision is subject to inundation or flood, as shown on the United States Department of Housing and Urban Development Flood Insurance Rate Map, such fact and portion shall be clearly indicated on the preliminary plat and the prominent note on each sheet of such map whereon any such portion shall be shown.
- G. Self-imposed restrictions. The owner may place restrictions on the development greater than those required by the Town of Benton Zoning Ordinance.¹⁰ Such restrictions, if any, shall be indicated on the final subdivision plat.
- H. Modification of standards. The Town Planning Board may modify the specified requirements of these regulations in any individual case where, in said Board's judgment,

10. Editor's Note: See Ch. 110, Zoning.

such modification is in the public interest, or will improve the general health, safety, or welfare of the affected public.

- I. Required recreation areas. Land may be reserved for recreation space in locations designated on the Comprehensive Plan or elsewhere where the Town Planning Board deems that such reservations would be appropriate. The area to be preserved shall possess suitable topography, general character, and adequate road access necessary for its recreational purposes.
- (1) Before the Planning Board may approve a subdivision plat containing residential units, such subdivision plat shall also show, when required by such Board, a park or parks suitably located for playground or other recreational purposes. Land for park playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular subdivision plat will contribute.
 - (2) In the event the Planning Board makes a finding pursuant to Subsection I(1) that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such subdivision plat, the Planning Board may require a sum of money in lieu thereof, in an amount to be established by the Town Board.
 - (3) Where the Planning Board requires land to be set aside for parks, playgrounds, or other recreational purposes, the Planning Board shall require that the site be graded, loamed, and seeded and may require it to be fenced.
 - (4) When an area for park, playground, or recreational purposes shall have been required on the subdivision plat, the approval of said subdivision plat shall not constitute an acceptance by the Town of such an area.
 - (5) Land set aside for recreation space shall be considered part of the permanent open space required for subdivisions.

ARTICLE V Improvements

§ 98-21. Improvements required.

The developer, before the approval of the subdivision plat, shall complete all improvements to the satisfaction of the Highway Superintendent, the Water and Sewer Superintendent, and any other inspector which may be appointed by the Planning Board or Town Board, or shall post a performance bond or other surety in a form acceptable to the Town Board which is sufficient to insure the satisfactory completion of the following required improvements. The Planning Board may grant requests for waivers, subject to appropriate conditions. All such

improvements shall comply with the standards and specifications for improvements for the Town of Benton.

- A. Streets. Shall be constructed, graded, and paved in accordance with the standards and specifications on file in § 110-49 of the Town of Benton Zoning Ordinance.
- B. Storm drains, culverts, catch basins, and other drainage structures shall be installed in accordance with the standards and specifications on file in the Town Zoning office and in accord with the final map approved by the Planning Board. All pipe shall comply with the requirements of the current New York State Highway Department specifications governing construction of these facilities. The location, length, depth, size, grade, and type of pipe shall be designated in the plans. If unusual conditions are discovered at the time of construction, which are not provided for on the plans, the Town Highway Superintendent, or other parties as designated by the Planning Board, shall determine the type and extent of construction required to overcome such conditions.
- C. Curbing and gutters shall be constructed on both sides of all streets shown on all proposed subdivision plats and in accord with the § 110-49 of the Town of Benton Zoning Ordinance.
- D. Driveway aprons shall be required between the curbing and the sidewalk and shall conform with § 110-49 of the Town of Benton Zoning Ordinance.
- E. Street signs shall be of metal and shall be installed at the intersection of all streets in conformity with Town specifications at the locations approved by the Planning Board.
- F. Street trees shall be planted in every subdivision at intervals from 40 feet to 60 feet along both sides of the street. Existing trees may be taken into consideration when determining the above. Street trees shall be a minimum of 10 feet from the right-of-way. The average trunk circumference shall be five inches. Such trees shall be of a species and at locations approved by the Planning Board. No trees shall be planted within 25 feet from an existing or proposed streetlight or street intersection.
- G. Shade trees. Other than within the road right-of-way, shade trees may be required when the Planning Board shall deem it necessary, taking into consideration the existing trees on the lots. The average trunk circumference shall be at least five inches. Such trees shall be of a species and at a location approved by the Planning Board.
- H. Sanitary sewers/waste treatment facilities. Sanitary sewers and waste treatment disposal facilities shall be required where a public sanitary sewer is reasonably accessible. The subdivider shall connect or provide for connection with such sanitary sewer and shall provide within the subdivision the sanitary sewer system required to make the sewer accessible to each lot in the subdivision. Sewer systems shall be approved by the New York State Department of Health, the Watershed Inspector, the Sewer and Water Superintendent, and other Town health officials where appropriate. The construction is subject to the supervision of the Watershed Inspector, the Town Sewer and Water Superintendent, or the appropriate health agencies as determined by the Planning Board.
- I. Public water connections. If available, the subdivider shall connect with a public water main and provide a water connection for each lot in accordance with Town standards,

procedures, and supervision. Fire hydrants shall be required and shall be installed in the location approved by the Town Sewer and Water Superintendent, the Fire Chief, and other appropriate entities as specified by the Planning Board, and in accord with the New York State Board of Fire Underwriters. The New York State Department of Health review will be required where specified by New York State statute or regulation.

- J. Block corner monuments. Permanent monuments shall be set at block corners and at intervals of approximately 500 feet, or such other distance as the Planning Board may determine appropriate, and their location shall be shown on the subdivision plat. Monuments shall also be set to mark all underground utilities. Iron pipes shall not be considered permanent monuments for the purpose of these regulations. Standards for monuments are on file in the Town Zoning office.
- K. Utilities. All utilities shall be installed underground.

ARTICLE VI

Specifications for Sketch Plans, Preliminary Plats, and Subdivision Plats

§ 98-22. Sketch plan for major and minor subdivisions.

- A. The sketch plan initially submitted to the Planning Board shall be based on Tax Map information or some similarly accurate base map at a scale (preferably not less than 200 feet to the inch) to enable the entire tract to be shown on one sheet. The sketch plan shall show the following information:
 - (1) The location of the portion which is to be subdivided in relation to the entire tract, and the distance to the nearest existing street intersection.
 - (2) All existing structures, wooded areas, streams, and other significant physical features, within the portion to be subdivided and within 200 feet thereof. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 10 feet.
 - (3) The name of the owner and of all adjoining property owners as disclosed by the most recent municipal tax records.
 - (4) A copy of the Tax Map showing adjoining properties.
 - (5) All the utilities available, and all streets which are either proposed, mapped or built.
 - (6) If applicable, the proposed pattern of lots (including lot width and depth), street layout, recreation areas, systems of drainage, sewerage, and water supply.
 - (7) All existing restrictions on the use of land including easements, covenants, and zoning lines.
 - (8) Before a land transfer is filed with the County Clerk, the Town Zoning Officer and Planning Board Chairman will review the proposed division and decide whether or

not a survey will be required. Criteria that may trigger a survey will include but are not limited to:

- (a) A steep slope greater than 12%.
 - (b) A lot size less than 20 acres.
 - (c) A buildable lot where there is a question about lot lines.
 - (d) A building lot that is not approved for construction.
- B. The Zoning Officer and the Planning Board Chairman may require that the proposed division be brought before the Planning Board for review. The applicant has a right to appeal any decision by the Zoning Officer and Planning Board Chairman.

§ 98-23. Preliminary plats for major subdivisions.

Preliminary plats submitted to the Planning Board shall be drawn to scale of not more than one inch equal to 100 feet, and shall show the following information:

- A. The location of the property with respect to surrounding property and streets. There shall also be included a key map at a scale of one inch equals 500 feet showing all streets, streams, and property within 1,500 feet of the applicant's property. All property held by the applicant within 2,000 feet must also be identified.
- B. The location and approximate dimensions of all existing property lines (including the entire area proposed to be subdivided and the remainder of the tract owned by the current owner of record or the subdivider).
- C. All pertinent features, such as existing structures, streets, railroads, water bodies, streams, swamps, and large trees, that may influence the design of the subdivision and topography at a contour interval of not more than five feet.
- D. The approximate location, dimensions, and area of all proposed and/or existing lots.
- E. The names of all property owners of record, or the names of developments within 500 feet of the proposed subdivision.
- F. 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. Further, the name of the land surveyor, engineer, or landscape architect will be added if required.
- G. The date, source of the north point, and scale.
- H. Acreage of the tract to be subdivided to the nearest tenth of an acre.
- I. Proposed provision of water supply, fire protection, disposal of sanitary waste, and stormwater drainage.
- J. The application deadline date for submission of materials for the review of the preliminary subdivision plat by the Planning Board.

- K. The approximate location of any proposed buildings.
- L. The location of the required setback lines for principal structures as delineated in the Town's Zoning Ordinance.¹¹
- M. The approximate location of the sewage disposal system, and the results of a percolation test conducted within such area.
- N. Provision of street signs.
- O. Each block shall be numbered and the lots within each block shall be numbered consecutively in accordance with the procedure established by the Town. The total number of residential lots shall be noted on the plat.
- P. The approximate location and dimensions of all property proposed to be set aside for playground or park use.
- Q. The location, width, and approximate grade of all proposed streets. Approximate elevations shall be shown at the beginning and end of each street, at street intersections, and at all points where there is a decided change in the slope or direction of the street. Profiles of all proposed streets shall be provided at a scale of not more than one inch equal to 100 feet.

§ 98-24. Additional information required.

In its review of the sketch plan or preliminary plan, the Planning Board may require additional information it deems important to the design of a particular subdivision in order to better provide for the health, safety and welfare of both the present and future inhabitants of the Town.

§ 98-25. Final subdivision plat for major subdivisions.

- A. All subdivision plats shall bear the stamp and signature of a New York State licensed land surveyor, engineer, or landscape architect.
- B. All subdivision plats shall contain the information as required for a preliminary plat as defined herein.
- C. Major subdivision plats shall be accompanied by separate construction detail sheets, and both shall be submitted to the Planning Board for approval as follows:
 - (1) Drawing, scale and size of plat. The subdivision plat and construction detail sheets shall be clearly and legibly drawn. In areas zoned for lots of a minimum permitted size of 20,000 square feet or more, maps and profiles shall be at a scale of one inch equals 100 feet. In areas zoned for minimum allowable lot sizes of less than 20,000 square feet, maps and profiles shall be at a scale of one inch equals 50 feet. Maps shall be on uniform size sheets in accordance with the applicable New York

11. Editor's Note: See Ch. 110, Zoning.

State statutes. Whenever any project is of such size that more than one sheet is required, an index map on the same size sheet shall accompany these sheets. The construction detail sheets shall show all improvements as required in § 98-26 below.

- (2) Information to be shown on plat:
 - (a) Proposed subdivision name or identifying title which shall not duplicate or too closely approximate that of any other development in the Town.
 - (b) Locations, names and widths of existing streets, highways and easements, building lines, parks, and other public properties.
 - (c) Locations and widths of all streets and sidewalks, together with names of streets, and location, dimensions, and status of all easements proposed by the subdivider.
 - (d) Lot areas in square feet.
 - (e) Lot lines with accurate dimensions and bearings of angles.
 - (f) Sufficient information to readily determine the location, bearing, and length of all lines, and to reproduce such lines upon the ground.
 - (g) Radii of all curves and lengths or arcs.
 - (h) Location, material and approximate size of all monuments.
 - (i) The accurate outline of all property which is offered, or to be offered, for dedication for public use, with the purpose indicated thereon, and of all property that is proposed to be reserved by deed covenant or by a homeowners' association for the common use of the property owners of the subdivision.
 - (j) Any additional information which the Planning Board shall direct to protect the public health, safety, and welfare.

§ 98-26. Construction detail sheets.

Construction detail sheets shall show the following information:

- A. 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, in both directions, shall be shown. All elevations must be referred to established United States government or approved local bench marks, where they exist within 1/2 mile of the boundary of the subdivision.
- B. Any other information which the Planning Board, in its review of the sketch plan, preliminary plan or subdivision plat, may have deemed of importance in the design and

review of a particular subdivision in order to better provide for the health, safety, and welfare of both present and future inhabitants of the Town.

- C. The Planning Board may require, where steep slopes exist, that present and proposed elevations of all proposed streets shall be shown every 100 feet at five points on a line drawn at right angles or, if on a curve, radial to the center line of the proposed street. Said five elevation points shall be at the center line of the street, each property line, and points 30 feet inside each property line abutting the street.
- D. Plans and profiles showing the location and a typical section of street pavements, including curbs and gutters, sidewalks, manholes, and catch basins; the location of street trees, streetlighting standards and street signs; the location, size and invert elevations of existing and proposed sanitary sewers, stormwater drains, and fire hydrants; and the exact location and size of all water, gas, electric, or other underground utilities of structures.
- E. All erosion control devices as required by the Town of Benton Zoning Law,¹² Yates County Soil and Water Conservation District and New York State Department of Conservation Law.

§ 98-27. Certificates and bonds.

In addition to the subdivision plat and other requirements as described above, the following shall also be presented to the Planning Board:

- A. A certificate that there are no tax liens on the property being subdivided.
- B. A performance bond or other survey instrument in a form acceptable to the Town Board in such amount as is acceptable to the Town Board as necessary to complete all street and utility improvements.

§ 98-28. Approvals needed.

Before approved plans can be signed by the Chairperson or Acting Chairperson of the Planning Board as being approved, the following approvals shall be required where applicable:

- A. All proposed curb cuts onto Town roads, all proposed streets and intersections shall be subject to the approval of the Town Highway Superintendent.
- B. All proposed municipal water and sewer hookups shall be approved by the Water and Sewer Superintendent where applicable.
- C. All extensions to existing municipal water and sewer mains and hookups therein shall be approved by the New York State Department of Health.
- D. All wastewater disposal systems shall be approved by the Town of Benton Watershed Inspector.

12. Editor's Note: See Ch. 110, Zoning.

- E. All proposed curb cuts onto county roads shall be subject to the approval of the County Highway Superintendent.
- F. All proposed curb cuts onto state highways shall be subject to the approval of the New York State Department of Transportation.
- G. All wastewater disposal systems shall be approved by the Town of Benton Watershed Inspector.

Chapter 100

TAXATION

ARTICLE I Senior Citizens Exemption

- § 100-1. Exemption granted.
- § 100-2. Statutory provisions to be in effect; no denial of exemption in certain instances.
- § 100-3. Limitations on exemption.

ARTICLE II Alternative Veterans Exemption

- § 100-4. Exemption increased.
- § 100-5. When effective.

ARTICLE III Exemption for Solar, Wind or Farm Waste Energy Systems

- § 100-6. Exemption not applicable.

ARTICLE IV Exemption for Cold War Veterans

- § 100-7. Cold War veteran exemption granted; limits.
- § 100-8. Exemption for disabled veterans.

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

ARTICLE I Senior Citizens Exemption [Adopted 4-10-1989 by L.L. No. 1-1989]

§ 100-1. Exemption granted.

The exemption from taxation of real property authorized by § 467 of the Real Property Tax Law as to real property owned by persons 65 years of age or over is and shall be effective as to real property located in the Town of Benton.

§ 100-2. Statutory provisions to be in effect; no denial of exemption in certain instances. [Amended 2-12-2001 by L.L. No. 1-2001]

- A. The terms and conditions of § 467 of the Real Property Tax Law shall be in effect in the Town of Benton.
- B. Any person otherwise qualifying under § 467 of the Real Property Tax Law, as amended, shall not be denied the exemption under § 467 of the Real Property Tax Law if he or she becomes 65 years of age after the appropriate taxable status date and/or before December 31 of the same year.

§ 100-3. Limitations on exemption. [Amended 4-9-1990 by L.L. No. 1-1990; 4-11-1994 by L.L. No. 1-1994; 11-12-2008 by L.L. No. 3-2008; 2-11-2009 by L.L. No. 2-2009; 2-10-2016 by L.L. No. 1-2016; 10-11-2023 by L.L. No. 4-2023]

A. In accordance with § 467 of the Real Property Tax Law, real property owned by persons aged 65 years or older will be exempt from taxation to the extent shown below as determined by the owner or owners' corresponding annual income:

Annual Income	Reduction
\$0 to \$20,000	50%
\$20,000.01 to \$20,999.99	45%
\$21,000 to \$21,999.99	40%
\$22,000 to \$22,999.99	35%
\$23,000 to \$23,899.99	30%
\$23,900 to \$24,799.99	25%
\$24,800 to \$25,699.99	20%
\$25,700 to \$26,599.99	15%
\$26,600 to \$27,499.99	10%
\$27,500 to \$28,399.99	5%
\$28,400 or more	0%

B. These increased limits shall apply to the 2024 assessment roll.

ARTICLE II

**Alternative Veterans Exemption
[Adopted 11-8-1995 by L.L. No. 1-1995]**

§ 100-4. Exemption increased. [Amended 11-12-2008 by L.L. No. 3-2008; 1-11-2023 by L.L. No. 2-2023]

Pursuant to Real Property Tax Law § 458-a(2)(d)(ii), the exemptions from real property taxes for veterans provided by Paragraphs (a), (b) and (c) of Subdivision 2(d)(ii) of § 458-a are hereby changed to \$24,000, \$16,000, and \$80,000, respectively.

§ 100-5. When effective. [Amended 1-11-2023 by L.L. No. 2-2023]

This article shall take effect upon its filing with the Secretary of State, but, pursuant to Real Property Tax Law § 458-a, the exemption shall not be available until the 2024 tax year (2023 assessment roll).

ARTICLE III

**Exemption for Solar, Wind or Farm Waste Energy Systems
[Adopted 12-10-2014 by L.L. No. 2-2014]****§ 100-6. Exemption not applicable.**

The exemption from real estate taxation granted by the provisions of Real Property Tax Law § 487 for any solar or wind energy systems and for any farm waste energy system whose construction began subsequent to the effective date of this article, shall not be applicable within the jurisdiction of the Town of Benton.

ARTICLE IV

**Exemption for Cold War Veterans
[Adopted 1-11-2023 by L.L. No. 1-2023]****§ 100-7. Cold War veteran exemption granted; limits.**

- A. Pursuant to Subsection 2(a) of § 458-b of the New York State Real Property Tax Law, the Town of Benton hereby adopts the qualifying residential real property exemption under Subsection 2(a)(i) of § 458-b of the New York State Real Property Tax Law, that is, an exemption in the amount of 10% of the assessed value of such property, provided, however, that such exemption, as permitted by Subsection 2(c)(iii), shall not exceed \$4,000 or the product of \$4,000 multiplied by the latest state equalization rate of such property's assessing unit, such exemption to be subject to the definitions, limitations and requirements of § 458-b.
- B. Pursuant to Subsection 2(c)(iii) of § 458-b of the New York State Real Property Tax Law, the exemption authorized shall apply to qualifying owners of qualifying real property for as long as they remain qualifying owners, without regard to the ten-year limitation otherwise established by Subsection 2(c)(iii) of § 458-b of the New York State Real Property Tax Law.

§ 100-8. Exemption for disabled veterans.

Pursuant to Subsection 2(b) of § 458-b of the New York State Real Property Tax Law, the Town of Benton hereby adopts the qualifying residential real property exemption under Subsection 2(b) of § 458-b of the New York State Real Property Tax Law, that is, where the Cold War veteran received a compensation rating from the United States Veterans Affairs or from the United States Department of Defense because of a service-connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property multiplied by 50% of the Cold War veteran's disability rating; provided, however, that such exemption, as permitted by Subdivision 2(c)(iii), shall not exceed \$20,000 or the product of \$20,000 multiplied by the latest state equalization rate of such property's assessing unit, such exemption to be subject to the definitions, limitations and requirements of § 458-b.

Chapter 104

WASTEWATER

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| <p>§ 104-1. Intent and purpose.</p> <p>§ 104-2. Applicability.</p> <p>§ 104-3. Short title.</p> <p>§ 104-4. Validity.</p> <p>§ 104-5. Management and implementation.</p> <p>§ 104-6. Disposal of wastewater.</p> <p>§ 104-7. Water quality protection zones.</p> <p>§ 104-8. Wastewater systems inspection.</p> | <p>§ 104-9. Permits.</p> <p>§ 104-10. Property owner responsibilities.</p> <p>§ 104-11. Notice of noncompliance.</p> <p>§ 104-12. Notice of violation.</p> <p>§ 104-13. Appearance tickets.</p> <p>§ 104-14. Penalties for offenses; fines.</p> <p>§ 104-15. Appeals.</p> <p>§ 104-16. Definitions.</p> |
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[Adopted by the Town Board of the Town of Benton 4-16-2024 by L.L. No. 1-2024. Amendments noted where applicable.]

§ 104-1. Intent and purpose.

The purpose of this chapter is to preserve and protect the water quality of Keuka and Seneca Lakes and all other surface and groundwater resources in the Town of Benton. This chapter is established to protect public health by ensuring adequate performance of existing wastewater treatment systems and by optimizing the effectiveness of new systems at removing nutrients and pathogens from wastewater.

§ 104-2. Applicability.

- A. The provisions of this chapter shall be in effect throughout the Town of Benton and apply to all wastewater treatment systems not subject to continuous licensing by the New York State Department of Environmental Conservation (NYSDEC) or the New York State Department of Health (NYSDOH).
- B. New and replacement residential wastewater systems shall be governed by Appendix 75A, a compilation of codes, rules, and regulations of the State of New York Title 10, Department of Health, Chapter II, Part 75, Standards for Individual Water Supply and Individual Sewage Treatment Systems.
- C. New and replacement commercial or institutional wastewater systems shall be governed according to the current New York State Department of Conservation guidelines Standards for Wastewater Treatment Works-Institutional and Commercial Sewage Facilities.

§ 104-3. Short title.

This chapter shall be known as the "Town of Benton Wastewater Law."

§ 104-4. Validity.

If any section, paragraph, or provision of this chapter shall be judge invalid or held unconstitutional, the same shall not affect the validity of this chapter as a whole or any part or provision of this chapter other than the part determined to be invalid or unconstitutional.

§ 104-5. Management and implementation.

The wastewater inspector shall be certified by attending training provided by New York State On-Site Wastewater Treatment Training Network (OTN). In administering this chapter, the Watershed Inspector shall follow the policies and procedures defined in the Town of Benton Wastewater Treatment Systems and Procedures.

§ 104-6. Disposal of wastewater.

- A. Wastewater from any structure in an established sewer district shall be discharged directly into public wastewater disposal systems. If no public wastewater disposal is available, residential, commercial, or institutional wastewater disposal must be treated by a wastewater treatment system inspected and approved by Town of Benton Watershed Inspector.
- B. No wastewater shall be deposited or allowed to escape into any water body.
- C. No wastewater shall be deposited on or allowed to escape to the surface of the ground without approval of the NYSDEC.

§ 104-7. Water quality protection zones.

Two zones shall be established within the Town of Benton to protect water quality and public health and safety. Zone 1, or the "critical water protection zone," shall include all land within a distance of 200 feet from the Seneca Lake mean high water mark or a of a NYSDEC Classified A, B, or C steam. Zone 2 shall include all other land in the Town of Benton.

§ 104-8. Wastewater systems inspection.

All wastewater treatment systems in the Town of Benton not subject to continuing licensing per § 104-2 shall be inspected by the Watershed Inspector as indicated below:

- A. Types of inspection.
 - (1) Basic inspection. A basic wastewater treatment inspection will assess the condition and operation of all tanks and the surface condition of the soil absorption system, and determine number of bedrooms and bedroom equivalent, appraise internal plumbing, and its customary use. For the purpose of this chapter, a bedroom is a room used primarily for sleeping. (See Town of Benton Wastewater Treatment Systems Policies and Procedures for specific inspection requirements.)

- (2) Comprehensive inspection. A comprehensive inspection will include a basic inspection plus an inspection of the seepage pit, drop box, and/or distribution box. (See Town of Benton Wastewater Treatment Systems Policies and Procedure for specific inspection requirements.)

B. Inspection schedule.

- (1) Conveyance of real property. All wastewater treatment systems within the Town of Benton are subject to receiving a comprehensive inspection before a real property transfer. The conveyance of real property is the transfer of the title of real estate, in the form of a deed, or other legal instrument, filed in the office of the Yates County Clerk. Real property transfer inspections shall be valid for one year.
- (2) New or replacement wastewater treatment systems. All new or replacement wastewater treatment systems require a comprehensive inspection during construction. The required permit for installation, repair, or inspection shall include a clause allowing the Watershed Inspector free access to the property for the purpose of inspecting the entire wastewater treatment system.
- (3) Increased water demand. A comprehensive inspection of the wastewater treatment system by the Watershed Inspector is required before adding a bedroom or otherwise increasing the water demand of a structure.
- (4) Change of property use. An inspection is required by the Watershed Inspector whenever there is a change in the use of a property that may impact its wastewater treatment system.
- (5) Repair of wastewater treatment system components. A basic inspection of the wastewater treatment system by the Watershed Inspector is required before the system components, other than the soil absorption system, are repaired or replaced. A comprehensive inspection is required for repairs to the soil absorption system.
- (6) Complaints or problems. A basic or comprehensive inspection may be required to determine the cause of a wastewater treatment system malfunction which has elicited reports or complaints.
- (7) Holding tanks. All holding tanks must be pumped and inspected annually.

§ 104-9. Permits.

A. Wastewater treatment system construction permit.

- (1) A wastewater treatment system construction permit is required for construction of a new or replacement wastewater treatment system. The permit shall be valid for one year from the date of issue.
- (2) The wastewater treatment system construction permit shall contain a clause that allows the Watershed Inspector free access to the property for the purpose of inspecting the watershed system.

- (3) The permit fee, as established by the Town of Benton Fees and Fines Schedule, must be paid before a wastewater treatment system construction permit is issued.
- B. Repair permit. A failed inspection report issued after a basic or comprehensive inspection resulting in a notice of noncompliance (§ 104-11) or a notice of violation (§ 104-12) shall serve as a permit to repair or replace system components other than soil absorption systems. The permit is good for one year from the date of issue.
- C. Permit to operate.
- (1) An inspection report completed by the Watershed Inspector certifying that a wastewater treatment system appears to be operating properly under the current use load shall constitute a permit to operate.
 - (2) No new, replacement or repaired wastewater treatment systems shall be placed in operation until a permit to operate has been issued by the Watershed Inspector.
 - (3) No guarantee is made or implied by the issuance of a permit to operate or a passing inspection report as to the future operation or condition of a wastewater treatment system.
 - (4) A permit to operate may be revoked if a public health hazard is identified or if system components have deteriorated to the point that the system no longer functions properly.

§ 104-10. Property owner responsibilities.

- A. Basic and comprehensive inspections. Upon receipt of an inspection notification from the Watershed Inspector, the property owner shall:
- (1) Facilitate the completion of a water treatment system inspection by the Watershed Inspector within the time frame stated on the notification.
 - (2) Retain the services of a NYSDEC licensed waste haul contractor and request that the contractor contact the Watershed Inspector to set an appointment to observe the pump-out of all septic tanks, holding tanks, and septic tank alternatives and to inspect the wastewater treatment system.
 - (3) Uncover septic tanks, holding tanks, pump tanks, septic tank alternatives, distribution boxes, drop boxes and seepage pits as requested in the inspection notification.
 - (4) Access to property for the purpose of inspecting the wastewater system. See § 104-9A(2).
- B. Real property transfer inspections [§ 104-8B(1)]. The property owner, or designated agent, shall:
- (1) Comply with all the requirements of § 104-10A(2).
 - (2) Schedule a comprehensive inspection by the Watershed Inspector at least 10 days before the closing date and pay the fee as prescribed by the Town of Benton Fees and Fines Schedule.

- (3) Before the transfer of property with an outstanding notice of noncompliance or notice of violation the property owner must:
 - (a) Bring the wastewater treatment system into compliance; or
 - (b) Present a letter of intent or a contract to repair from a contractor acceptable to the Watershed Inspector specifying the plan of work and time frame within which the work will be completed; or
 - (c) Obtain a wastewater treatment system construction permit.

C. Construction or repair inspection.

- (1) The Watershed Inspector shall be notified a minimum of 48 hours before construction begins and 48 hours before a requested inspection.
- (2) No element of the system shall be covered until inspected and approved by the Watershed Inspector.

§ 104-11. Notice of noncompliance.

If upon completion of a wastewater treatment system inspection, the Watershed Inspector determines that any part of a wastewater treatment system does not comply with the requirements of this chapter, but the system is otherwise functioning properly under current use load and prevents no risk to the public health or safety, a notice of noncompliance shall be delivered by hand or certified mail to the property owner. Such notice shall specify the components that do not comply with the requirements of this chapter and the action that is necessary to correct the noncompliance. The notice shall also advise the property owner that use of the system may continue under current use load. However, the system must be brought into compliance with this chapter before a property transfer.

§ 104-12. Notice of violation.

- A. A notice of violation shall be delivered by hand or by certified mail to the property owner if the property owner fails to schedule a wastewater treatment inspection within the mandated time or if the Watershed Inspector determines upon completion of an inspection that a component of the system does not comply with this chapter and that such noncompliance may imperil the public health and safety. Such notice shall specify:
 - (1) The specific section of the chapter being violated;
 - (2) The component(s) of the system that are not in compliance with the requirements of this chapter;
 - (3) The action that is necessary to correct the noncompliance; and
 - (4) The time frame within which the corrective action must be completed.
- B. For failure to schedule a required inspection or for a system failure that does not pose an imminent risk to public health and safety, the Watershed Inspector may prescribe a reasonable completion date for compliance or for repair not to exceed 180 days. For a

system failure that does pose an imminent risk, the Watershed Inspector shall require that repairs be completed within 72 hours or that use of the wastewater treatment system ceases until repairs are completed.

§ 104-13. Appearance tickets.

The Watershed Inspector is authorized to issue appearance tickets in order to enforce the provisions of this chapter.

§ 104-14. Penalties for offenses; fines.

- A. Failure to comply with a notice of violation shall be punishable by a fine as stated in the Benton Fees and Fines Schedule. Each day of noncompliance shall be considered a separate offence and shall be subject to additional penalty under the Benton Fees and Fines Schedule unless the violation is actively being remedied pursuant to a plan acceptable to the Watershed Inspector. The imposition of any fine or penalty shall not excuse a violation nor permit its continuance.
- B. If the Watershed Inspector determines that the risk to public health or safety is substantial and ongoing or the violation is blatant and/or intentional, the Watershed Inspector may seek an injunction or other relief including property condemnation. The Town of Benton may take other lawful action as necessary to remedy a violation.
- C. Should the responsible party fail to take timely corrective action and the Watershed Inspector determines that there is imminent danger to the public health or safety, the Town of Benton may take the necessary action to remedy a wastewater system problem and, in that event, seek recovery of all cost from the responsible party.
- D. If work on a wastewater system has begun without a permit, and the system has been covered, the work must be inspected, and a permit issued after construction has started has been obtained before work may continue.
- E. If work on a wastewater system has begun without a permit, and the system has been covered, the system must be uncovered at the owner's expense, the work must be inspected and a permit issued after construction has started has been obtained before work may continue.

§ 104-15. Appeals.

- A. The Town Board shall hear and decide appeals of any order, requirement, decision, or determination made by the Watershed Inspector except those that pose an imminent risk to public health and safety. An appeal may be made by any aggrieved person and must be filed within 30 days of the Watershed Inspector's decision.
- B. All appeals to the Town Board shall be in writing from the Watershed Inspector. Every appeal shall refer to the specific provision of this chapter or policy that is in contention, the interpretation that is claimed and/or the reasons the Watershed Inspector's decision should be reversed or modified.

- C. All appeals must be submitted to the Town Clerk who will date stamp and date the appeal as being formally submitted to the Town.
- D. The Watershed Inspector shall transmit all supporting documentation to the Town Board within five business days of submission of the appeal.
- E. The Town Board shall hold a hearing on and within 30 days from receipt of the appeal application. The appellant, or the appellant's representative, shall be notified of the hearing date and must attend the hearing in order to provide additional information to the Board as it may require. The Watershed Inspector shall attend the hearing in order to provide additional information to the Board as needed.
- F. Unless additional information is required to make a decision, the Town Board shall render a decision within 30 days following the hearing on the appeal. If more information, or additional expertise is needed to make a decision, a second appeal hearing shall be scheduled within 30 days.
- G. The Town Clerk shall notify the applicant in writing of the decision on the appeal of the Town Board within five business days.

§ 104-16. Definitions.

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

AS BUILTS — Revised drawings that reflect all changes made in the construction process showing the exact dimensions, geometry and location of all elements of the completed work.

BEDROOM — Any room or space used for sleeping purposes. (The final decision regarding whether a room shall be deemed a bedroom for system design purposes shall be by the Watershed Inspector.)

CONVEYANCE OF REAL PROPERTY — The transfer of the title of real estate, in the form of a deed or other legal instrument, filed in the Office of the Yates County Clerk, which involves none of the transferors of such deed or other legal instrument remaining in possession of such real estate.

DISTANCE TO DETERMINE — The shortest horizontal measure from any component of a wastewater system to the high water mark of Seneca Lake or the edge of a DEC classified A, B, or C stream.

GROUNDWATER — Subsurface water occupying the saturation zone from which wells and springs are fed.

HOLDING TANK — A large container in which liquid are temporarily held.

PUMP TANK — A tank that contains a pump.

SEPTIC TANK — A tank, typically underground, in which sewage is collected and allowed to decompose through bacterial activity.

SEWAGE — The combination of human and household waste with water, including the waste from a flush toilet, bath, sink, lavatory, dishwashing or laundry machine, or the waste carried from any other fixture, equipment or machine.

SOIL ABSORPTION SYSTEM (SAS) — An area to which wastewater is distributed for infiltration into the soil.

SOLIDS — Any non-liquid sewage as well as dirt, gravel and rocks.

WASTEWATER — Liquids containing sewage, gray water or other contamination of any kind in or from the drainage system or sewer of a domestic dwelling or any other structure used for commercial, recreational, agricultural, institutional, or industrial purposes.

WATER DEMAND — Theoretical water usage based on the building's design and the requirements of Appendix 75A.

WATERSHED INSPECTOR — The individual appointed by the Town Board responsible for administering this chapter.

Chapter 106

WATER

ARTICLE I Water Supply

- § 106-1. Legislative intent.
- § 106-2. Adoption of rules and regulations.
- § 106-3. Rules to be part of contract.
- § 106-4. Work to be done by or under the supervision of the Town.
- § 106-5. Agents of owner; liability.
- § 106-6. Application for service; payment of meter deposit and connection charge.
- § 106-7. Material of service pipe.
- § 106-8. Opening or closing of curb cock.
- § 106-9. Damage to water facilities.
- § 106-10. Responsibility for trenches; safety requirements.
- § 106-11. Maintenance of service pipe.
- § 106-12. Stop cock required.
- § 106-13. Entrance to premises by inspectors.
- § 106-14. Shutting off in case of construction, testing or repair.
- § 106-15. Changes in pressure.
- § 106-16. All service to be metered.
- § 106-17. Damage to meter.
- § 106-18. Access to meter and outside reader.
- § 106-19. Meter pits.
- § 106-20. Meters for building purposes.

- § 106-21. Water fees.
- § 106-22. Water bills.
- § 106-23. Abatements.
- § 106-24. Unpaid charges.
- § 106-25. Hydrant control and maintenance.
- § 106-26. Valve and curb cock control.
- § 106-27. Laying of service pipe.
- § 106-28. Sale of water.
- § 106-29. Connections between public and private systems.
- § 106-30. Discontinuation of service.
- § 106-31. Water service specifications.
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- § 106-41. Physical connections to comply with Sanitary Code.
- § 106-42. Penalties for offenses.

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

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 30. Zoning — See Ch. 110.
Floor damage prevention — See Ch. 35.

ARTICLE I
Water Supply
[Adopted 10-9-2000 by L.L. No. 2-2000]

§ 106-1. Legislative intent.

It is the purpose of this article to protect and enhance the public health and welfare of the Town of Benton by providing for rules and regulations governing the public water supply within the Town of Benton.

§ 106-2. Adoption of rules and regulations.

The Town Board of the Town of Benton may adopt such further rules and regulations as it may deem necessary or expedient in the implementation and administration of this article.

§ 106-3. Rules to be part of contract.

Every person who shall be supplied, or whose property shall be supplied with water by any Town of Benton Water District or extension shall be deemed to have accepted and approved the rules of the Town of Benton governing and regulating the supplying of water, and the same shall constitute a part of the contract between such person and the Town of Benton Water District or extension. Wherever the word “consumer” shall be used in the rules and regulations, it shall mean the owner or owners of the premises. The continuance of the consumer to take water after any amendment or change of these rules shall be deemed an acceptance of such amendment or change.

§ 106-4. Work to be done by or under the supervision of the Town.

- A. All service connections with the principle mains and service pipes from said principle mains to approximately two feet from the lot line or not more than 100 feet from the main tap or edge of road right-of-way, whichever distance is shortest, including tapping of main, corporation cock, CTS plastic pipe, curb cock and box for same, shall be put in and installed only by properly authorized persons acting under the direction of the Town of Benton or its agent at the expense of the consumer. If the tap is not within two feet of the lot line, the Town of Benton will provide necessary easements.
- B. All connections from curb cock to the meter location shall be at the owner’s expense, under the supervision of the Town of Benton or its agent, and all installations shall be subject to approval by the Town of Benton or its agent, before water shall be turned on.

§ 106-5. Agents of owner; liability.

The plumber or any other person designated and employed by the owner of the premises will be considered the agent of such owner while employed in the execution of the work of introducing water into such premises and in no sense as the agent of the Water District or the Town of Benton. The Town of Benton will not be responsible for the acts of such persons.

§ 106-6. Application for service; payment of meter deposit and connection charge.

- A. Every person desiring a supply of water through the principle water mains must make application at the Town of Benton offices for a service pipe and connection with the main. Such application shall be made in writing upon a form furnished by said Town of Benton and must be signed by the owner of the property or the owner's duly authorized agent. The application for water service form must be received by the Town Clerk and later reviewed for approval/disapproval by the Water Superintendent who may include on this form special provisions as deemed applicable.
- B. The meter deposit and connection charge must be paid immediately following an applicant's approval prior to an installation.

§ 106-7. Material of service pipe.

The service pipe between the curb and meter, wherever located, shall be pipe approved by the Town of Benton. For household use the pipe shall be one-inch CTS polyethylene tubing with a blue stripe, minimum 200 P.S.I. Larger pipe (maximum two inches) may be used with Town of Benton approval for larger users.

§ 106-8. Opening or closing of curb cock.

The curb cock controlling any service shall not be opened by any person after connecting said service at the curb, so that water may be supplied to such premises by said service, unless the service pipe installation has been approved by the Town of Benton or its agent and the meter installation completed. In case of building operations, special permission may be given by the Town Board or Superintendent of Water Department under such conditions as they may prescribe. The curb cock controlling any water service shall not be opened or closed by any person other than the Water Superintendent or his/her agent.

§ 106-9. Damage to water facilities.

Any person, contractor, utility, public or private agency responsible for any damage to any main, pipe, hydrant or other water facility shall reimburse the Water District for such damage and for the loss of water and any/all damage caused by such escaping water.

§ 106-10. Responsibility for trenches; safety requirements.

In the case of any excavation for the introduction of water pipe or connection under authority of a permit from the Town of Benton, the owner will be held responsible for the trench

opening. Public safety and conveniences shall be duly regarded and conserved by the construction of such bridges across open trenches as may be required to insure safety to the public. Amber lights, barricades and all such other means of protection against accident must be provided. Before trenches are backfilled, materials and workmanship shall be inspected by the Town of Benton or its agent, and approved in writing.

§ 106-11. Maintenance of service pipe.

The owner of property into which water is introduced by a service pipe will be required to maintain to perfect order, at his own expense, the said service pipe from the corporation cock to the meter on or for delivering or supplying water for any purpose. In case such services and fixtures are not so kept in repair, the Town of Benton or its agent may cause to have made all necessary repairs and renewals or, parts thereof. The expense of such work and all materials and labor required shall be paid by the property owner. In case of a water leak, repairs must be made within seven days or sooner as determined by the Water Superintendent. If repairs are not made, repairs will be made by the Water District at the owner's expense.

§ 106-12. Stop cock required.

Immediately prior to the meter, a stop must be installed and shall be conveniently located in order to drain the meter, or in such other convenient place as the Water Superintendent may approve.

§ 106-13. Entrance to premises by inspectors.

The Water Superintendent or employees of the Water District, upon presentation of proper credentials, may enter upon any premises where water is being supplied by the Water District or upon any premises when application is made for a permit to connect plumbing with the water pipes, for the purpose of installing, reading, removing or repairing meters, or for inspecting the plumbing and fixtures of the water services. The inspector(s) will possess and present as proper credentials, appropriate photo identification.

§ 106-14. Shutting off in case of construction, testing or repair.

In the case of making or constructing new work, in making repairs or leakage tests, the right is reserved to shut off the water from any consumer without notice for as long a period as may be necessary. No Water District, its employees or the Town of Benton, shall be liable for any damage which may result to any person, property or premises as a result of shutting off the water from any main, or service, for any purpose whatsoever, even in cases where no notice is given.

§ 106-15. Changes in pressure.

No Water District or the Town of Benton shall be liable for any damage or loss of any kind to property or persons which may arise from or be caused by any change, either in increase or

decrease, in pressure of water supplies, from any cause whatsoever, including negligence on the part of the Water District, its agents, servants, or employees.

§ 106-16. All service to be metered.

All water furnished through service pipes, whether for residential, commercial or industrial use, shall be metered. No meters shall be set or removed or disturbed except by the Water Department. All meters shall be furnished and installed by the Water District, after payment of the meter deposit and the connection charge. The Water Superintendent shall approve the location of the meter.

§ 106-17. Damage to meter.

Any damage which the meter and component parts may sustain, resulting from the carelessness of the owner, his agent or tenant, or from neglect of either of them to properly secure and protect the same, including any damage that may result from allowing said meter to become frozen, or to be injured by hot water or steam getting back from a boiler or hot water tank, shall be paid to the Water District by the owner of the premises. It is required that a check valve be installed in the line immediately after the meter.

§ 106-18. Access to meter and outside reader.

Whenever a meter is placed in any building, the space occupied by the meter and the meter box shall, at all times be kept free from rubbish or obstructions of any kind. The owner or tenant shall provide ready and convenient access to the meter so that it may be frequently read and examined by agents of the Water District. An outside reader should be kept free of all obstructions as well.

§ 106-19. Meter pits.

- A. A service line in excess of 150 feet from the highway right-of-way will require a meter pit. Meter pits will also be required for all structures built on a concrete slab with unheated space below the first floor, any structure where the service line passes through unheated space, or any heated space less than four feet in height, along with all other structures as deemed necessary by the Water Superintendent. The above said meter pits must be purchased or approved through the Town of Benton and will be located at the curb stop near the highway right-of-way.
- B. A service line in excess of 150 feet will require a meter pit at the curb stop.

§ 106-20. Meters for building purposes.

Water meters for building purposes shall be set by the Water District at the expense of the contractor or person making such application. In case it is not practical to place meters for such building purposes, water may be supplied to the contractor or owner at a flat rate.

§ 106-21. Water fees.

Generally, all water consumed shall be recorded and paid for by meter registration and at rates to be fixed by the Town Board. Such fees may from time to time be changed as the Town Board may determine. A water fee schedule will be on file in the Town Clerk's Office which will include fees for water hook-up, turning water on and off, transmission fees, taking meters in and out, general water rates and other service fees as determined by the Town Board.

§ 106-22. Water bills.

Bills for metered water shall be payable quarterly by the property owner or at such period as may be set by the Town Board. In each instance, water bills, if not paid in 30 days, shall be increased 10% as a penalty for failure to pay promptly. Failure to receive a bill shall not act as a waiver of said penalty. In case of the inability to read a meter, an estimated bill will be submitted to the consumer.

§ 106-23. Abatements.

No abatement (lessening or stopping) of the charges for water shall be allowed on account of the vacancy of any premises supplied with water, unless the water supply is turned off by the Water District and the meter is removed. For such suspension of service there shall be a charge to be fixed by resolution of the Town Board, which is on file in the Town Clerk's Office.

§ 106-24. Unpaid charges.

All charges for water, service pipe installation, repairs, damages caused by carelessness or neglect, penalties, etc., shall be made against the premises supplied, and the owner of the premises shall be held responsible. Such charges, if not paid, shall become a lien on the property. All such unpaid charges shall be added to the next general tax against the property. Failure to pay within 90 days may result in the discontinuation of service.

§ 106-25. Hydrant control and maintenance.

- A. All street or road fire hydrants or hydrants for private fire protection from unrestricted service lines are under the control of the Water District. No person, except an authorized agent or employee of the Water District, or a person permitted by the Town Board to take water from a hydrant, shall operate, use or disturb any hydrant, or any part thereof, under any circumstances whatsoever, except fire companies to control, prevent or extinguish fires.
- B. In case any damage to a street or road hydrant is done by any person or his agent, he/she shall pay such damages and all costs and expenses that may be incurred on demand to the Water District, including the loss of water.

§ 106-26. Valve and curb cock control.

No person except a duly authorized representative of the Water District shall open, close or in any way interfere with any valve or gate in any water main or pipe. Any person who has disturbed or displaced a valve box or who has covered a valve box with dirt, paving, plank or other material shall immediately replace the valve box or remove the obstruction, at the owner's expense.

§ 106-27. Laying of service pipe.

A joint-free service pipe with No. 12 gauge solid copper tracer will be required to be laid not less than four feet six inches below the surface of the earth at any point to the inside of the foundation wall of the building into which the water service is introduced.

§ 106-28. Sale of water.

No consumer within the Water District shall sell water to anyone for any purpose whatsoever, unless a specific permit is issued by the Town Board.

§ 106-29. Connections between public and private systems.

No connection between a public and private water system is allowable.

§ 106-30. Discontinuation of service.

It is understood and agreed that failure of the applicant to give written notice to have service discontinued will make the owner of the property liable for all water charges against said premises. A notice of discontinuance must be delivered to the office of the Town Clerk with all applicable fees.

§ 106-31. Water service specifications.

Water service specifications and information are to be provided by the Town of Benton Water Superintendent.

§ 106-32. Out-of-district users.

Out-of-district users will be subject to special provisions of an out-of-district water agreement as established by the Town Board as well as this article.

§ 106-33. Fire protection connections.

All fire protection connections with the principle mains shall be installed only by authorized persons acting under the direction of the Town of Benton or its agent after detail plans and water flow information have been approved by the Town Engineer. All costs shall be paid by the consumer.

§ 106-34. Cross-connections.

- A. It shall be unlawful for the owners of property or the users of water or both to introduce or permit the introduction into the water supply system of pollution or contamination of any kind. Whenever cross-connection to another water supply into the system is found or whenever any other condition is found which presents the possibility of contamination or pollution, the water supply to such premises and or other premises from which cross-connection is made shall be discontinued immediately until the cross-connection is eliminated or the condition remedied. The Water Superintendent of the Water District may permit or require a backflow preventer of a pattern and design which the New York State Department of Health approves as reasonably adequate to prevent contamination, if the Water Superintendent determines that a complete physical separation from the water system is not practicable or necessary, or that adequate inspection for cross-connection cannot readily be made, or that such backflow preventer is necessary because of existing or possible backflow resulting from special conditions, use or equipment.
- B. Any corrective measure, disconnection or change on private property shall be at the sole expense of the person in control of such property. Any changes required in the water system outside the property or between the meter and the supply line or distribution system and any charges for cutoff or disconnection shall be added to the charges for water against the premises necessitating such expenditure.
- C. All physical connections which may constitute potential cross-connections are prohibited unless constructed, maintained and operated in accordance with the provisions of the New York State Sanitary Code, Chapter 1, Part 5, Section 5-1.31.

§ 106-35. Penalties for offenses.

Any person, firm or corporation violating any provision of this article, shall, upon conviction, be punishable by a fine not to exceed \$250. Each week that a violation is permitted to continue shall constitute a separate offense.

§ 106-36. Higher standard to prevail.

In any case where a provision of this article is found to be in conflict with a provision of any ordinance or local law, or with a provision of any statute, rule, regulation, or order of the State of New York, the provision which established the higher standard for the promotion of the health, welfare and safety of the citizens of the municipality shall prevail. In any case where a provision of this article is found to be in conflict with a provision of any other ordinance or local law existing on the effective date of this article, which established a lower standard for the promotion of the health, welfare and safety of the citizens of the municipality, the provisions of this article law shall be deemed to prevail.

§ 106-37. Effect on prior actions.

The adoption of this article shall not affect or impair any act done, offense committed or right accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the time this article takes effect.

ARTICLE II

Cross Connections

[Adopted 9-13-2004 by L.L. No. 1-2004¹]

§ 106-38. Prohibitions.

It shall be unlawful for the owners of property or the users of water or both to introduce or permit the introduction into the water supply system of pollution or contamination of any kind. Whenever cross connection to other water supply into the system is found or whenever any other condition is found which presents the possibility of contamination or pollution, the water supply to such premises and/or other premises from which cross connection is made shall be discontinued immediately until the cross connection is eliminated or the condition remedied.

§ 106-39. Backflow preventers permitted under certain conditions.

The Water Superintendent of the Water Districts may permit or require a backflow preventer of pattern and design which the New York State Department of Health approves as reasonably adequate to prevent contamination, if the Water Superintendent determines that a complete physical separation from the water system is not practicable or necessary, or that adequate inspection for cross connection cannot readily be made, or that such backflow preventer is necessary because of existing or possible backflow resulting from special conditions, use or equipment.

§ 106-40. Costs for corrective measures, disconnections or changes.

Any corrective measure, disconnection or change on private property shall be at the sole expense of the person in control of such property. Any changes required in the water system outside the property or between the meter and the supply line or distribution system and any charges for cut off or disconnection shall be added to the charges for water against the premises necessitating such expenditure.

§ 106-41. Physical connections to comply with Sanitary Code.

All physical connections which may constitute potential cross connections are prohibited unless constructed, maintained and operated in accordance with the provisions of the New York State Sanitary Code, Chapter 1, Part 5, Section 5-1.31.

1. Editor's Note: This local law was originally adopted as Ch. 16 but was renumbered to maintain the organization of the Code.

§ 106-42. Penalties for offenses.

Any person, firm or corporation violating any provision of this article, shall, upon conviction, be punishable by a fine not to exceed \$250. Each week that a violation is permitted to continue shall constitute a separate offense.

Chapter 110

ZONING

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[HISTORY: Adopted by the Town Board of the Town of Benton 1-16-1992 by L.L. No. 1-1992. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 30.

Flood damage prevention — See Ch. 35.

ARTICLE I

Title, Purpose and Authority**§ 110-1. Title; legislative intent.**

This chapter shall be known as the "Town of Benton Zoning Law." It has been enacted by the Town Board of the Town of Benton pursuant to Article 16 of the Town Law of the State of New York which empowers the Town Board to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, building setbacks and other open space, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and to establish penalties for the violation of such regulations.

§ 110-2. Site plan review authorized.

The Town Board under § 274-a of the Town Law and Article 3 of the Municipal Home Rule Law of the State of New York hereby authorizes the Planning Board of the Town of Benton to review, approve, approve with modification or disapprove site plans prepared to specifications set forth in this chapter.

§ 110-3. Purpose and objectives.

The intent of this chapter is to encourage appropriate and orderly physical development and general welfare; classify, designate and regulate the location and use of buildings, structures, and land for agriculture, residential, commercial, industrial or other uses in appropriate places. Objectives of this chapter are to provide assurance of opportunities for effective utilization of land; provide adequate community and public utility facilities; provide workable relationships of land uses to the transportation system and lessen congestion on the roads; conserve and stabilize the value of property; provide adequate open space for light and air; provide desired levels of population density; and secure safety from fire, flood and other dangers.

§ 110-4. Consideration of other factors.

These regulations have been made with reasonable consideration, among other things, as to the physical character of land and its peculiar suitability for particular uses, and with a view to conserving and stabilizing the value of land and buildings and encouraging the most appropriate use of land throughout the Town. This chapter has been developed in accordance with the Comprehensive Plan of the Town of Benton.

ARTICLE II
Interpretation

§ 110-5. Word usage and interpretation; conflict with other provisions.

- A. The following rules of construction of language shall apply to the text of this chapter:
- (1) Words used in the present tense include the future tense.
 - (2) Words used in the singular include the plural, and words used in the plural include the singular.
 - (3) Words used in the masculine form shall also include the feminine.
 - (4) The word "lot" includes the word "plot" or "parcel."
 - (5) The word "person" includes an individual, firm or corporation.
 - (6) The word "shall" is always mandatory; the word "may" is always permissive.
 - (7) The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."
 - (8) A "building" or "structure" includes any part thereof.
 - (9) The phrases "to erect," "to construct," and "to build" a building, each have the same meaning and include to excavate for a building and to relocate a building by moving it from one location to another.
- B. This chapter shall be interpreted in such a way wherever possible so that the meaning of the words and phrases and sections herein shall make them valid and legal in their effect.
- C. Whenever the requirements of this chapter are at variance with the requirements of other lawfully adopted rules, regulations or laws, the law with the most restrictive provisions or those imposing the higher standards shall govern.

§ 110-6. Definitions.

- A. The following words or phrases as used in this chapter are defined as follows:

ACCESSORY BUILDING — A building detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building.

ACCESSORY USE — A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

ADULT USE AND ENTERTAINMENT ESTABLISHMENT — A public or private establishment, or any part thereof, which presents any or the following entertainment, exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the

servers or entertainers wear pasties or G-strings or both; adult arcades, adult bookstores or adult video stores; adult cabarets; adult motels; adult motion-picture theaters; adult theaters; escort agencies; massage parlors; nude model studios and sexual encounter centers. Adult use and entertainment establishments customarily exclude minors by reason of age and include those businesses defined as follows: **[Added 6-8-2005 by L.L. No. 1-2005]**

- (1) **ADULT ARCADE** — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion-picture machines, projectors or other image-producing devices, which are regularly used to show films, motion pictures, videocassettes, slides or other photographic reproductions, are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.
- (2) **ADULT BOOKSTORE or ADULT VIDEO STORE:**
 - (a) A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business advertising to the sale or rental, for any form of consideration, of any one or more of the following:
 - [1] Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, videocassettes, digital video discs or video reproductions, slides, compact disks, computer software or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - [2] Instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.
 - (b) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental, for consideration, the specified materials which depict or describe specified sexual activities or specified anatomical areas. For purposes of this definition, "principal business purpose" shall mean 25% or more of any of the following:
 - [1] The number of different titles or kinds of such merchandise.
 - [2] The number of copies or pieces of such merchandise.
 - [3] The amount of floor space devoted to the sale and/or display of such merchandise.

- [4] The amount of advertising which is devoted to such merchandise, either in print or broadcast media.
- (3) ADULT CABARET — A nightclub, bar, nonalcoholic or juice bar, restaurant or similar commercial establishment which regularly features:
- (a) Persons who appear nude or in a state of seminudity; or
 - (b) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
 - (c) Films, motion pictures, videocassettes, digital video discs, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (4) ADULT MOTEL — A hotel, motel or similar commercial establishment which:
- (a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, DVD's, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and which advertises the availability of sexually oriented type of material by means of a sign visible from a public right-of-way, or by means of off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets, leaflets, radio or television; or
 - (b) Offers sleeping rooms for rent on a regular basis for a period of time that is less than 10 hours; or
 - (c) Allows a tenant or occupant of a room to sublease the room for a period of time that is less than 10 hours.
- (5) ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, digital video discs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (6) ADULT THEATER — A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
- (7) ESCORT AGENCY — A person or business association who or which furnishes, or offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- (8) MASSAGE PARLOR — Any place where, for any form of consideration or gratuity, massage, hot-oil body rub, alcohol rub or administration of fomentations, electric or magnetic treatments or any other treatment manipulation of the human body occurs as apart of or in connection with specified sexual activities, or where

any person providing such treatment, manipulation or service related thereto exposes his or her specified anatomical areas. The definition of "adult use" shall not include the practice of massage in any licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

- (9) **NUDE MODEL STUDIO** - Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.
- (10) **SEXUAL ENCOUNTER CENTER** — A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or exposure of specified anatomical areas, or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or is seminude. The definition of "adult use" shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

AGRICULTURAL USE, CUSTOMARY — The raising of agricultural products including livestock, poultry, dairy products, farm crops, fruit and vegetables, and nursery stock, whether for gain or otherwise. The term shall not include livery or boarding stables, manufacturing or processing of agricultural products as a principal use.

ALTERATION — As applied to a building or structure, a change or rearrangement in the structural parts or existing facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board and an individual appointed by the Town Board to serve on the Town Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the respective board because of an absence or a conflict of interest, as provided herein. **[Added 7-12-1999 by L.L. No. 1-1999]**

AREA, BUILDING — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of terraces and uncovered steps.

AREA, COMMON — Space reserved for use by any and all residents of a housing development such as halls, stairways and landings in apartment houses.

AREA, LOT — The total area within the property lines excluding external streets.

ATTIC — That space of building which is immediately below and wholly or partly within the roof framing.

AUTOMOBILE SALES AND SERVICE AREA — A premises, including open areas, other than a street or way, and enclosed showrooms, for the display and sale of new or used automobiles, trucks, trailers, motorcycles and recreational vehicles, and where mechanical repairs may be conducted as an accessory use incidental to the primary sales use.

AUTOMOBILE SERVICE STATION — A building or place of business where gasoline, oil and grease, batteries, tires and/or automobile accessories are supplied and dispensed directly to the public, at retail, and where minor service is rendered.

AUTOMOTIVE REPAIR FACILITY — A building or premises used for the repair of motor vehicles, including painting and the sale of related parts and accessories. A junkyard is not to be construed as an automotive repair facility.

BASEMENT — A story partly below average finished grade, having at least 1/2 of its height measured from floor to ceiling, but no less than four feet, above average finished grade. Special grading, such as berms designed specifically for architectural, landscaping and/or energy conservation purposes, shall be excluded from this definition.

BED-AND-BREAKFAST — A dwelling or part of a dwelling in which at least one, but not more than four, sleeping rooms are offered for pay by the owner/occupant as overnight lodging facilities for the accommodation of transient guests and which shall conform to the New York State Building Code.

BOARDING KENNEL — Any establishment available to the general public where a dog or dogs are housed for compensation by the day, week or a specified or unspecified time. The term shall not include a kennel where the practice of veterinary medicine is performed. The term shall include any establishment available to the general public that, for consideration, takes control of dog(s) from the owner for a portion of a day for the purposes of exercise, day care or entertainment of the dog. For the purpose of this term, each time a dog enters the kennel it shall be counted as one dog. This term does not include any establishment engaged in only dog grooming or dog training. **[Added 3-13-2013 by L.L. No. 2-2013]**

BOARDING OR LODGING HOUSE — A building where selected persons are supplied with and charged for meals or sleeping accommodations or both for fixed periods of time.

BUILDING — Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals, materials, chattel or services.

BUILDING, ACCESSORY — See "accessory building."

BUILDING AREA — The area taken on a horizontal plane at the main grade level of the building exclusive of storage space, open porches, terraces, and steps, and, in respect to dwellings, also exclusive of attached or built-in garages.

BUILDING GROUP — A group of two or more principal buildings and any buildings accessory thereto occupying a lot in one ownership and having any yard in common.

BUILDING LOT — The line, established by statute or local law, beyond which a building shall not extend, as specifically provided by law.

BUILDING, PRINCIPAL — A building in which is conducted the main or principal use of the lot on which said building is situated.

BUILDING, SEMIDETACHED — A building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

BULK — A term to describe the size, volume, area, and shape of buildings and structures, and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures, or other walls of the same building, other structure, or tract of land.

CAMPGROUNDS, RECREATIONAL VEHICLE PARKS, TOURIST CAMPS, TRAVEL TRAILER PARKS — The area or place (as a field or woodlot) on which may be located one or more cabins, camping vehicles, tents, or other accommodations by design or character suitable for seasonal or other temporary living purposes used for camping or for a camp meeting, and is conducted as a commercial business. It may also include summer colonies, vacation resorts, and day camps, but not mobile home parks, boarding houses, or motels. **[Added 7-11-2018 by L.L. No. 1-2018]**

CAMPING CABIN — Small cabins located within a campground that are intended for temporary shelter, and include sleeping quarters and in some cases a bathroom, but no kitchen facilities. **[Added 7-11-2018 by L.L. No. 1-2018]**

CELLAR — Any space in a building the structural ceiling level of which is less than four feet above average finished grade where such grade meets the exterior walls of the building. Special grading, such as berms designed specifically for architectural, landscaping and/or energy conservation purposes, shall be excluded from this definition.

CHURCH or PLACE OF WORSHIP — A building or premises used for regular worship by members or representatives of a religious sect or organization as defined by state statute.

CLUB, MEMBERSHIP — An organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes which are not conducted primarily for gain, provided that there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

CLUSTER DEVELOPMENT, RESIDENTIAL — A zoning technique whereby any dimensional requirements in this chapter may be modified in a subdivision, provided that the overall density limitations are not exceeded for the total parcel.

COMMERCIAL KENNEL — Any building or lot upon which a person (or persons) or entity: **[Added 3-13-2013 by L.L. No. 2-2013]**

- (1) Breeds two or more litters of dogs/puppies in a calendar year; or
- (2) Maintains more than four unspayed or unneutered dogs of breeding age; or
- (3) Publicly or privately sells or offers for sale any dog for consideration, a fee, a commission or a percentage of the sale price; or

- (4) Transfers dogs at wholesale for resale to another; or
- (5) Offers or maintains dogs at wholesale for resale to another.

COMMERCIAL USE — The use of a parcel of land or one or more buildings for the purpose of retail or wholesale business activity in the preparation, processing or repair of materials, products, services or commodities for sale to others.

CONTIGUOUS PARCEL — A tract of land under the control of one person or firm or its agent that is not divided by any natural or man-made barriers such as existing roads and highways, rivers, areas with slopes greater than 35%, and not bisected by water bodies.

CONTRACTOR'S YARD — Any space, whether inside or outside a building, used for the storage or keeping of more than three pieces of construction equipment, machinery, or vehicles, or parts thereof, which are in active use by a construction contractor or for equipment rental or sales.

CONVENIENCE/MINI-MARKET — A commercial retail use which combines the sale of beverages, dairy and baked goods, snack foods, similar grocery items, and other related items which may also be accompanied by the sale of motor vehicle fuel and accessory substances.

COVERAGE — The portion or percentage of lot area covered by buildings or structures, including accessory buildings and structures.

DAY-CARE CENTER/NURSERY — Any place, however designated, operated for the purpose of providing daytime care and instruction for children and operated on a regular basis for a fee, including kindergartens, day nurseries, and day-care centers, which must conform to New York State laws.

DISTRICT — Any one of the areas, as shown on the Zoning Map of the Town of Benton,¹ into which the Town has been divided for the purposes of this chapter.

DOG, ADULT — A live *Canis lupus familiaris* or any dog hybrid reaching four months of age. **[Added 3-13-2013 by L.L. No. 2-2013]**

DRIVE-IN USE — An establishment that, by design of physical facilities or by service or packaging procedures, encourages or permits customers to receive a service or obtain a product that may be used or consumed in a motor vehicle on the premises.

DWELLING — A building designed or used principally as the living quarters for one or more families. The terms "dwelling," "one-family dwelling," "two-family dwelling," or "multiple dwelling" shall not be deemed to include motel, hotel, rooming house or other accommodations used for more or less transient occupancy.

DWELLING, MULTIFAMILY — A dwelling containing three or more dwelling units and occupied or designed for occupancy by three or more families living independently of each other, but not including townhouses.

DWELLING, ONE-FAMILY — A building containing one dwelling unit only.

1. Editor's Note: The Zoning Map is on file in the Town offices.

DWELLING, ONE-FAMILY DETACHED — A building accommodating a single family and having two side yards.

DWELLING, ONE-FAMILY SEMIDETACHED — A one-family dwelling having one party wall and one side yard.

DWELLING, TWO-FAMILY — A building containing two dwelling units.

DWELLING UNIT — One room or rooms physically arranged so as to create an independent housekeeping establishment for owner occupancy, rental or lease, and containing independent cooking, sanitary and sleeping facilities. This shall include sectional, modular and mobile home units, provided that they meet the standards of this chapter and the building code. Motel, hotel and lodging establishments are not dwelling units.

EASEMENT — A vested or acquired right to use land other than as a tenant for a specific purpose, such right being held by someone other than the owner who holds title to the land.

EFFECTIVELY SCREENED — A particular use shall be considered effectively screened when barriers of sufficient height and capacity are provided so as to reduce the transmission of sound and light into adjacent properties to the point where the adjacent property owner is not disturbed.

EQUIPMENT RENTAL OR SALES YARD — See "contractor's yard."

ESCORT — A person who, for a fee, tip or other consideration, agrees to or offers any of the following: act as a date for another person; privately model lingerie for another person; or privately perform a striptease for another person. **[Added 6-8-2005 by L.L. No. 1-2005]**

ESSENTIAL UTILITY SERVICES — The erection, construction, alteration or maintenance by public utilities or Town or other governmental agencies of underground or overhead gas, electrical, or water transmission or distribution systems, communications 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 and reasonably necessary for the furnishing of adequate service by such public utilities or Town or other governmental agencies for the public health or safety or general welfare.

EXCAVATION OF SAND OR GRAVEL — A lot or land or part thereof used for the purpose of extracting stone, sand, gravel, or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building.

FAMILY — One or more persons who live together in a single dwelling unit and maintain a common household.

FARM — Any parcel of land containing at least five acres which is used for financial gain in the raising of agricultural products, livestock, poultry, dairy products and nursery stock. It includes necessary farm structures and the storage of equipment used. It does

not include the raising of fur-bearing animals, livery or boarding stables, riding academies, and kennels. It also excludes structures used for storage of commercial equipment not used in a farm-related business or home occupation.

FARM-RELATED BUSINESS — Activities and services carried on for financial gain and directed at meeting the needs of those engaged in area farming and providing materials and services needed for farming. Farm-related business is subject to the provisions of Article VII of this chapter.

FENCE — A natural or artificial barrier of shrubs, trees, wood, masonry, stone, metal wire or any other material manufactured for the construction of a fence. **[Amended 6-17-1996 by L.L. No. 1-1996]**

FLOOR AREA — The sum of the gross horizontal area of the several floors of a building and its accessory buildings, measured from the exterior walls.

GARAGE, PRIVATE — A detached or attached accessory building used for the storage of private motor vehicles, boats, lawn and garden equipment and household furnishings.

GOLF COURSE — Any tract of land designated for playing the game of golf and for services related thereto.

GRADE LEVEL — The level where the average finished grade of the ground intersects the foundation wall at the main entrance.

GROCERY STORE — A commercial retail use which provides for the sale of a full range of food products including meats, fruits, vegetables, dairy products, snack foods, beverages and similar grocery items.

HEIGHT OF BUILDING — The vertical distance measured from the elevation of the average finished grade level to the highest point of the roof.

HIGHWAY — Any state highway, county road or Town road, and unless the context indicates otherwise any street laid out on a filed subdivision map which connects with a state highway, county road or Town road.

HOME OCCUPATION — An accessory use which is clearly incidental to or secondary to the residential use of a dwelling unit and does not change the character thereof, and is carried on within the enclosed walls of a dwelling unit or accessory building by one or more occupants of such dwelling unit. Home occupations are subject to the provisions of Article VII of this chapter.

HOTEL/MOTEL — A facility offering transient lodging accommodations at a daily rate to the general public. Additional facilities such as a restaurant, meeting rooms and/or recreational facilities may be provided.

INDUSTRIAL USE — The use of a parcel of land and/or building for the purpose of manufacture, fabrication, extraction, assembly, warehousing and other processing or handling of materials.

INSTITUTIONAL, GOVERNMENTAL OR PHILANTHROPIC USE — Those uses limited to churches, public or private schools covering kindergarten through grade 12, libraries and uses by the municipal, state, or federal government.²

LOT — A contiguous parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use or ownership, and the customary accessories and open spaces belonging to the same and which abuts and is accessible from a private or public street.

LOT AREA — The area within the property lines excluding any portion thereof within the boundaries of a street or highway.

LOT, CORNER — A lot situated at the junction of and adjacent to two or more intersecting streets or highways and when the interior angle of the intersection does not exceed 135°. This lot shall be deemed to front on each street or highway it abuts and be subject to the required front yard for each street or highway, with the yards opposite subject to side yard requirements. **[Amended 6-17-1996 by L.L. No. 1-1996]**

LOT COVERAGE — See "coverage."

LOT, DEPTH OF — The mean distance from the front street line or mean highwater mark of a lot to its rear line.

LOT FRONTAGE — A lot line which is coincident with a road line or mean high water mark.

LOT LINES — The lines bounding a lot as defined herein.

LOT, THROUGH — A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

2. Editor's Note: The former definition of "kennel," which immediately followed this definition, was repealed 3-13-2013 by L.L. No. 2-2013.

LOT WIDTH — The distance between the two side lot lines measured along the rear lines of the required front yard and the required rear yard.

MANUFACTURED HOUSING — A factory-built, single-family structure that is manufactured under the authority of 42 U.S.C. § 5401, the National Manufactured Home Construction and Safety Standards Act of 1974, is transportable in one or more sections, is built on a permanent chassis, and is used as a place of human habitation; but which is not constructed with a permanent hitch or other device allowing transport of the unit other than for the purpose of delivery to a permanent site, and which does not have wheels or axles permanently attached to its body or frame.

MANURE STORAGE FACILITY — A facility constructed as an accessory use to an animal husbandry use, riding stable, or kennel, intended to collect, hold, process, store, treat, or distribute solid and liquid animal waste. Included within this definition are storage tanks, lagoons, seepage pits, drains, and collection systems intended to handle animal waste solids and food-processing. Not included within this definition are systems designed and constructed to handle human waste. **[Added 11-9-2011 by L.L. No. 4-2011]**

MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board or the Town Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such Planning Board and Zoning Board of Appeals. **[Added 7-12-1999 by L.L. No. 1-1999]**

MIGRANT CAMP — As defined in the State Sanitary Code, Chapter 1, Part 15, a property consisting of a tract of land and all vehicles, mobile homes, buildings or other structures pertaining thereto, any part of which may be used or occupied by persons employed as laborers in farm activities, including sleeping facilities, provided in whole or in part, by the employer of such persons, owner, lessee, or operator thereof, with or without stipulated agreement as to the duration of their stay, whether or not they are supplied with meals but who are supplied with services or facilities as are necessary for their use of such property. This shall not include a private home, hotel, boardinghouse, lodging house, or similar property which is regularly operated primarily for the occupancy of people engaged in some activity other than farm labor, or if engaged in farm labor, the premises are occupied by one family per dwelling unit and there are not more than two such families.

MINOR — A person less than 18 years of age. **[Added 6-8-2005 by L.L. No. 1-2005]**

MOBILE HOME — A dwelling unit that is manufactured as a relocatable living unit, which is designed to be transported on a permanent chassis and to be installed on a site with or without a permanent foundation when connected to utilities. This does not include Department of Motor Vehicles registered recreation vehicles, travel trailers or dwelling units that are prebuilt in one or more parts and transported to and assembled on a permanent foundation.

MOBILE HOME PARK — A contiguous parcel of land divided into two or more lots, for sale or lease, on which mobile homes or manufactured houses will be placed for nontransient use.

MUNICIPAL BUILDING — Any building established and operated by any governmental agency.

NONCONFORMING BULK — That part of a building, other structure or tract of land which does not conform to one or more of the applicable bulk regulations of this chapter, either following its effective date or as a result of subsequent amendment thereto.

NONCONFORMING USE — Any use of a building, other structure, or tract of land which does not conform to the use regulations for the district in which such use is located, either at the effective date of this chapter or as a result of subsequent amendment thereto.

NUDE, NUDITY or STATE OF NUDITY — The appearance of: **[Added 6-8-2005 by L.L. No. 1-2005]**

- (1) Human bare buttocks, anus, male genitals, female genitals or areola or nipple of the female breast; or
- (2) A state of dress which fails to opaquely and fully cover human bare buttocks, anus, male genitals, female genitals, pubic region or areola or nipple of female breast.

NURSERY SCHOOL — See "day-care center."

NURSING OR CONVALESCENT HOME — A building with sleeping rooms where, for a fee, persons are housed on a twenty-four-hour basis and furnished with meals and/or nursing care.

OPEN SPACE — Area not occupied by any building, structure or parking area.

OPEN SPACE, COMMON — Area not occupied by any building structure or parking area which is available to the general public or to owners or tenants of a particular development.

PARKING SPACE — An off-street space available for the parking of one motor vehicle and having an area of not less than 200 square feet exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

PERSON — An individual, proprietorship, partnership, corporation, association or other legal entity. **[Added 6-8-2005 by L.L. No. 1-2005]**

PERSONAL SERVICE ESTABLISHMENT — An office, store, or other place of business catering to the personal needs of a customer, such as normally conducted by a beautician, tailor or dressmaker.

PLANNING BOARD — The Planning Board of the Town of Benton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 271 of the Town Law. **[Added 7-12-1999 by L.L. No. 1-1999]**

PREMISES — A lot together with all the buildings and uses thereon.

PRIVATE KENNEL — Any building or lot upon which a person does not meet the definition of "commercial kennel" where dogs are bred by the owner, for the purpose of hunting, tracking and exhibiting in dog shows, performance events or field and obedience trials. **[Added 3-13-2013 by L.L. No. 2-2013]**

PROMOTE — To manufacture, issue, sell, give, provide, lend, mail, deliver, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise or to offer or agree to do the same. **[Added 6-8-2005 by L.L. No. 1-2005]**

PUBLIC UTILITY — A business or service which is of public consequence and need, such as electricity, gas, water or telephone service.

QUARRY — See "excavation of sand or gravel."

RESCUE ORGANIZATION — Any facility where homeless, stray, abandoned, rescued or unwanted animals are received, harbored, maintained or made available for adoption to the general public and which is owned, operated or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of the cruelty to animals or other nonprofit or tax-exempt organization devoted to the welfare, protection or humane treatment of animals. A rescue organization may board up to 20 dogs at a time per year. **[Added 3-13-2013 by L.L. No. 2-2013]**

RESIDENCES — See "dwelling unit."

RESTAURANT — Any establishment, however designated, whose primary use is preparation and sale of food for consumption to patrons seated within an enclosed building or on the premises. A snack bar or refreshment stand at a public or quasi-public community swimming pool, playground, playfield or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RETAIL BUSINESS — A business establishment engaged in selling directly to consumers.

RIDING ACADEMY or STABLE — Any establishment where horses are kept for riding, driving or stabling for compensation.

RIGHT-OF-WAY — The property used for movement of vehicles, including, but not restricted to, the pavement area.

ROAD, COLLECTOR — All Town roads or streets, other than major roads and interior subdivision roads.

ROAD, MAJOR — All state and county highways.

ROAD, MINOR — Streets or roads other than collector roads or major roads, whether dedicated or not.

ROADSIDE STAND — A light structure with a roof, either attached to the ground or movable, not for year-round use and at which only local produce and locally produced handcrafted items are offered for sale to the general public.

ROAD WIDTH — The width of the right-of-way or the distance between property lines on opposite sides of a street.

SADOMASOCHISTIC ABUSE — Actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed. **[Added 6-8-2005 by L.L. No. 1-2005]**

SATELLITE TELEVISION ANTENNA — An antenna the purpose of which is to receive television and/or radio signals from orbiting satellites.

SETBACK — The required distance from the nearest right-of-way or lot line measured at right angles or radially from such points to the nearest edge of any building located on such lot.

SEXUAL CONDUCT — Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such be female, breast. **[Added 6-8-2005 by L.L. No. 1-2005]**

SEXUAL EXCITEMENT — The condition of human male or female genitals when in a state of sexual stimulation or arousal. **[Added 6-8-2005 by L.L. No. 1-2005]**

SIGN — Any structure or part thereof, or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as, or which is in the nature of, an announcement, direction or advertisement. A "sign" includes a billboard, but does not include the flag insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, drive, movement, or event which is temporary in nature and which does not include any lettering or advertisement.

SIGN, ACCESSORY — Any sign, other than the primary or principal business sign which relates to the principal use, business or profession conducted on the lot.

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. Only one face of a sign shall be counted to determine the sign area, except that any neon tube, string of lights, or similar device shall be deemed to have minimum dimensions of one foot.

SIGN, PRINCIPAL BUSINESS — A sign which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a business sign.

SINGLE OWNERSHIP — Possession of land under single or unified control, whether by sole, joint, common or other ownership or by a lease having a term of not less than 30 years, regardless of any division of such land into parcels for the purpose of financing.

SITE PLAN — Maps and supporting information required under Article VIII for special uses as specified in § 110-16, Use Regulation Table.

SPECIAL USE — Uses granted by special permit through the site plan approval process as specified in this chapter.

SPECIFIED ANATOMICAL AREAS — [Added 6-8-2005 by L.L. No. 1-2005]

- (1) Unless completely and opaquely covered, human genitals, pubic region, buttocks, and female breasts directly and laterally below the top of the areola.
- (2) Even if completely and opaquely covered, male genitals in a discernibly turgid state.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following: [Added 6-8-2005 by L.L. No. 1-2005]

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts.
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.
- (3) Masturbation, actual or simulated.
- (4) Excretory functions.

STORY — That portion of a building included between the surface of the floor and the ceiling next above it, having a height of at least seven feet six inches.

STREET — Any federal, state, county or town highway or road, any street shown upon a subdivision plat approved by the Town Planning Board under Article 16 of the Town Law, as amended, or a street on a plat duly filed and recorded in the office of the Yates County Clerk prior to the appointment of the Planning Board and the grant to such Board of the power to approve plats. [Added 9-14-2005 by L.L. No. 2-2005]

STREET, PRIVATE — [Added 9-14-2005 by L.L. No. 2-2005]

- (1) A way for vehicular use, either by the general public or for the benefit of a lot or lots alone, which said way is between right-of-way lines, that is not owned, plowed or maintained by any governmental jurisdiction and that was created prior to the effective date of this definition.
- (2) As of the effective date of this definition, a private street may only be created pursuant to Article XI of the Highway Law, as amended.³

STRUCTURE — Anything constructed or erected. Structures include, but are not limited to, buildings, mobile homes, walls, signs, patios, decks, landings, fences (excluding agricultural fences), swimming pools (both in ground and aboveground), docks and piers above the high water line of Seneca Lake, satellite and television dish or other antenna and communication towers.

3. Editor's Note: See New York State Highway Law § 300 et seq.

SUITABLY LANDSCAPED — Landscaped with vegetation of a type sufficient to effectively screen differing uses, enhance the quality of the environment, limit erosion, and protect the general welfare.

TOURIST CAMP — Any parcel of land on which may be located one or more cabins, camping vehicles, tents or other accommodations of a design or character suitable for seasonal or other temporary living purposes including summer cabin colony, vacation resort, day camp, and travel trailer park but not including a mobile home park, boardinghouse or motel.

TOWNHOUSE — A building consisting of three or more attached single-family dwelling units each having separate outdoor entrances and common vertical party walls.

TRAILER, HOUSE — See "mobile home."

TRAILER PARK — See "mobile home park."

TRAVEL TRAILER — A unit which is used or designed to be used for seasonal and/or temporary living or sleeping purposes, and which is customarily standing on wheels or rigid supports.

USE — This term is employed in referring to both:

- (1) The purpose for which any buildings, other structures, or land may be arranged, designed, intended, maintained, or occupied.
- (2) Any occupation, business activity, or operation conducted in any building or other structure, or on land.

VETERINARY HOSPITAL — A building for the treatment of animal illness.

WAREHOUSE — A building, or part of a building or premises, for storing of goods, wares and merchandise, whether for the owner or for others, prior to shipment to final retail sale operation and whether it is a public or private ownership and use.

WHOLESALE ESTABLISHMENT — A business establishment engaged in selling to retailers or jobbers rather than directly to consumers.

YARD, FRONT — A yard extending along the full length of the front lot line between the side lot lines, not including any land within the right-of-way of public or private streets.

YARD, REAR — A yard extending the full length of the rear lot line.

YARD, REQUIRED — That portion of the open space of a lot which lies between the principal building or group of buildings and the nearest lot line of the lot, with a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

YARD, SIDE — A yard situated between the building and the side line of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard) to the rear yard front line (or rear lot line).

ZONES — Area defined for the purpose of regulating permitted and special land uses (see "district").

ZONING BOARD OF APPEALS — The Zoning Board of the Town of Benton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 267 of the Town Law. **[Added 7-12-1999 by L.L. No. 1-1999]**

- B. Words and phrases not herein defined shall be given standard dictionary definitions or common usage meaning.

ARTICLE III Establishment of Districts

§ 110-7. Application of regulations.

Except as hereinafter provided:

- A. No building or land shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved, or altered, unless in conformity with the regulations herein specified for the district in which it is located.
- B. No building or structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of dwelling units, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards or side yards, than is specified herein for the district in which such building is located.
- C. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this chapter shall be included as part of a yard or other open space similarly required for another building.
- D. No lot shall be so reduced in size that its area or any of its dimensions or open spaces shall be smaller than required by this chapter.
- E. The Code Enforcement Officer shall, prior to issuing a building permit, be satisfied that the issuance of such permit is not in violation of this chapter or any other law, laws or

regulations of record of the Town of Benton. Cases which appear in violation of this chapter shall be referred to the Chairman of the Board of Zoning Appeals for review and recommendation.

§ 110-8. Enumeration of zoning districts. [Amended 3-14-2007 by L.L. No. 1-2007; 11-14-2007 by L.L. No. 3-2007]

In order to fulfill the purpose of this chapter, the Town of Benton establishes the following zoning districts:

A-R-1	Agricultural-Residential-One District
A-R-B	Agricultural-Residential-Business District
H-C	Hamlet Center District
L-R	Lakefront Residential District
W-E-F	Wind Energy Facilities Overlay District

§ 110-9. Zoning Map.

The location and boundaries of said zoning districts are shown on a scaled map designated "Zoning Map of the Town of Benton," adopted on January 16, 1992, by the Town Board of the Town of Benton and certified by the Town Clerk. Said map is kept on file and is available for public viewing in the Town of Benton Town offices and is declared to be a part of this chapter. A copy of said map is included herein.³

§ 110-10. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Center lines and right-of-way lines. Where district boundaries are indicated as approximately following the center lines or right-of-way lines of streets, highways, public utility easements, or watercourses, said boundaries shall be interpreted to be coincident with such lines.
- B. Lot or boundary lines. Where district boundaries are indicated as approximately following a Town boundary line, property lines, lot lines, or projections thereof, said boundaries shall be interpreted to be coincident with such lines or projections thereof.
- C. Parallel to lot or boundary lines. Where district boundaries are so indicated that they are approximately parallel to the Town boundary line, property lines, lot lines, right-of-way lines, or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the Zoning Map or as shall be determined by the use of the scale shown on the Zoning Map.

3. Editor's Note: The Zoning Map is on file in the Town offices.

- D. District boundaries shall be determined by use of an accurate scale which shall be shown on the Zoning Map. In no instances shall a district boundary be set at less than the minimum lot depth required in the Density Control Schedule.⁴
- E. In the event of a questionable district boundary, the questionable boundary shall be referred to the Board of Zoning Appeals, and it shall, to the best of its ability, establish the exact boundary.
- F. The copy of the Zoning Map showing any such determinations made under this section shall be kept on file at the office of the Town Clerk.
- G. Precise zone boundary determinations made by the Zoning Board of Appeals in accordance with the above rules shall be considered final, and may only be altered by amendment of the Zoning Map by the Town Board.
- H. Lots divided by zoning district lines. Where a lot is divided by a district boundary line, the regulations for each respective district shall apply.

ARTICLE IV Use Regulations

§ 110-11. Agricultural-Residential-One (A-R-1) District.

- A. Intent. The Agricultural-Residential-One (A-R-1) District is intended to encourage agricultural use of land, conserve the scenic beauty and open space of the Town and permit limited residential development. The regulations of the district recognize that the rich Honeoye-Lima types of soils and topographic conditions within Benton are excellently suited for successful agriculture and that allowance for residential development and limited farm-related businesses and home occupations is necessary in order to maintain economically viable agricultural activity. The intent of the district is also to recognize that the area is designated as an "agricultural district" under the New York State Agricultural Districts Law.⁵
- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-12. (Reserved) ⁶

4. Editor's Note: See § 110-18, Density Control Schedule.

5. Editor's Note: See Agriculture and Markets Law § 300 et seq.

6. Editor's Note: Former § 110-12, Agricultural-Residential-Two (A-R-2) District, was repealed 11-14-2007 by L.L. No. 3-2007.

§ 110-13. Agricultural-Residential-Business (A-R-B) District.

- A. Intent. The Agricultural-Residential-Business District (A-R-B) is intended to enable the orderly continuation of farming and agricultural activities and also to permit more extensive residential and business development than is encouraged within the A-R-1 District. Orderly residential development is encouraged within the A-R-B District, as is the development of individual business enterprises within the guidelines of the regulations. [Amended 11-14-2007 by L.L. No. 3-2007]
- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-14. Hamlet Center (H-C) District

- A. Intent. The Hamlet Center (H-C) District is intended to promote and encourage the continued health of the Town's traditional hamlet centers and to encourage and enable continued investment in residential and compatible business activity in these historic centers. The district recognizes that the preservation of property values and vitality within the hamlets requires the ability to develop additional parcels of land along hamlet streets and edges. The character of these historic centers within the Town is a vital component of the quality of rural life in the Town of Benton.
- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18 of this article, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-15. Lakefront Residential (L-R) District.

- A. Intent. The Lakefront Residential District (L-R) is intended to maintain and enhance the residential character and attractiveness of the Town's lakefront residential neighborhood. The district recognizes that the preservation of the traditional low-density residential character of this lakefront neighborhood is a vital public policy of the Town of Benton.
- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18 of this article, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-15.1. Wind Energy Facilities Overlay (W-E-F) District. [Added 3-14-2007 by L.L. No. 1-2007]

- A. Purpose. The purpose of these regulations is to provide for the construction and operation of wind energy facilities in The Town of Benton, subject to reasonable conditions that will protect the public health, safety and welfare.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ACCESSORY BUILDING — Barn, shop, garage, shed or any other building not considered to be an occupied building. **[Added 12-9-2009 by L.L. No. 3-2009]**

APPLICANT — The person or entity filing an application under these regulations.

FACILITY OWNER — The entity or entities having an equity interest in the wind energy facility, including their respective successors and assigns.

HUB HEIGHT — The distance measured from the surface of the tower foundation to the height of the wind turbine hub, to which the blade is attached.

NONPARTICIPATING LANDOWNER — Any landowner except those on whose property all or a portion of a wind energy facility is located or who has an agreement with the facility owner or operator.

OCCUPIED BUILDING — A residence, school, hospital, church, public library (or other building used for public gathering) that is occupied or in use when the permit application is submitted. **[Amended 12-9-2009 by L.L. No. 3-2009]**

OPERATOR — The entity responsible for the day-to-day operation and maintenance of the wind energy facility.

PARTICIPATING LANDOWNER — Any landowner on whose property all or a portion of a wind energy facility is located or who has an agreement with the facility owner or operator.

SMALL WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

TOWER HEIGHT — The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

TURBINE HEIGHT — The distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.

WIND ENERGY FACILITY — An electric generating facility whose main purpose is to supply electricity, consisting of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

WIND TURBINE — A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

C. Applicability.

- (1) These regulations apply to all wind energy facilities proposed to be constructed after the effective date of this section, except that these regulations are not intended to apply to stand-alone wind turbines constructed primarily for small wind energy systems.
- (2) Wind energy facilities constructed prior to the effective date of this section shall not be required to meet the requirements of these regulations, provided that any physical modification to an existing wind energy facility that materially alters the size, type and number of wind turbines or other equipment shall require a permit under these regulations.

D. Nonpermitted areas. Wind energy facilities shall not be permitted/constructed in L-R, A-R-B and Hamlet Center Districts. **[Amended 11-14-2007 by L.L. No. 3-2007]**

E. Permitted areas. Wind energy facilities shall be permitted in an overlay zone encompassing A-R-1 districts with the following boundaries: north, west and south to the Town lines and east to Route 14A where it follows 14A up to Haven's Corner's Road. At Haven's Corner's Road, the zone runs east to Pre-Emption Road, then north along Pre-Emption Road to the Town line.

F. Permit requirement.

- (1) No wind energy facility, or addition of a wind turbine to an existing wind energy facility, shall be constructed unless a special use permit has been issued to the facility owner or operator approving construction of the facility under these regulations.
- (2) Special use permits will only be considered within the boundaries of the overlay zone outlined in Subsection E, Permitted areas.
- (3) The permit application or amended permit application shall be accompanied with a fee as determined by the Town Board.
- (4) Any physical modification to an existing and permitted wind energy facility that alters the size, type and number of wind turbines or other equipment shall require a permit modification under these regulations. Like-kind replacements, however, shall not require a permit modification.
- (5) The use shall not have an adverse effect on the agriculture of the area.

G. Permit application.

- (1) The permit application shall demonstrate that the proposed wind energy facility will comply with these regulations.
- (2) Among other things, the application shall contain the following:

- (a) A narrative describing the proposed wind energy facility, including an overview of the project; the project location; the approximate generating capacity of the wind energy facility; the approximate number, representative types and height or range of heights of wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
- (b) An affidavit or similar evidence of agreement between the property owner and the facility owner or operator demonstrating that the facility owner or operator has the permission of the property owner to apply for necessary permits for construction and operation of the wind energy facility.
- (c) Identification of the properties on which the proposed wind energy facility will be located, and the properties adjacent to where the wind energy facility will be located.
- (d) A site plan showing the planned location of each wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the wind energy facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
- (e) Documents related to decommissioning.
- (f) A completed New York State Environmental Impact Assessment/SEQR.
- (g) Dimensional representation of the structural components of the tower construction, including the base and footings.
- (h) Manufacturer's specifications and installation and operation instructions.
- (i) Certification by a registered professional engineer that the tower and base design is sufficient to withstand wind load requirements.
- (j) All turbines shall be new equipment commercially available. Used, experimental or prototype equipment still in testing shall be approved by the Town of Benton Planning Board as per the normal special use permit process.
- (k) Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted with the application.
- (l) A transportation plan showing how vehicles would access the site and describing the impacts of the proposed energy project on the local and regional road system during construction and operation.
- (m) A revegetation plan that complies with NYS Ag and Markets restoration guidelines will be submitted and must address how areas that are temporarily disturbed during construction will be restored as well as restoration after decommissioning.

- (n) A drainage plan for construction and operation as well as an erosion plan must be developed and submitted for approval by the Town of Benton Code Enforcement Officer and the Planning Board.
- (o) Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Town of Benton to ensure compliance with these regulations. This may include but not be limited to bird migration and flicker impact studies.
- (p) The application shall contain a written plan for storage usage and disposal of all hazardous materials, lubricants, cleaning supplies, etc., in accordance with DEC regulations and the written plan shall be approved by DEC.

H. Design and installation.

- (1) Design safety certification. The design of the wind energy facility shall conform to applicable industry standards, including those of the American National Standards Institute. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.
- (2) Uniform Construction Code. To the extent applicable, the wind energy facility shall comply with the NYS Building Codes, National Electrical Codes, NFPA and other national or state codes as deemed applicable by The Town of Benton Code Enforcement Officer.
- (3) Controls and brakes. All wind energy facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.
- (4) Electrical components. All electrical components of the wind energy facility shall conform to relevant and applicable local, state and national codes.
- (5) Visual appearance; power lines.
 - (a) Wind turbines shall be a nonreflective, nonobtrusive color such as white, off-white or gray.
 - (b) Wind energy facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety. Lighting shall not be a nuisance to surrounding residences and, when installed on multiple turbines, shall not be synchronized but rather designed to flash independently.
 - (c) Wind turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, facility owner and operator at the base of the tower in no larger than six-inch letters.

- (d) On-site transmission and power lines between wind turbines shall, to the maximum extent practicable, be placed underground and in accordance with Ag and Markets recommendations and relevant building codes.
 - (6) Warnings.
 - (a) A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
 - (b) Visible, reflective, colored objects such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 10 feet from the ground.
 - (7) Climb prevention/locks.
 - (a) Wind turbines shall not be climbable up to 15 feet above ground surface.
 - (b) All access doors to wind turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by nonauthorized persons.
 - (8) Meteorological (MET) tower construction. Meteorological towers shall be monopoles rather than lattice construction, and shall use no guy wires where possible.
 - (9) Turbine height. Turbine height shall not exceed 407 feet (base to top of extended blade). **[Added 12-9-2009 by L.L. No. 3-2009]**
- I. Setbacks.
- (1) Occupied buildings.
 - (a) Wind turbines shall be set back from the nearest occupied building located on a participating landowner's property a distance of not less than the normal setback requirements for that zoning classification or 1.25 times the turbine height, whichever is greater. The setback distance shall be measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.
 - (b) Wind turbines shall be set back from the nearest occupied building located on a nonparticipating landowner's property a distance of not less than 2.5 times the turbine height, as measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.
 - (2) Accessory buildings. Wind turbines shall be set back from any accessory building a distance of not less than 1.25 times the turbine height. **[Added 12-9-2009 by L.L. No. 3-2009]**
 - (3) Property lines. All wind turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements for that zoning

7. This local law also provided for the redesignation of former Subsection I(2) and (3) as Subsection I(3) and (4), respectively.

classification or 1.25 times the turbine height, whichever is greater. The setback distance shall be measured to the center of the wind turbine base.

- (4) Public roads. All wind turbines shall be set back from the nearest public road a distance of not less than 1.25 times the turbine height, as measured from the right-of-way line of the nearest public road to the center of the wind turbine base.
- J. Waiver of setbacks. Property owners must adhere to all setbacks. The only exception to this is in the event where there are two adjacent participating landowners, property line setbacks may be waived between the two landowners' properties by way of a written document where the two landowners agree to the waiver. The Planning Board must also agree to the waiver.
- K. Use of public roads.
- (1) The applicant shall identify all state and local public roads to be used within the Town of Benton to transport equipment and parts for construction, operation or maintenance of the wind energy facility.
 - (2) The Town of Benton's engineer or a qualified third-party engineer hired by the Town of Benton and paid for by the applicant shall document road conditions prior to construction. The engineer shall document road conditions again 30 days after construction is complete or as weather permits.
 - (3) The Town of Benton may bond the road in compliance with state regulations.
 - (4) Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense, returning the road to a condition satisfactory to the Town Board or its representatives.
 - (5) The applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.
- L. Local emergency services.
- (1) The applicant shall provide a copy of the project summary and site plan to local emergency services, including all local paid or volunteer fire and ambulance department(s).
 - (2) Upon request, the applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the wind energy facility.
- M. Noise and shadow flicker.
- (1) Audible sound from a wind energy facility shall not exceed 50 dBA, as measured at the exterior of any occupied building on a nonparticipating landowner's property. Methods for measuring and reporting acoustic emissions from wind turbines and the wind energy facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled "Procedures for the Measurement and Reporting of Acoustic Emissions from wind turbine Generation Systems Volume I: First Tier."

- (2) The facility owner and operator shall make reasonable efforts to minimize shadow flicker to any occupied building on a nonparticipating landowner's property.

N. Waiver of noise and shadow flicker provisions.

- (1) Property owners may waive the noise and shadow flicker provisions of these regulations by signing a waiver of their rights.
- (2) The written waiver shall notify the property owner(s) of the sound or flicker limits in these regulations, describe the impact on the property owner(s), and state that the consent is granted for the wind energy facility to not comply with the sound or flicker limit in these regulations.

- (3) Any such waiver shall be recorded in the Recorder of Deeds' office of the county where the property is located. The waiver shall describe the properties benefited and burdened, and will advise all subsequent purchasers of the burdened property that the waiver of sound or flicker limit shall run with the land and may forever burden the subject property.
- O. Signal interference.
- (1) No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
 - (2) No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or interference with signal transmission or reception.
- P. Liability insurance. Prior to issuance of a building permit, the applicant shall provide the Town of Benton with proof in the form of a duplicate insurance policy or a certificate issued by an insurance company of liability insurance of a level to be determined by the Town Board in consultation with the Town's insurer to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation and transmission facility.
- Q. Decommissioning.
- (1) The facility owner and operator shall, at its expense, complete decommissioning of the wind energy facility, or individual wind turbines, within 12 months after the end of the useful life of the facility or individual wind turbines.
 - (2) The wind energy facility or individual wind turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of 12 months.
 - (3) Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.
 - (4) Disturbed earth shall be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
 - (5) An independent and certified professional engineer shall be retained to estimate the total cost of decommissioning ("decommissioning costs") without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("net decommissioning costs"). Said estimates shall be submitted to the Town of Benton after the first year of operation and every fifth year thereafter.
 - (6) The facility owner or operator shall post and maintain decommissioning funds in an amount equal to net decommissioning costs, provided that at no point shall decommissioning funds be less than 25% of decommissioning costs. The decommissioning funds shall be posted and maintained with a bonding company or federal or Commonwealth chartered lending institution chosen by the facility

owner or operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within NYS and is approved by the Town of Benton.

- (7) Decommissioning funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Town of Benton.
- (8) If the facility owner or operator fails to complete decommissioning within the period prescribed by Subsection Q(1), the landowner shall have six months to complete decommissioning.
- (9) If neither the facility owner or operator nor the landowner complete decommissioning within the periods prescribed by Subsection Q(1) and (8), then the Town of Benton may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a participating landowner agreement to the Town of Benton shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town of Benton may take such action as necessary to implement the decommissioning plan.
- (10) The escrow agent shall release the decommissioning funds when the facility owner or operator has demonstrated and the municipality concurs that decommissioning has been satisfactorily completed, or upon written approval of the municipality in order to implement the decommissioning plan.

R. Maintenance/inspections.

- (1) The owner or operator of the wind facility must submit, on an annual basis, a summary of the operation and maintenance reports to the Town of Benton. In addition to the above annual summary, the owner or operator must furnish such operation and maintenance reports as the Town reasonably requests.
- (2) Any physical modification to the wind facility that alters the mechanical load, mechanical load path, or major electrical components shall require recertification. Like-kind replacements shall not require recertification. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with the Town of Benton Code Enforcement Officer to determine whether the physical modification requires a special use permit modification.
- (3) The Town of Benton staff, along with licensed third-party professionals retained by the Town for the specific purpose of conducting inspections of the wind facility, shall have the right, once annually, and with sufficient prior notice, to accompany the owner or operator, or his agent, on the premises where a wind facility has been constructed, to inspect all parts of said wind facility installation and to require that repairs or alterations be made. The owner or operator of a wind facility may retain a licensed third-party professional engineer familiar with the specific wind facility system to prepare and submit to the Town of Benton a written report which addresses the repairs or alterations requested, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are

unnecessary. This report must be submitted within 30 days after receiving notice from the Town of Benton that repairs or alterations are requested unless both parties have agreed to a longer period of time. The Town of Benton will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report.

- (4) Inspections, at a fee to be determined from time to time by the Town of Benton and paid by the applicant, may be made by the Town of Benton Code Enforcement Officer or by a qualified inspector for equipment of this type selected by the Town of Benton, no more than once annually to certify the safety and maintenance of the wind facility and accessory structures.
- S. Public inquiries and complaints.
- (1) The facility owner and operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
 - (2) The facility owner and operator shall make reasonable efforts to respond to the public's inquiries and complaints.
- T. Small wind energy systems permitted use. Small wind energy systems shall be a permitted use, following site plan approval from the Planning Board, in all zoning classifications where structures of any sort are allowed; subject to certain requirements as set forth below:
- (1) Tower height. For property sizes between 1/2 acre and one acre, the tower height shall be limited to 80 feet. For property sizes of one acre or more, the tower height shall be limited to 200 feet, except where such height does not conform to regulations imposed by FAA.
 - (2) Setback. No part of the wind system structure, including guy wire anchors, may extend closer than 1.25 times the turbine height to the property boundaries of the installation site.
 - (3) Noise. Small wind energy systems shall not exceed 50 dBA, as measured at the closest nonparticipating landowner's occupied building. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
 - (4) Approved wind turbines. Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.
 - (5) Compliance with Uniform Building Code. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the Uniform Building Code and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer. Wet stamps shall not be required.

- (6) Compliance with FAA regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
 - (7) Compliance with National Electric Code. Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.
 - (8) Utility notification. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- U. Compliance with New York State Department of Agriculture and Markets guidelines. Wind power construction projects located in county-adopted, state-certified agricultural districts shall comply with the following guidelines. The project sponsor is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals of these guidelines are being met. For larger projects, the project sponsor shall hire an environmental monitor to oversee the construction and restoration in agricultural fields.
- (1) Siting guidelines.
 - (a) Minimize impacts to normal farming operations by locating structures along field edges and in nonagricultural areas where possible.
 - (b) Locate access roads which cross agricultural fields along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
 - (c) Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields and in nonagricultural areas where possible.
 - (d) All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.
 - (2) Construction guidelines.
 - (a) The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
 - (b) Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.

- (c) All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the environmental monitor.
 - (d) Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings.
 - (e) In cropland, hayland and improved pasture, a minimum depth of 48 inches of cover will be required for all buried electric cables. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of 36 inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to 48 inches, the electric cables shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use, whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.
 - (f) All excess subsoil and rock shall be removed from the site. On-site disposal of such material may be allowed if approved by the landowner and, when applicable, the environmental monitor, with appropriate consideration given to any possible agricultural or environmental impacts. (Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
 - (g) In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
 - (h) All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil. (Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
 - (i) Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas. (Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
- (3) Restoration guidelines.

- (a) Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1 may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.
 - (b) All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
 - (c) All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.
 - (d) All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.
 - (e) Following restoration, all construction debris will be removed from the site.
- (4) Two-year monitoring and remediation.
- (a) The project sponsor will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two-year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.
 - (b) General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on-site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and the Department of Agriculture and Markets.
 - (c) Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined

by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the project sponsor.

- (d) When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the project sponsor as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at or shortly after the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the project sponsor's responsibility to fully redress all project impacts.
- (e) Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

§ 110-16. Use Regulation Table.

The attached Use Regulation Table is hereby adopted and declared to be a part of this chapter and is hereinafter referred to as the "Town of Benton Use Regulation Table."⁷

ARTICLE V **Area Bulk Regulations; Density Control**

§ 110-17. Purpose.

In order to provide adequate open spaces for access to light and air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, and to lessen congestion on streets, no building or premises shall be erected, altered or used except in accordance with the standards set forth in this article.

7. Editor's Note: The Use Regulation Table is included at the end of this chapter.

§ 110-18. Density Control Schedule.

The attached schedule of density control regulations is hereby adopted and declared to be a part of this chapter and is hereinafter referred to as the "Town of Benton Density Control Schedule."⁸

§ 110-19. Corner lots.

Whenever a side or rear yard is adjacent to a street, the standards for front yards shall apply.

§ 110-20. Projections into required yards.

- A. The following projections into required yards may be permitted:
- (1) Open fire escapes: four feet into side or rear yards.
 - (2) Awnings or movable canopies and overhangs: six feet into any yard.
 - (3) Cornices, eaves, insulation walls and roofs, and other similar architectural features: three feet into any yard.
 - (4) Apparatus needed for the operation of active or passive solar energy systems, including detached solar collectors, reflectors, piping or ductwork, and insulation necessary for efficient utilization thereof.
- B. Any open or enclosed porch or attached carport or garage shall be considered a part of the building in the determination of the size of the required yard or lot coverage. Nonroofed paved terraces shall not be considered a part of the building.
- C. Accessory buildings and uses shall comply with the provisions of Article IX, § 110-52, of this chapter. **[Amended 6-17-1996 by L.L. No. 1-1996]**

§ 110-21. Minimum lot size.

- A. In all districts where residences are permitted, a lot held in single ownership may be improved for residential use according to the minimum lot size per dwelling unit and bulk regulations for each district as set forth in the Density Control Schedule,⁹ provided that there shall be no more than one principal building and use on each lot. If two or more principal residential structures are located on the same lot, the minimum average density requirement must be complied with and future partition of the lot must be anticipated by providing adequate width and yards.
- B. A residential lot of required or larger than required size as set forth in this chapter shall not be reduced in size for transfer of ownership if such lot so subdivided will form one or more lots which shall not be in compliance with the requirements for the minimum

8. Editor's Note: The Density Control Schedule is included at the end of this chapter.

9. Editor's Note: The Density Control Schedule is included at the end of this chapter.

average residential density for the district in which such lot or lots are situated, except as provided in Article X, Residential Cluster Development.

§ 110-22. Distance between principal buildings on a lot.

No detached principal building shall be closer to any other principal building on the same lot than the average heights of said buildings.

§ 110-23. Lakeshore frontage.

- A. No person, firm, company, corporation or other entity shall deed, grant, sell, give, permit or lease a right-of-way or an easement to the lakeshore (except for "essential utility services," as defined in Article II, § 110-6, for drawing water) of less than 50 feet minimum width for each dwelling unit served. The minimum required area for a dwelling

unit in an L-R District shall not include the area of any right-of-way or easement deeded, granted, sold, permitted, conveyed, given, or leased.

- B. Any multiple-dwelling development or planned subdivision with L-R District lakeshore land used as a common recreation area shall have a minimum of 25 feet of lot width for each dwelling unit served.
- C. Joint or individual ownership of one or more parcels of land in districts or municipalities adjacent to the L-R District sharing ownership in an unoccupied and/or vacant L-R District lot shall have a minimum of 25 feet of lot width in the L-R District for each dwelling unit of the adjacent district or municipality. No dwelling unit or other structure shall be permitted on such L-R District lot.

ARTICLE VI Special Uses

§ 110-24. Intent.

The intent of special uses and special uses approval is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their special characteristics, or the special characteristics of the area in which they are to be located, special uses require special consideration so that they may be properly located with respect to the objectives of this chapter and their effect on surrounding properties.

§ 110-25. Authorization to grant or deny special uses.

The special uses listed in this chapter may be permitted upon issuance by the Zoning Board of Appeals of a special use permit in accordance with the standards and procedures set forth in this chapter. Special uses may also be enlarged or otherwise altered by such special use permit. In permitting a special use or the modification of a special use, the Zoning Board of Appeals may impose in addition to the standards and requirements expressly specified by this chapter, additional conditions which it considers to be necessary to protect the surrounding property, the neighborhood, or the Town as a whole. These conditions may include limiting the height of buildings, controlling the location and number of vehicular access points, increasing the street width, increasing the number of off-street parking and loading spaces required, limiting the number, size and location of signs, and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.

§ 110-26. Application for special use.

A property owner(s) or his agent(s) may initiate a request for a special use by filing an application with the Code Enforcement Officer. Such application shall be accompanied by a site plan in conformance with Article VIII of this chapter. A filing fee, as set by the Town Board, shall also be required, no part of which is returnable.

§ 110-27. Standards governing special use.

A special use shall comply with the procedures and standards set forth in Article VIII, Site Plan Approval and Approval of Special Uses, and Article 9, Development Standards For Site Plan Review, of this chapter except as these standards have been modified in authorizing the special use. Consideration shall be given to the following:

- A. The submission of a site plan in accordance with Article VIII is required before any consideration can be given for a special use.
- B. In order to grant any special use, the Zoning Board of Appeals shall find that the request is in harmony with the general purpose and intent of this chapter, taking into account the location and size of the use, the nature and intensity of the proposed use and the size of the site with respect to its accessibility and the traffic-bearing capacity of the surrounding thoroughfares.
- C. In order to grant any special use, the Zoning Board of Appeals shall find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- D. In the case where a special use has been permitted, no building permit shall be issued until 15 days after the granting of the special permit by the Zoning Board of Appeals, and then only in accordance with the terms and conditions of said permit. The appeals proceeding shall be instituted within 30 days after the filing of the decision in the office of the Town of Benton Clerk.
- E. A special permit for a special use shall become void one year after approval or after such time as may be specified as a condition of approval, if no construction or use activity has begun. The special permit shall be void if the original use shall cease for more than one year for any reason.
- F. The Zoning Board of Appeals, on its own motion and after proper notice and hearing, may revoke any approval of a special use for noncompliance with conditions set forth in the granting of said use after first holding a public hearing. Notice of the public hearing shall be published at least five days prior to the scheduled date in a newspaper of general circulation in the Town. The foregoing shall not be the exclusive remedy, but it shall be unlawful and punishable hereunder for any person to violate any condition imposed by an approved special permit for a special use.

§ 110-28. Public hearing on special use.

Before a special use is permitted, the proposed special use shall be considered by the Zoning Board of Appeals at a public hearing. Notice of said hearing shall be given as provided in § 110-27F.

§ 110-29. Notification of action.

The Zoning Board of Appeals shall notify the applicant of its action within 45 days after the public hearing.

§ 110-30. Appeal.

The applicant or any interested person may appeal a decision of the Zoning Board of Appeals. The appeal shall be made to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision on a special use application with the Town of Benton Clerk.

ARTICLE VII

Farm-Related Businesses and Home Occupations**§ 110-31. Farm-related business (special use). [Amended 6-17-1996 by L.L. No. 1-1996; 11-14-2007 by L.L. No. 3-2007]**

Within A-R-1 and A-R-B Districts on lots of three acres or more, farm-related businesses may be permitted as special uses subject to site plan review as authorized by Article VIII of this chapter. "Farm-related businesses" are defined as activities and services directed toward meeting the needs of those engaged in area farming and providing materials and services needed for farming. Farm-related businesses are subject to the following standards:

- A. For the purposes of this chapter, farm-related businesses may involve the following types of uses. Other uses may be permitted if the applicant demonstrates that the proposed farm-related business would serve the area farming community.
 - (1) Facilities for the manufacturing, processing, warehousing, sales, distribution, storage, repair and service of agricultural produce, equipment, vehicles or supplies.
 - (2) Blacksmith shops and harness making.
 - (3) Butcher shops.
 - (4) Grain mills.
 - (5) Processing of locally produced agricultural products.
 - (6) Veterinary offices.
 - (7) Feed supply, seed, and fertilizer distribution.
- B. The maximum lot coverage of a farm-related business shall be 25%.
- C. Farm-related business may be conducted in a building or buildings comprising up to 15,000 square feet.
- D. The length of access drive shall be sufficient to accommodate stacking of delivery and customer vehicles.

- E. No farm-related business shall be located within 80 feet of any adjoining side or rear property line. Such distance shall be measured as a straight line between the closest points of any structure or any other physical improvement of the farm-related business and the adjoining property line.
- F. Screening must be provided when a farm-related business abuts any property used principally for residential purposes. Certain pieces of apparatus used for farm-related businesses which create noxious dust, odor, light or noise conditions may require greater setbacks or screening, as determined by the Planning Board.
- G. Off-street parking areas shall be provided for the farm-related business as required in § 110-50 of this chapter. Truck parking shall be limited to trucks used by the farm or in the farm occupation.
- H. Any outdoor storage of supplies, materials and products shall be screened from adjoining roads and properties. The display of farm equipment for sale shall be exempted from this provision.
- I. If in the opinion of the Planning Board a proposed farm-related business presents a fire hazard, emits smoke, dust or other air pollutants, noise, or glare, or could create a potential nuisance as a result of its hours of operation, the Board may impose such other reasonable conditions it deems appropriate.

§ 110-32. Home occupations permitted as special use. [Amended 6-11-2001 by L.L. No. 2-2001; 11-14-2007 by L.L. No. 3-2007]

Within A-R-1, A-R-B and H-C Districts, on lots of two acres or more, a home occupation which meets the following standards may be permitted as a special use subject to site plan review as authorized by Article VIII of this chapter:

- A. For the purposes of this chapter, home occupations on lots of two acres or more may involve any one of a wide range of uses, so long as the use is not incompatible with the primary agricultural or residential use of the land. These uses include, but are not limited to, professional offices, including doctors, dentists, veterinarians, attorneys, engineers, architects, accountants, real estate and insurance offices, music, dance or artist studios, barber and/or beauty shops, tailoring or dressmaking, business, agricultural and/or personal service establishments. The applicant must demonstrate that the home occupation is compatible with the rural or hamlet setting and will not create nuisances for nearby properties.
- B. The home occupation shall be conducted by the owner-occupant or tenant of the farm or home and no more than two additional employees.
- C. The home occupation shall occupy no more than 4,000 square feet of gross floor area.
- D. The maximum lot coverage of the residence or farm, as specified in the Density Control Schedule¹⁰ of this chapter, shall include the home occupation.

10. Editor's Note: The Density Control Schedule is included at the end of this chapter.

- E. The maximum area devoted to the home occupation (including the structure, parking, storage, and driveway if separate) shall be no more than 10,000 square feet of land.
- F. Where practicable, home occupations shall be conducted within an existing farm or residential building. Any building constructed for use by the home occupation shall be located within 100 feet of the residence or other farm building, and shall be set back at least 100 feet from the roadway.
- G. Any building constructed for the use of the home occupation shall be of a nature that it can be converted to agricultural or residential use if the home occupation is discontinued. The structure's exterior appearance should be that of a farm or residential building.
- H. No home occupation shall be located within 50 feet of any adjoining side or rear property line. Such distance shall be measured as a straight line between the closest points of any structure or any other physical improvement of the home occupation and the adjoining property line.
- I. Outdoor storage shall be located so as not to be visible from adjoining roads and properties. This may be done by means of placement within a building, landscaping, screening or placement on the lot behind a building.
- J. Off-street parking areas shall be provided for the home occupation at a ratio of not more than one space per 200 square feet of building area devoted to the home occupation and not less than one space per 500 square feet of building area devoted to the home occupation. Truck parking shall be limited to trucks used by the farm, if any, or in the home occupation. One parking space must be provided for each employee.
- K. The use shall not create excessive noise, vibration, glare, smoke or fumes which are continuously detectable beyond the limits of the property.

§ 110-33. Home occupations permitted as accessory use. [Amended 6-17-1996 by L.L. No. 1-1996]

Home occupations which meet the following standards are permitted as accessory uses to a residence, and no special use permit shall be required in order to establish or maintain such uses:

- A. For the purposes of this chapter, home occupations may involve any one of a wide range of uses, so long as the use is not incompatible with the primarily residential use of the property. Such uses include, but are not limited to, those occupations listed in § 110-32. The applicant must demonstrate that the home occupation is compatible with the residential character and setting and will not create nuisances for nearby properties.
- B. The home occupation shall be conducted by the owner-occupant or tenant of the residence.
- C. The home occupation shall be conducted in the home or in an accessory building which maintains the appearance of the property as a residential property.

- D. The permitted home occupation shall occupy no more than 1,000 square feet of gross floor area.
- E. There shall be no exterior storage of business vehicles, equipment, supplies, materials, merchandise, or inventory.
- F. There shall be no exterior display of products.
- G. A minimum of one parking space shall be provided for each 500 square feet of gross floor area devoted to the permitted home occupation.
- H. The use shall not create excessive noise, vibration, glare, smoke or fumes which are continuously detectable beyond the limits of the property.

ARTICLE VIII
Site Plan Review and Approval of Special Uses

§ 110-34. Intent.

- A. The intent of site plan approval is to authorize the Town of Benton Planning Board to review and approve site plans for special uses otherwise permitted by this chapter in order to accomplish compliance with the intent of the standards of this chapter. The objective is to evaluate site plans in order to minimize conflicts between the site layout and design of proposed uses and existing uses and natural site conditions and thereby minimize any adverse effects affecting the health, safety, and overall welfare of the community. The level of site plan review is intended to be commensurate with the scale and complexity of the proposed development or change.
- B. Development standards to be used for site plan review are found in Article IX of this chapter.

§ 110-35. Authorization.

The power to approve, approve with modification, or disapprove site plans, where required by this chapter, is hereby vested in the Town of Benton Planning Board pursuant to § 274-a of the Town Law of New York State. Prior to issuing a building permit for construction, reconstruction or expansion, or change in use of any special use, a site plan and supporting documentation shall be submitted to the Planning Board for its review and approval. For development proposals involving new construction of 2,000 square feet or more of floor area, the Planning Board may require that the site plans be prepared by a licensed architect or engineer. Such requirement shall be reasonably based on the complexity of the site development and of proposed structure(s) or land uses which are included in the development proposed by the applicant.

§ 110-36. Site plan review for special use home occupations and certain farm-related businesses.

Where applicants propose special use home occupations under the requirements of § 110-32 of this chapter, or farm-related businesses requiring no additional construction, or farm-related businesses proposing the construction, reconstruction, expansion or use of less than 2,000 square feet of floor area, the applicant is required to submit a sketch plan⁹ and written description to the Planning Board which describes the following characteristics of the proposed use or development:

- A. Its location on the property owned or leased by the applicant, its relationship to other uses or buildings on the property, and its distance from the nearest public streets.
- B. A description of the uses and/or buildings or improvements proposed by the applicant and their locations on the property.
- C. The size of the proposed uses measured in square feet.
- D. Any exterior improvements proposed, including parking, landscaping or other improvements.
- E. A description of the type of activity which would occur as part of the proposed home occupation or farm-related business, including the anticipated business traffic involved, any processing operations which may result in noise, odor or glare to neighboring uses and any requirements for paving, storage or utility use.
- F. The Planning Board shall review the sketch plan and written description in accordance with the requirements of §§ 110-31 and 110-32 of this chapter and may approve, approve with modifications or disapprove the applicant's proposal based on the findings of its review. The Planning Board will notify the applicant within 30 days of its findings; provided, however, that the time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.

§ 110-37. Site plan review for certain farm-related businesses or residential special uses.

For farm-related business proposals involving the construction, reconstruction or use of 2,000 square feet or more of floor area or for other business or residential special uses requiring a special permit, the following site plan review procedures will be carried out by the Planning Board.

§ 110-38. Concept plan conference.

The Planning Board may request a conference with the applicant while the proposed development is still in the concept stage,¹⁰ and may request that a concept or sketch plan be submitted at that time. A concept plan conference may also be initiated by the applicant. The purpose of a concept plan conference is to provide the opportunity for the person applying for

9. Editor's Note: Request of a sketch plan is authorized pursuant to L.L. No. 2-1992, adopted 3-9-1992.

10. Editor's Note: Request of a concept plan conference is authorized pursuant to L.L. No. 2-1992, adopted 3-9-1992.

a special use to consult early and informally with the Planning Board in order to minimize conflicts, save time and money and make the most of opportunities for desirable development.

A. Requirements.

- (1) The Planning Board may discuss with the applicant general requirements as to design of streets, reservations of land, drainage, utilities, water supply, fire protection, and other improvements as well as procedural matters.
- (2) Applicants proposing the development of land adjoining state or county highways are advised to consult with the District Engineer of the New York State Department of Transportation or Yates County Highway Superintendent in order to resolve problems at the earliest possible stage. The Planning Board shall provide written comments on the concept plan for a proposed development and in the course of its review may consult with other interested public agencies.
- (3) The concept plan shall include the following information:
 - (a) An area map showing:
 - [1] Applicant's entire holdings, that portion of the applicant's property under consideration for development and any adjacent parcels owned by the applicant.
 - [2] All properties, their ownership and uses, subdivisions, streets, zoning districts, easements, and adjacent buildings within 500 feet of the applicant's property.
 - (b) A site development plan:
 - [1] Existing natural features such as water bodies, watercourses, wetlands, wooded areas, individual large trees, and flood hazard areas.
 - [2] Zoning districts, certified agricultural districts, and school districts.
 - [3] Special improvement districts (water, sewer, lights, fire, drainage and the like).
 - [4] Easements.
 - [5] All existing man-made features.
 - [6] All proposed buildings, man-made structures, landscaping and public improvements.
 - (c) A map showing the topography of the site.
 - (d) A soils overlay, if general site grades exceed 15% or if portions of the site have susceptibility to erosion, flooding or ponding.

§ 110-39. Preliminary site plan application.

Application for preliminary site plan approval¹¹ shall be made in writing in triplicate to the Code Enforcement Officer no less than 15 days prior to the next scheduled Planning Board meeting. The Code Enforcement Officer shall refer all preliminary site plan applications to the Planning Board for its review and approval. For the purposes of this chapter, the submission date shall be the date of the first regular Planning Board meeting following submission to the Code Enforcement Officer.

§ 110-40. Preliminary site plan requirements.

The preliminary site plan application shall include the information listed below. The Planning Board may at its discretion waive any preliminary requirements which are not relevant to the proposed use and site.

- A. An area map showing that portion of the applicant's property under consideration for development, any adjacent parcels owned by the applicant, and all streets, zoning districts, easements and adjacent buildings within 500 feet of the applicant's property.
- B. A preliminary site plan shall include the following information:
 - (1) Title of drawing, including the name and address of the applicant.
 - (2) North arrow, scale and date.
 - (3) Boundaries of the project at a scale of not more than 100 feet to one inch.
 - (4) Existing natural features such as watercourses, water bodies, wetlands, wooded areas and individual large trees, showing features to be retained.
 - (5) Existing and proposed contours at intervals of not more than five feet.
 - (6) Location of proposed land uses and their areas in square feet or acres, the uses proposed and the height of each proposed structure.
 - (7) Location of all existing or proposed site improvements including streets, drains, culverts, retaining walls, fences and easements, whether public or private.
 - (8) Description of sewage disposal and water systems and the location proposed for such facilities.
 - (9) Provision for buffer areas and other landscaping.
 - (10) Delineation of residential areas, if proposed, indicating the general extent of each area, a description of the dwelling unit types proposed, and a calculation of residential density in dwelling units per gross acre for each such area.
 - (11) Location of all parking and truck-loading areas, showing access and ingress drives.

11. Editor's Note: Request for preliminary site plan applications is authorized pursuant to L.L. No. 2-1992, adopted 3-9-1992.

- (12) The location, design and size of all signs and lighting facilities.
 - (13) The approximate locations and dimensions of areas proposed for neighborhood parks or playgrounds, or other permanent open space.
 - (14) Building orientation.
 - (15) The location and design of all energy distribution facilities, including electrical, gas and solar energy.
 - (16) Provision for energy efficiency.
 - (17) Grading and erosion control measures including the proposed location of sediment sink/settling pond and interceptor swales, etc.
 - (18) Location and design for stormwater management facilities.
 - (19) A drainage report including supporting design data and copies of the engineering computations used to determine the design capacities and performance requirements of drainage facilities.
 - (20) The lines and dimensions of all property which is offered, or is to be offered, for dedication for public use, with the purpose indicated thereon, and of all property that is proposed to be reserved by deed covenant for the common use of the property owners of the development.
- C. The Planning Board may require additional information which appears necessary for a complete assessment of the project.
- D. Review of preliminary site plan.
- (1) The Planning Board review of the preliminary site plan shall include, but is not limited to, the following considerations:
 - (a) Adequacy and arrangement of vehicular traffic access and circulation.
 - (b) Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - (c) Location, arrangement, size and design of buildings, lighting and signs.
 - (d) Relationship of the various uses to one another and their scale.
 - (e) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and noise buffer between adjacent uses and adjoining lands.
 - (f) Adequacy of stormwater and sanitary waste disposal.
 - (g) Adequacy of structures, roadways and landscaping in areas susceptible to flooding and ponding or erosion.

- (h) Compatibility of development with natural features of the site and with surrounding land uses.
 - (i) Adequacy of floodproofing and prevention measures consistent with flood hazard prevention district regulations.
 - (j) Adequacy of building orientation and site design for energy efficiency; the extent to which the proposal plan conserves energy use and energy adequate sunlight for use by solar energy systems.
 - (k) Adequacy of open space for play areas, informal recreation and the retention of natural areas such as wildlife habitats, wetlands and wooded areas.
 - (l) Adequacy of pedestrian access, circulation, convenience and safety.
- (2) In their review of a preliminary site plan, the Planning Board may consult with the Code Enforcement Officer, Fire Commissioners, other local and county officials, and any designated private consultants, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.

§ 110-41. Public hearing.

Upon the Planning Board's certification that the preliminary site plan application is complete and satisfactory, a public hearing shall be scheduled within 45 days from the time of such certification. For the purpose of this chapter, the submission date shall mean the date of the first regular Planning Board meeting following submission of the preliminary site plan to the Code Enforcement Officer. Notice of the public hearing shall be published at least five days prior to the scheduled date in a newspaper of general circulation in the Town.

§ 110-42. Notification of decision on preliminary site plan.

Within 45 days of the public hearing at which a preliminary site plan is considered, unless an extension is agreed upon by mutual consent, the Planning Board shall act upon it. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, specially approved, or disapproved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report. The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan application. If the preliminary layout is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case the Planning Board may recommend further study of the proposal and resubmission of the preliminary site plan.

§ 110-43. Final site plan application.

After receiving approval, with or without conditions, from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and

county officials, the applicant may prepare a final site plan and submit it to the Planning Board for its review and approval. However, if more than six months have elapsed between the time of the Planning Board's report on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revisions prior to accepting the proposed final site plan for review. The final site plan shall conform to the approved preliminary site plan, and shall incorporate any revisions or other features that may have been recommended by the Planning Board at the preliminary review. All revisions shall be clearly indicated by the applicant.

§ 110-44. Notification of decision on final site plan.

Within 45 days of the submission of the final site plan, the Planning Board shall render a decision. This decision shall also immediately be filed in the office of the Town of Benton Clerk.

- A. Upon approval, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Code Enforcement Officer who shall then issue a building permit if the project conforms to all other applicable requirements.
- B. Upon disapproval, the Planning Board shall so inform the Code Enforcement Officer who shall then deny a building permit. The Planning Board shall also notify the applicant in writing of its decision and its reason for disapproval. A copy of the appropriate minutes may suffice for this notice.
- C. Specifications for improvements shown on the site plan shall be those set forth in this chapter and in other laws, rules and regulations, or in construction specifications of the Town of Benton, as they shall from time to time be enacted.

§ 110-45. Appeals.

- A. The applicant or any interested person may appeal a decision of the Planning Board. The appeal is made to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision on a special use application with the Town of Benton Clerk.
- B. The Planning Board, at its discretion, may waive the concept and final application procedure.

ARTICLE IX

Development Standards For Site Plan Review

§ 110-46. General provisions.

- A. The Planning Board, in reviewing a site plan, shall be guided by the standards presented in this article. In the review, they shall take into consideration the prospective character of the development and require improvements be designed to such standards as are consistent with reasonable protection of the public health, safety, or welfare.

- B. Where a property is divided into lots and blocks, whether intended for single or multiple ownership, the requirements of the Town of Benton's Subdivision Regulations, as may be adopted by the Town from time to time, shall be followed.
- C. For permitted uses the Code Enforcement Officer shall ensure compliance with this article and any other applicable laws, articles or sections.

§ 110-47. Trees and landscaping.

Developers shall take adequate measures to preserve desirable existing trees in suitable locations and to provide new lawn, trees and shrubs to suitably landscape proposed developments.

§ 110-48. Street names.

All streets shall be named, and such names shall be subject to the approval of the Planning Board. A street which is a continuation of an existing street shall bear the same name. Relating street names to features of local historical, topographical, or other natural interest is encouraged. Street signs shall be provided by the developer at all intersections and shall be of a type approved by the Town Highway Superintendent.

§ 110-49. Standards for street design.

Streets shall be designed and constructed to conform with New York State Department of Transportation, Yates County and Town of Benton specifications. The typical section approved by the Town Highway Superintendent shall be used for all roads. Pavement and right-of-way widths shall vary with type of use.

§ 110-50. Parking.

- A. General provisions.
 - (1) It shall be the responsibility of the owner of a property to provide the off-street parking spaces required in the listing below for any use which is erected, enlarged, or altered after the effective date of this chapter.
 - (2) A parking space shall be considered adequate if it is not less than 200 square feet (10 feet by 20 feet) exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to street or alley.
 - (3) No exit or entrance drive connecting a parking area and a street shall be permitted within 30 feet of the intersection of two public rights-of-way.
 - (4) Where appropriate, the Planning Board may, upon the presentation of evidence, vary the number of circumstance of the following parking space requirements, in order that the general welfare be served and the prospective uses be equitably treated.

- (5) In stadiums, churches, and other places of assembly, in which patrons or spectators occupy benches, pews, or other similar seating facilities, each 20 inches of such seating facilities shall be counted as one seat.
 - (6) The lighting of off-street parking lots shall not be directed into adjacent properties.
 - (7) If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.
- B. Required parking spaces. The minimum number of required spaces shall be determined on the basis of dwelling units, bedrooms, floor area, number of members, employees and/or visitors, equipment, and/or seats contained in proposed new buildings or structures, or added by alteration to existing buildings or structures, and such minimum number of spaces shall be maintained by the owners of such buildings or structures, as follows:
- (1) Residences: two spaces per dwelling unit.
 - (2) Home occupation: see §§ 110-32 and 110-33 of this chapter.
 - (3) Hospitals, sanitariums, nursing homes: one space for each bed.
 - (4) Bed-and-breakfast, boardinghouse, tourist home, or rooming house: one space for each guestroom within the facility.
 - (5) Motels/hotels: one space for each unit plus one space for every four employees.
 - (6) Offices, service, retail, professional: one space for each 200 square feet of gross floor area.
 - (7) Medical and dental clinics: one space for each 100 square feet of gross floor area.
 - (8) Retail establishments, funeral homes, veterinary hospitals, banks, and related commercial establishments of a personal service or business service nature: one space for each 100 square feet of gross floor area.
 - (9) Restaurants: one space for each 100 square feet of customer floor area plus additional space as required to accommodate tractor trailer parking and maneuvering.
 - (10) Commercial recreation, membership clubs: one space for every three persons allowed within the maximum occupancy as established by the Code Enforcement Officer.
 - (11) Roadside stands: one space for every 50 square feet of area devoted to selling or display.
 - (12) Nursery and elementary schools: one space per employee plus two additional spaces per classroom.
 - (13) High schools and colleges: one space per employee plus one space per each eight students.

- (14) Churches, temples, auditoriums, theaters: one space for every five seats.
 - (15) Industrial uses: one space for each 1,000 square feet of floor area devoted to manufacture, storage or stationary operating equipment and one space for each company vehicle.
 - (16) Farm-related business: one space per employee and compliance with the parking requirements provided in this Subsection B, based on type of business.
 - (17) Automobile service and sales: two spaces per employee plus one space per service bay.
- C. Calculation of parking spaces. In the case of combination of uses, the total requirements for off-street automobile parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit modification. Whenever a major fraction of a space is required, a full space shall be provided.
- D. Dimensions of parking spaces. Every parking space provided shall be at least 10 feet wide and 20 feet long, and every space shall have usable driveway access to a street or alley.
- E. Construction of parking. Parking areas, with the exception of single-family residences, shall be surfaced with a suitable all-weather, dust-free surface.
- F. Landscaping. Wherever possible, parking areas should be landscaped with lawn, trees, shrubs or other plant material.

§ 110-51. Signs. [Amended 6-17-1996 by L.L. No. 1-1996; 3-15-2006 by L.L. No. 1-2006]

No sign or other outdoor devices for the purpose of advertising of any kind may be erected or established in the Town except in conformance with the standards in this section.

A. General provisions.

- (1) No sign shall be erected or placed at or near the intersection of any streets in such a manner as to cause a traffic hazard at the intersection; or at any location where, by reason of the position, shape, or color of the sign, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device.
- (2) No sign shall be placed or erected above the maximum elevation of the main roofline of the principal building located upon the lot where the sign is located.
- (3) No permitted freestanding sign shall be greater than 25 feet in height above the average surface of the ground of the lot where the sign is located.
- (4) All signs shall be set back a minimum of 10 feet from any side or rear lot line and cannot be located in the highway right-of-way.
- (5) The provisions of this section shall not apply to safety signs, road signs, historical markers or highway directional signs erected by municipal public agencies.

- (6) Illumination of signs shall not be intermittent or of varying intensity and shall not produce glare beyond the limits of the property lines.
- (7) Signs with moving parts are not permitted except in the cases of public service signs (such as time and temperature signs) which are approved by the Code Enforcement Officer.
- (8) Marquee-type signs are not permitted, except as a special use permit. The definition of a "marquee sign" is a sign with or without internal lighting and removable letters.
- (9) Signs must be constructed of durable materials and maintained in good condition. If allowed to become dilapidated, they shall be repaired or removed within 30 days, by the direction of the Code Enforcement Officer, at the owner's expense. The following design elements shall be preferred:
 - (a) Use of natural construction materials such as stone, brick, wood, or simulated materials.
 - (b) Landscaping.
 - (c) Simplicity of design and color scheme.
- (10) All off-premises signs will require special use permits.

B. Signs permitted for any use.

- (1) Real estate signs.
 - (a) Residential use: six square feet per side for a total area of 12 square feet.
 - (b) Business and industrial uses: 12 square feet per side for a total area of 24 square feet.
- (2) Single identification signs not classified as business signs. Such signs shall contain no more than two sides with a maximum area of 10 square feet per side for a total area of 20 square feet.
- (3) Memorial signs or tables.
- (4) Temporary construction signs identifying an architect, engineer, or contractor when placed upon the property where the construction is being undertaken. Such signs shall be removed within 30 days after construction is completed.
- (5) Temporary event posters or banners covering such things as festivals, political and sporting events, shows and elections. Such signs shall not be displayed until four weeks prior to the event and must be removed within two weeks following the event.
- (6) All signs, certificates and licenses that are mandated to be on display by any local, county, state and federal law or authority.

- (7) Temporary signs for the sale of seasonal fruits and vegetables during the growing season shall be allowed when a permitted or a special use occupation is involved and shall have an aggregate total face area of not more than a maximum of 16 square feet per side, not to exceed 32 square feet in total area.
- (8) Temporary signs shall be constructed of light-weight, nondurable materials and shall generally appear and be temporary in nature.
- (9) Temporary signs shall not be located within the limits of a public right-of-way and shall be located in such a manner as not to interfere with traffic or pedestrian visibility.
- (10) Temporary signs, event posters or banners, other than for the sale of seasonal fruits and vegetables, shall contain no more than two sides with a maximum area of 10 square feet per side for a total area of 20 square feet.
- (11) Temporary signs may be displayed for a maximum of six months per year.
- (12) Larger temporary signs may only be used with issuance of a special use permit.

C. Business signs.

- (1) The design, appearance and location of a sign and the material used in the fabrication of the sign shall be submitted to and approved by the Planning Board before a permit is issued to erect a sign.
- (2) Maximum signage, both attached and detached from the building, shall consist of no more than 10% of the area of the primary building facade.
- (3) One detached sign shall be permitted and shall contain no more than two sides with a maximum area of 32 square feet per side for a total area of 64 square feet. A second detached sign may be permitted with issuance of a special use permit.
- (4) A dwelling unit in which a home occupation is permitted may display a sign noting such an occupation. Such sign shall contain no more than two sides with a maximum area of 10 square feet per side for a total area of 20 square feet.
- (5) Subdivision signs are permitted. Such signs shall contain no more than two sides with a maximum area of 16 square feet per side for a total area of 32 square feet.

§ 110-52. Accessory buildings and uses. [Amended 6-17-1996 by L.L. No. 1-1996]

A. Accessory buildings not attached to principal buildings shall comply with the following requirements:

- (1) No accessory building shall exceed 20 feet in total height, except agriculture structures.
- (2) Accessory building setbacks shall be as stipulated in the Density Control Schedule, 110 Attachment 2, attached to the end of this chapter pursuant to § 110-18. **[Amended 7-11-2018 by L.L. No. 1-2018]**

- (3) No accessory building shall be located within the required front yard or closer to the front lot line than the existing principal residential building.
 - (4) No accessory building may be used for habitable space.
- B. Accessory buildings attached to a principal building shall comply with the same requirements as the principal building involved.
- C. Accessory uses (except fences) not enclosed in a building shall comply with the following requirements:
- (1) No accessory use shall be located closer than 15 feet to a side or rear lot line.
 - (2) No accessory use shall be located within the required front yard or closer to the front lot line than the existing principal residential building.
 - (3) No accessory use shall adversely affect the character of any residential neighborhood by reason of noise, glare or safety.
- D. Fences.
- (1) All fences shall be located within the established lot area of the property concerned, with clearance provided for proper maintenance.
 - (2) No fence shall be erected or placed at or near an intersection of any road or street in such a manner as to cause a traffic hazard.
 - (3) All fences shall not exceed 10 feet in height.
- E. Special designs. In cases where a developer has designed a grouping of buildings, the Planning Board may approve the siting of accessory buildings such as garages and carports in the front yard, provided that the buildings are in compliance with all required setbacks.

§ 110-53. Drainage and erosion control.

- A. Drainage systems. Adequate and comprehensive drainage systems shall be provided to convey the stormwater runoff originating within and outside the proposed development as follows:
- (1) Drainage systems shall have sufficient capacity to accommodate the potential future runoff based upon the probable land use and ultimate development of the total watershed upland of the development.
 - (2) Preservation of natural watercourses is generally preferable to the construction of drainage channels.
 - (3) Interior drainage systems shall be designed to accommodate a ten-year storm.
 - (4) Utilizing the drainage guidelines outlined above, the Planning Board may require the developer to submit the following:
 - (a) Plan profiles, and typical and special cross-sections of proposed drainage facilities.

- (b) Final design capacities and estimated performance of the drainage facilities.
 - (c) A grading plan identifying suitable contour intervals with grading details to indicate proposed grades.
 - (d) If the development is within or adjacent to a designated floodplain, an analysis of the area with respect to management of the floodplain shall be included in the drainage report.
- B. Erosion control. In order to ensure that land development will occur with minimum soil erosion, the Planning Board may require the developer to consult with the Soil Conservation Service and the Soil Conservation Service shall determine whether or not to require that the following procedures be put into practice. Such procedures may include:
- (1) Exposing the smallest practical area of land at any one time during the development.
 - (2) Provision of temporary vegetation and/or mulching to protect critical areas.
 - (3) Provision of adequate drainage facilities, which may include swales and sedimentation basins, to accommodate increased runoff caused by changed soil and surface conditions during and after development.
 - (4) Adjusting the development plan to the topography and soils so as to minimize erosion potential.
 - (5) Retention and protection of existing vegetation wherever possible.
 - (6) Installation of permanent final vegetation and structures as soon as practicable.
 - (7) Provision of adequate protective measures when slopes in excess of 15% are graded.
 - (8) Installation of temporary sedimentation basins as required by the Soil Conservation Service.

§ 110-54. Mobile homes. [Amended 6-17-1996 by L.L. No. 1-1996]

All mobile homes shall meet the minimum lot size and setback requirements for a residential use in said district. All mobile homes require a building permit.

- A. Mobile home standards. All mobile homes installed in the Town of Benton shall meet the following minimum requirements:
- (1) Minimum size: 24 feet wide 720 square feet. **[Amended 11-14-2007 by L.L. No. 3-2007]**
 - (2) No less than two means of exit.
 - (3) Water and sewage facilities that meet state and local health standards.

- (4) New York State Certification and shall meet all State Fire Prevention and Building Code requirements.
 - (5) Installation of masonry pad foundation. **[Amended 11-14-2007 by L.L. No. 3-2007]**
 - (6) All mobile homes shall be on lot of record.
 - (7) Minimum roof pitch: 4 1/2. **[Amended 11-14-2007 by L.L. No. 3-2007]**
- B. Temporary business use. A single mobile home to be used as a temporary business office, storehouse or construction field office may be located anywhere in the Town. Such temporary location, however, shall be subject to the site plan review and shall be allowed for a period of time which shall not exceed six months. This time limit may be extended if, in the opinion of the Code Enforcement Officer, such extension is a proper continuance of the temporary purpose.
- C. Temporary residential use. For a time period not to exceed 12 months, a single mobile home to be used as a residence on an emergency basis on a lot where an existing residence is destroyed or damaged to the extent that it is not habitable.

§ 110-55. Excavations for soil mining.

Excavation for the purpose of commercial soil mining such as gravel pits, quarrying, or any subsoil removal shall be allowed only by special permit, subject to the following provisions:

- A. Before a special permit is issued, the applicant shall submit to the Planning Board the following information:
- (1) Two copies of a map at a scale of one inch equals not 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 and landowners. Such map shall also show the present topography at two-foot contour intervals. The map shall be signed by a professional engineer or land surveyor for certification of its accuracy.
 - (2) Two copies of the proposed plan of excavation at the same scale as above showing the proposed finished elevations at two-foot contour intervals and the proposed drainage plan.
 - (3) Two copies of a reclamation plan. The plan must show the land restored to a configuration permitting reuse of the land for another purpose such as housing, industrial parks, commercial areas, parks, etc. Such a plan would illustrate road and building layout as well as final contour elevations. Pre-planning for such future use enables an efficient, sequential restoration of land as excavation progresses, thereby permitting an economically efficient operation. The plans shall be prepared by a competent professional such as an architect, landscape architect or civil engineer.

- B. Excavation operations requiring a New York State Department of Environmental Conservation Soil Mining Permit shall obtain such permit prior to the issuance of a special permit by the Town.
- C. 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 of the slope shall not be closer than 40 feet to a property line. Suitable landscaping may also be required if appropriate to the public health, safety, or welfare. In those cases where excavating is

already in progress but has not as yet come within 40 feet of the property line, this chapter shall be retroactive to prevent excavation within 40 feet of the property line.

- D. No rock crusher, cement plant, or other crushing, grinding, polishing, or cutting machinery or other physical or chemical process for treating the product of such excavation shall be permitted, without prior approval of the Planning Board.
- E. The proposed finished grading plan shall show the land to be smooth-graded and topsoil respread to a minimum depth of four inches; the slope shall not exceed the normal angle of repose of the material removed but in no instance shall a finished slope exceed one foot vertical to two feet horizontal. Slopes shall be seeded with appropriate grasses and reforestation seedlings may be required to be planted.
- F. The applicant may be required to furnish a performance bond, in the amount determined by the Town Board to be sufficient to guarantee completion of the finished grading and drainage plan. Such bond shall be released by the Town Board only upon certification that all requirements including the finished grading and drainage have been complied with.
- G. No special permit for excavation operations or soil mining shall be granted for a period of more than five years, but such permit may be extended for additional five-year periods upon approval of the Planning Board. To receive such an extension, the applicant must provide plans and information showing the sequence and timing of excavation.
- H. Upon approval, one copy of the approved excavation plan shall be returned to the applicant by the Town Clerk together with a special permit upon payment of a fee as set by the Town Board resolution to cover all engineering and other costs directly attributable to the approval and office and field checking of the proposed soil mining operation.

§ 110-56. Erection, re-erection and razing of damaged buildings.

- A. Any building which has been damaged by fire or other causes to the extent of more than 50% of its appraised valuation shall be repaired or rebuilt in conformance with the regulations of this chapter. Such building shall either be so repaired or razed within 18 months in a fashion which leaves the site clean.
- B. A building which has been damaged by fire or other causes to the extent of less than 50% of its appraised valuation must be reconstructed within a period not to exceed 18 months or be razed by or at the cost of the owner.
- C. Enforcement will be by the Code Enforcement Officer, utilizing the services of a qualified appraiser when necessary.

§ 110-57. Industrial use design standards.

The following general standards are hereby adopted for the control of any industrial use. No such use shall be permitted, established, maintained or conducted therein which shall cause or be likely to cause:

- A. Excessive smoke, fumes, gas, dust, glare, noise, discharge of effluent, odor, or any other atmospheric pollutant beyond the boundaries of the lot whereon such use is located. What smoke is excessive shall be determined according to Ringlemann's Scale for Grading the Density of Smoke, published by the U.S. Bureau of Mines, when the shade or appearance of such smoke is darker than No. 2 on said Ringlemann Smoke Chart.
- B. Hazard to person or property by reason of fire, explosion, radiation, or other cause.

§ 110-58. Private kennel, boarding kennel and rescue organization standards. [Amended 3-13-2013 by L.L. No. 2-2013]

A private kennel, boarding kennel and rescue organization shall conform to the following minimum requirements:

- A. Minimum lot size: three acres.
- B. Setback. The actual kennel facility and all associated runs or fenced areas shall be set back a minimum of 100 feet from all lot lines.
- C. Buffer. All kennel facilities and associated shall be adequately screened by fence, plantings or landscaping from all roads and adjacent properties.
- D. The kennel facility shall have sufficient indoor boarding areas and associated outdoor runs to accommodate the proposed number of animals to be boarded.
 - (1) Indoor area shall be a minimum of 16 square feet in size.
 - (2) Outdoor runs:
 - (a) Shall be a minimum of 4 1/2 feet wide and 12 feet long.
 - (b) Shall be appropriately separated from adjacent runs by fencing, concrete, block or other appropriate materials.
 - (c) Shall provide a form of shelter if not directly linked to a separate indoor kennel area.

§ 110-58.1. Commercial kennel standards. [Added 3-13-2013 by L.L. No. 2-2013]

A commercial kennel will be permitted in the Town of Benton in its designated district A-R-1 only under the following conditions:

- A. No more than 15 adult dogs are permitted in a commercial kennel or on the premises on which it is located at any time.
- B. All animals shall be kept in clean and sanitary premises, structures or enclosures.
- C. The ambient temperature shall be consistent with the requirements of the specific companion animals. Heating shall be deemed necessary when the inside ambient temperature of the facility falls below 50° F. for a period of four consecutive hours and cooling shall be required when the temperature of the facility rises above 85° F.

- D. All facilities shall be adequately ventilated with fresh or filtered air to minimize drafts, odors and moisture condensation and to provide for the health and comfort of the animals at all times. Ventilation shall be provided by either natural or mechanical means. The necessary equipment or comparable means shall be provided to exhaust the air from the animal area to the outside of the building.
- E. Uniformly distributed natural and/or artificial lighting shall be provided to permit routine inspection and facilitate routine cleaning and the proper care and maintenance of the animals. Lighting shall be so arranged as to protect each animal from excessive illumination.
- F. One inside pen shall be provided for each dog or animal boarded or kept.
- G. For dogs weighing 70 pounds or less, any inside pen shall have a minimum measurement of four feet wide by four feet long. For all dogs weighing more than 70 pounds, any inside pen shall have a minimum measurement of six feet wide by six feet long in area size. Any pen shall be of sufficient height for the dog to stand fully erect on all four legs with at least six inches of headroom.
- H. Cages or pens may not be stacked one on top of another.
- I. There shall be a minimum of one outside exercise pen or run for every three dogs boarded or kept that is 70 pounds or less and one outside exercise pen or run for every two dogs boarded or kept that is over 70 pounds.
- J. There shall be no more than one dog in an outside exercise pen or run at any one time.
- K. Each outside pen or run shall:
 - (1) Have a concrete base;
 - (2) Be enclosed by a minimum six-foot-high chain-link fence with shelter and with secure gates; and
 - (3) The size of the pen or run shall be 4.5 feet in width and 12 feet in length.
- L. There shall be potable water available to each dog or animal at all times.
- M. A plan for sewage and waste disposal shall be submitted with the permit application and may include septic disposal, composting, spreading or burying of all waste generated at the facility. A plan for disposal of remains of dead animals shall also be submitted with the permit application.
- N. A facility can only be established on at least five acres of property located at least 100 yards from any adjoining property lines. A facility cannot be established within a one-mile radius of the property boundary of any existing commercial kennel or commercial breeding facility.
- O. Inspection requirement:
 - (1) Prior to the commencement of any use or upon any transfer of ownership or control of a facility, the premises must be inspected by the Town Zoning Officer,

together with the local Dog Control Officer, and found to be in compliance with all laws, ordinances, rules and regulations applicable to the use and occupancy for a commercial kennel or commercial dog breeding facility and/or dealers, in compliance with the Code of the Town of Benton, and in compliance with the New York State Agriculture and Markets Law, the New York State General Business Law, the New York State Penal Law relating to the mistreatment of animals and the Uniform Fire Prevention and Building Code.

- (2) The Town Zoning Officer and local Dog Control Officer shall complete their certifications that the premises is in compliance or is not in compliance within 20 days of the inspections of the premises by such officials.
 - (3) Any owner and/or operator of a commercial kennel, any employee of such owner and/or operator, or any agent of such owner and/or operator, shall permit the Town Zoning Officer, the local Dog Control Officer, the Yates County Health Department, the Yates County Sheriffs Department, the New York State Police, the New York State Health Department, or an authorized representative of any other Town, county or state department or agency that has permitting authority regarding the use of the premises to inspect the premises of the commercial kennel for the purpose of ensuring compliance with any Town, county or state law at any time during normal operational hours.
 - (4) If the owner/operator of a commercial kennel does not permit any person authorized to inspect such commercial kennel pursuant to the Town of Benton Zoning Law to conduct an inspection authorized by such law or by any other local, county or state law; or the special use permit for a commercial kennel expires and is not in the process of being renewed by the Planning Board; or upon inspection as described above, it shall be found that the owner/operator has violated any provisions of this section of the Town of Benton Zoning Law or any provisions of the Code of the Town of Benton or of any local, county or state law or regulations pertaining to commercial kennels or commercial breeding facilities, the Zoning Board of Appeals shall have the power to revoke or suspend the special use permit after providing notice to the owner/operator of the commercial kennel and an opportunity for the owner/operator to be heard before the Zoning Board of Appeals. If the Zoning Board of Appeals does revoke or suspend the special use permit following such hearing, the Town Zoning Officer and the local Dog Control Officer shall thereafter order the animals removed and commercial kennel closed.
- P. The duration of any special use permit permitting a commercial kennel shall be for a maximum period of one year and shall expire on December 31 of each year unless otherwise allowed by the Town Planning Board. The special use permit shall run for the calendar year if so renewed by the Town of Benton Planning Board. An application for renewal of any permit must be made no more than 90 and no less than 60 calendar days prior to expiration of such permit.
- Q. Continuation of nonconforming commercial kennels:

- (1) Preexisting facilities shall be considered nonconforming structures and must follow the terms under Article XI (Nonconforming Buildings, Uses and Lots) of the Town's Zoning Laws.
- (2) Nonconformities shall be allowed no modification and/or expansion without a variance except for expanding the size of kennel runs to meet requirements in the section. The facility may not increase the number of dogs bred within the facility.

§ 110-59. Townhouse and multifamily developments.

All townhouse and multifamily development, as permitted in Article IV of this chapter, shall, in addition to the requirements set forth in Article IV, conform to the following standards. These standards shall be regarded as minimum requirements.

A. Townhouse developments shall meet the following standards:

- (1) There shall be no more than four townhouse units in any contiguous group.
- (2) Yard requirements:
 - (a) Front yard: minimum 20 feet (from interior project road).
 - (b) Rear yard: minimum 30 feet.
 - (c) Side yard: minimum 15 feet (at ends of buildings).

- (3) All principal buildings shall be set back a minimum of 50 feet from any lot line.
 - (4) No accessory building, including unattached garages, shall be nearer than 50 feet from any lot line.
 - (5) Maximum building height shall be 35 feet.
 - (6) Maximum site coverage by all buildings and structures shall not be more than 20% of the lot area, such percentage to be calculated on the basis of the total project area.
- B. Multifamily developments shall meet the following standards:
- (1) Yard requirements:
 - (a) No building shall be nearer than 50 feet to the road line of any dedicated road peripheral to the site.
 - (b) No accessory building, including unattached garages, shall be nearer than 50 feet from any lot line.
 - (2) Maximum building height shall be 35 feet.
 - (3) Maximum site coverage by all buildings and structures shall be not more than 20% of the lot area, such percentage to be calculated on the basis of total project area.
 - (4) No building shall contain more than eight dwelling units.
- C. Minimum unit size of multifamily dwelling units:
- (1) Efficiency: 550 square feet.
 - (2) One-bedroom: 700 square feet.
 - (3) Two-bedroom: 850 square feet.
 - (4) Three-bedroom: 1,000 square feet.

§ 110-60. Automobile service and sales uses.

Where permitted, an automobile service station, service and repair garage or automobile sales area shall conform to the following standards which shall be regarded as minimum requirements:

- A. Minimum lot size shall be:
- (1) For a gasoline filling station, service and repair garage: 30,000 square feet.
 - (2) For a combination gas station, mini-mart convenience food store: 45,000 square feet.
 - (3) Additional lot area and setbacks shall be required as deemed to be adequate by the Planning Board to accommodate tractor trailer servicing.

- B. Lot frontage and width shall be at least 150 feet.
- C. No automobile service station shall be located within 500 feet of any public entrance to a church, school, library, hospital, charitable institution, or place of public assembly. Such distance shall be measured in a straight line from said public entrance to the lot line nearest said entrance along the street line.
- D. Fuel pumps and other service devices shall be located at least 35 feet from any front lot line and 50 feet from any side and rear lot lines. This distance shall be measured from the outside edge of the fuel island.
- E. All automobile parts, including tires and dismantled vehicles, are to be stored within a building. Tires that are offered for sale may be placed outside during normal business hours but must be stored in a rack. Tires to be processed or sold for junk must be stored either inside a building or behind a six-foot high fence, wall or natural screen.
- F. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or anti-freeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
- G. All repair work is to be performed within a building. Automobiles waiting to be serviced or stored on the premises shall not encroach on any required yard area. Wrecked automobiles being held for insurance adjuster inspection may be stored for a period not to exceed 30 days and must be stored in the rear of the premises, out of sight as much as possible.
- H. Parking.
- (1) No vehicle shall be parked, stored or left standing within 35 feet of the street line.
 - (2) Parking requirements shall be in conformance with § 110-50. Such parking areas shall not conflict with the traffic pattern established for the use of the fuel pumps. Additional parking area may be required by the Planning Board to accommodate tractor trailer parking areas.
 - (3) Where parking areas abut a residential use, they shall be screened by a buffer area no less than 10 feet in depth composed of densely planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the Planning Board, will be adequate to prevent the transmission of headlight glare across the zone boundary line. Such buffer screen shall have a minimum height of six feet above finished grade at the highest point of the parking area. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide adequate screen, the Code Enforcement Officer may direct the property owner to replace said shrubs.

- I. All storage and display areas shall be provided with a hard, dust-free surface, shall be adequately drained and, if lighted, shall produce no glare on adjacent properties.
- J. A maximum of two driveways and curb cuts shall be permitted. These shall be no less than 20 feet and no wider than 30 feet, and located a minimum of 30 feet from any street intersection and a minimum distance of 40 feet shall be maintained between such driveways and curb cuts.

§ 110-60.1. Campgrounds, including recreational vehicle parks, tourist camps and travel trailer parks. [Added 7-11-2018 by L.L. No. 1-2018]

The purpose of this section is to provide opportunities for quality designed commercial campgrounds and recreational vehicle parks that are properly located in the community where street access and capacity and other infrastructure are favorable for higher density development. In order to create a desirable recreational environment and protect the public health, safety, and welfare, site plans and special use permits are required for all new commercial campgrounds and recreational vehicle parks. A commercial campground and recreational vehicle park shall only be allowed in the A-R1 zoned district and must meet the following regulations:

- A. The Town Planning Board shall determine that not more than 25% of any site proposed for use as a camping ground, that lies within an established State Agricultural District and contains prime agricultural soils as defined by the Yates County Soil Conservation Service, will be taken out of production. It is recommended that at least 50% of the total site area be wooded.
- B. Camping grounds may be occupied by travel trailers, pickup coaches, motor homes, camping trailers, recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation, and recreation purposes. No permanent external appurtenances such as carports, cabanas, or patios may be attached to any travel trailer or other vehicle accommodation parked in a camping ground, and the underpinning or removal of wheels and placement of a unit on a foundation in a camping ground is prohibited.
- C. The only dwelling units permitted in camping grounds are the owner's or caretaker's dwelling unit, as described in the Town of Benton building code. There shall be no other dwellings provided, of any type, which shall be placed at any point within the camping ground property. The only other buildings allowed in the camping ground are camping cabins, recreational buildings, service or office buildings for the camping grounds, and accessory structures for uses specified in Subsection R, accessory uses.
- D. Camping grounds shall not be in operation for more than seven months in any twelve-month period. The seven-month time period shall commence on May 15 and end on December 15 of each year.
 - (1) Vehicles owned and operated by seasonal camp workers shall be exempt from this requirement.
 - (2) Storage of unoccupied recreational vehicles may be allowed in a designated storage area, with the number of stored vehicles not to exceed 40% of the total number of campsites; shall not encroach on subsurface sewage disposal system;

shall be visually buffered from any public road; and shall be set back from lot lines by a minimum of 150 feet.

- (3) Each commercial campground or recreational vehicle park may have campsites available for camp workers directly employed by the campground.
- E. The conversion of any campsite building or dwelling to a year-round dwelling unit or any other use shall be allowed only by a special use permit issued by the Town Zoning Board of Appeals.
- F. Minimum site area: 12 acres.
- G. Corners of each campsite shall be clearly and permanently marked.
- H. Recreational vehicle campsites:
- (1) All recreational vehicle campsites shall have a minimum of 1,400 square feet.
 - (2) A recreational vehicle campsite shall be designed so there is a minimum of 10 feet between recreational vehicles.
 - (3) Each campsite shall contain a stabilized vehicular parking pad.
 - (4) No building or storage sheds are permitted on individual recreational vehicle campsites.
 - (5) Recreational vehicle campsites shall include a minimum of one automobile vehicle parking space with minimum dimensions of 10 feet by 20 feet.
 - (6) Each campsite shall abut at least one internal roadway within the boundaries of the recreational vehicle park and campground. Ingress and egress to the campsite shall be limited to an internal roadway.
 - (7) Recreational vehicle campsites shall be set back at least 15 feet from any stream high-water mark.
- I. Tent campsite:
- (1) All tent campsites shall have a minimum area of 1,200 square feet.
 - (2) Tent campsites shall include a minimum of one automobile parking space with minimum dimensions of 10 feet by 20 feet.
 - (3) Each campsite shall abut at least one internal roadway within the boundaries of the recreational vehicle park and campground. Ingress and egress to the campsite shall be limited to an internal roadway.
 - (4) Tent campsites shall be set back at least 15 feet from any stream high-water mark.
- J. Camping cabin sites:
- (1) All camping cabins sites shall have a minimum area of 1,400 square feet.
 - (2) A camping cabin site must be designed so there is a minimum of 20 feet between camping cabins.

- (3) No storage sheds are permitted on an individual camping cabin site.
 - (4) Camping cabin sites shall include a minimum of one automobile vehicle parking space with minimum dimensions of 10 feet by 20 feet.
 - (5) Each camping cabin site shall abut at least one internal roadway within the boundaries of the recreational vehicle park and campground. Ingress and egress to the camping cabin shall be limited to an internal roadway.
 - (6) Camping cabin sites shall be set back at least 25 feet from any stream high-water mark.
- K. All campsites shall be designed in conformity with floodplain regulations if within a flood zone.
- L. Not more than a total of eight travel trailers, campers, tents, recreational vehicles, or motor homes shall be permitted per acre of gross site area.
- M. A camping ground shall be so located that no entrance or exit from a site shall discharge traffic into a Hamlet Center (H-C) District nor require movement of traffic from the camping ground through a Lakefront Residential (L-R) District.
- N. A camping ground shall have a minimum of 200 feet of frontage on a public roadway.
- O. Prior to receiving a special use permit for the establishment of a camping ground or the expansion of an existing camping ground, the owner shall submit a detailed site plan to the Planning Board for review and approval. Said site plan shall conform to the requirements and specifications set forth herein in Article VIII: Site Plan Review and Approval of Special Uses, and shall show the placement of all existing and proposed features, including but not limited to campsites, cabins, parking and recreational areas, accessory structures, streets and driveways, pedestrian walkways, and rubbish collection facilities, as well as other uses and features specified by the Planning Board.
- P. No cabin, A-frame, or similar structure shall be constructed or erected on the site without a building permit. The construction of all buildings for human occupancy shall be designed and built to meet the standards of the New York State Uniform Fire Prevention and Building Code. The issuance of a building permit by the Code Enforcement Officer shall precede the start of any construction. No structure shall be occupied for camping or any other purpose without a certificate of occupancy issued by the Code Enforcement Officer. The Code Enforcement Officer shall not issue a certificate of occupancy for any structure without written approval of the New York State Health Department and until the sewage disposal system serving the building has been installed in accord with appropriate standards and is functioning properly.
- Q. Conditions of soil, slope, groundwater level, drainage, possible flooding, and topography shall not create hazards to the property or the health or safety of the occupants. Natural vegetation shall be retained wherever possible. The site shall not be exposed to objectionable smoke, noise, odors, or other adverse influences.
- (1) No portion of the camping grounds that are subject to flooding, subsidence, or erosion shall be used for any purpose that would expose persons or property to hazards.

- R. Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries, and other uses and structures customarily incidental to the operation of camping grounds are permitted as accessory uses to the camping grounds. In addition, retail stores and other convenience establishments shall be permitted as accessory uses in camping grounds in such districts where such uses are not allowed as principal uses, subject to the following restrictions:
- (1) Such establishments and the parking areas primarily related to their operations shall not occupy more than 5% of the gross area of the camping ground.
 - (2) Such establishments shall be restricted in their use to occupants of the camping ground.
 - (3) Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the camping ground.
- S. Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Departments of Health and Environmental Conservation and the Town of Benton Zoning Code, and shall receive approval from all involved agencies.
- T. Streets.
- (1) Streets in camping grounds shall be private, but shall be constructed to the following minimum requirements:
 - (a) One-way, no parking: 12 feet.
 - (b) One-way with parking on one side, or two-way with no parking: 18 feet.
 - (c) Two-way with parking on one side: 27 feet.
 - (d) Two-way with parking on both sides: 34 feet.
 - (2) Plans and specifications for streets shall be reviewed and approved by the Town Planning Board. All roadways and public parking areas shall either be paved or otherwise constructed for all-weather use.
 - (3) Internal roadways shall be maintained so emergency vehicles can safely access all areas of the site.
- U. A minimum of 10% of the gross site area for the camping ground shall be set aside and developed as common use areas for open or enclosed recreation facilities. No travel trailer site, required buffer strip, street right-of-way, site setback, storage area, or utility site shall be counted as meeting recreational purposes.
- V. Entrances and exits to camping grounds shall be designed for safe and convenient movement of traffic into and out of the camping ground, and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended. Road curbs shall have a minimum turning radius of 50 feet and shall be designed for drive-through campsite parking.

- W. All campground sites shall be accessible and serviced by interior roadways.
- X. In connection with use of any camping ground, no parking, loading, or maneuvering incidental to parking or loading shall be permitted on any public street, sidewalk, or required buffer or right-of-way, or any public grounds, or on any private grounds not part of the camping ground, unless the owner has given written permission for such use. Each camping ground shall provide off-street parking, loading and maneuvering space, located and scaled so that the prohibitions above may be observed, and camping ground owners shall be responsible for violations of these requirements.
- (1) Parking spaces shall be provided for the manager and camp workers. A minimum of one guest parking space shall be provided for every five campsites.
- Y. An adequate downward directed lighting system shall be provided for the camping ground. Pedestrian walkways shall be provided to lead to all parking areas, restrooms, or other service buildings.
- Z. All utilities shall be underground.
- AA. Garbage, recyclables, and rubbish shall be collected and disposed of on a daily basis to ensure sanitary conditions.
- AB. All applicable sanitation standards promulgated by the State of New York shall be met.
- AC. No camp structure, except fences, gates, and permitted signs shall be located within 100 feet of any street or property line.
- AD. Campsites and buildings shall be set back not less than 15 feet from the high-water mark of any stream bank and 25 feet from any pond or lake edge.
- (1) Campground site to be adequately screened from all public roadways by trees, shrubbery, and/or proper fencing.
- (2) The owner or manager of a campground/travel trailer park shall maintain an office in the immediate vicinity of the park and shall maintain accurate records, including names and home addresses of principal park residents, and make, description, year, and license or identification number of the camper/trailer. These records shall be available for review by any law enforcement official or the Zoning Code Enforcement Officer.
- AE. Fire pits. Campfires shall only be permitted in designated fire pits.

ARTICLE X

Residential Cluster Development

§ 110-61. Intent.

The intent of this article is to permit variation in lot size and housing type in suitable areas in order to encourage flexibility of design, to enable land to be developed in such a manner as to promote its most appropriate use, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open space, in accordance with § 281 of the New York State Town Law. This purpose is achieved by

permitting lot sizes to be reduced in a subdivision tract if the overall density does not exceed that which otherwise is permitted in the applicable zoning district, and the land thus gained is preserved as permanent open space for the use and enjoyment of the residents of the area and Town.

§ 110-62. Authorization to grant or deny residential cluster development.

In accordance with § 281 of the Town Law, the Town Board authorizes the Planning Board to permit variations in the dimensional requirements of this chapter under their subdivision review powers. The Planning Board shall comply with all procedures and standards set forth in this article when implementing such power.

§ 110-63. Standards governing residential cluster development.

Any residential cluster development shall conform to the following requirements:

- A. This procedure shall apply only to parcels of land which are a minimum of 10 acres in size. In addition, it shall be determined that such development will not be detrimental to the health, safety, or general welfare of persons residing in the vicinity, or injurious to property or improvements in close proximity, and that the proposed development create an attractive residential environment which is in conformance with the Town's Comprehensive Plan, and that the gross density will be no greater than if the tract were developed in accordance with the existing zoning requirements, and that the permanent retention of open space areas along with their care and maintenance is guaranteed.
- B. When such development is proposed adjacent to any existing residence or residential area, a buffer area of at least 30 feet in width shall be maintained within the proposed development along any lot line that abuts an existing residential development area or a conventionally platted residential map that has been filed with the Yates County Clerk.
- C. The size of lots in a residential cluster development may vary from the normal requirements of the district, but no dimensional or area requirement of the district shall be reduced by more than 50%.
- D. Single-family detached houses shall be subject to the following minimum setback requirements:
 - (1) Front yard: 25 feet.
 - (2) Rear yard: 25 feet.
 - (3) Side yard: 15 feet.
- E. All residential cluster development plans shall be prepared with competent professional assistance and shall be consistent with the spirit and intent of this chapter.
- F. In areas without public water and sewer, any reduction in lot size allowed under this article shall be dependent on approval of water and sewer provisions by the New York State Department of Health and the New York State Department of Environmental Conservation.

- G. Land not contained in lots or road rights-of-way.
- (1) All the land not contained in the lots or road rights-of-way, if provided, shall be contiguous or on either side of a watercourse and of such size and shape as to be usable for recreation, open space or agriculture.
 - (2) Such land shall either be deeded to the Town or be held in corporate ownership by the owners of lots within the development, and, if held in corporate ownership, the developer shall incorporate into the deeds of all property within the development a clause giving to the owners an interest in such open land which shall be used for recreation, open space or agricultural purposes. No structure save those incidental to the recreational, open space or agricultural use shall be permitted thereon.
 - (3) The open space lands shall be subject to taxation unless deeded to the Town. In the case of such tracts, the developer may petition the Town to take over the land to be used in perpetuity as open space.
- H. Special designs. In cases where a developer has proposed a special design for groups of dwellings and garages, the Town Planning Board, after inspecting the plans and elevations, may recommend approval of smaller minimum lot sizes than those specified in § 110-18, Density Control Schedule, provided that the sanitary systems are approved by the New York State Departments of Health and Environmental Conservation, that the gross density does not exceed that normally permitted within the zoning district in which the property is located, and the layout is not detrimental to the health, general welfare, and aesthetic character of the community.
- I. Construction shall start within one year of the date of approval and shall be completed within a timeframe agreed to by the developer and the Planning Board. If such timeframe is not met by the developer within the agreed-upon timeframe, the residential cluster development approval may be revoked by the Planning Board.

J. Notice and hearing.

- (1) In the event that the organization established to own and maintain common property or a successor organization shall fail to maintain the common property in reasonable order and condition in accordance with the plan, the Town may serve written notice upon such organization or upon the residents and owners of the development setting forth the manner in which the organization has failed to maintain the common property in reasonable condition. Said notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof, and shall state the date and place of a hearing thereon which shall be held within 14 days of the notice.
- (2) At such a hearing, the Town may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within 30 days or any extension thereof, the Town, in order to preserve the taxable values of the properties within the development and to prevent the common property from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common property, call a public hearing upon notice to such organization, or to the residents and owners of the development to be held by the Town, at which hearing such organization or the residents and owners of the development shall show causes why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year.
- (3) If the Town shall determine that such organization is ready and able to maintain said common property in reasonable condition, it shall cease to maintain said common property at the end of said year. If the Town shall determine such organization is not ready and able to maintain said common property in a reasonable condition, the Town may at its discretion continue to maintain said common property during the next succeeding year, subject to a similar hearing and determination in each year thereafter.
- (4) The cost of such maintenance by the Town shall be assessed at the same proportion as each unit's assessed value bears to the total assessment of the development.

§ 110-64. Review of residential cluster development plans.

The approval procedure shall be generally the same as that specified in the subdivision regulations for the review and approval of a proposed subdivision of land. The applicant shall submit at successive stages a concept plan, preliminary plan, and final plan in accordance with the requirements of the Town of Benton Subdivision Regulations, as they may be from time to time enacted. If subdivision regulations have not been enacted, the site plan review

requirements of this chapter shall be followed. In addition, the applicant at each stage shall provide the following information:

- A. Proposed number of dwelling units and computation of overall residential density per gross acre.
- B. A tabulation of the total number of acres in the proposed project; the percentage designated for each use area.
- C. Proposed location and acreage for parks, playgrounds, natural watercourses and other open space.

§ 110-65. Public hearing on residential cluster development.

A residential cluster development shall not be approved as a subdivision plat by the Planning Board until a public hearing has been held on the proposal in the manner specified in the subdivision regulations and by § 281 of the Town Law.

ARTICLE XI
Nonconforming Buildings, Uses and Lots

§ 110-66. Continuation of nonconforming buildings and lots.

Any lawful building, structure or use existing at the time of enactment of this chapter, or any subsequent amendment thereof applying to such building, structure, or use, may be continued although such building, structure, or use does not conform to the provisions of this chapter; provided, however, that:

- A. Nothing herein contained shall be construed to render lawful any existing building, structure or use not lawfully conforming to provisions of the Town of Benton Zoning Law hereby repealed. If the existing use commenced prior to the effective date of this chapter, but after the enactment of the Town of Benton Zoning Law adopted by the Town of Benton on January 1, 1971, as further re-enacted on January 16, 1987, the use must have been a permitted use under the Zoning Law in effect at that time; otherwise, such use shall be a violation of this chapter, and the enforcement provisions of this chapter shall apply. Such use shall not be considered a preexisting nonconforming use under this chapter.
- B. No nonconforming building, structure or use shall be enlarged, extended or increased if such enlargement would increase the degree of nonconformance. **[Amended 6-17-1996 by L.L. No. 1-1996]**
- C. A preexisting nonconforming use of land or building may not be increased in area to a total area greater than that occupied by the use at the time of adoption of this chapter.
- D. Nonconforming buildings, structures and uses shall have a minimum front yard requirement of 50 feet. **[Added 6-17-1996 by L.L. No. 1-1996]**

- E. Additions or modifications to a preexisting nonconforming building or structure are permitted without the need for a variance, provided the side and rear yard requirements, as listed in the Town of Benton Density Control Schedule, included at the end of the Zoning Chapter in the Town Code and attached to § 110-18 of the Town of Benton Zoning Code, are adhered to and provided the addition or modification is no closer to the front lot line than the existing building or structure. **[Added 6-11-2001 by L.L. No. 2-2001]**

§ 110-67. Discontinuance.

- A. When a nonconforming building, structure or use has been discontinued for a period of two years, or is changed to a conforming use, any future use of the building or land shall conform to the provisions of this chapter.
- B. Any land or building upon or within which a preexisting nonconforming use is superseded by a permitted use shall thereafter conform to the regulations of the district in which it is located.

§ 110-68. Maintenance and repairs.

A nonconforming building or structure may be repaired or restored to a safe condition.

§ 110-69. Construction initiated prior to this chapter.

Any building or structure for which permitted construction was begun prior to the effective date of this chapter, or any subsequent amendment thereof, may be completed and used in accordance with the plans and specifications for such building and structure.

§ 110-70. Nonconforming lots of record.

Any lot held in single and separate ownership prior to the adoption of this chapter, and whose area is less than the specified minimum lot requirements of this chapter for the district involved, may be considered as complying with such minimum lot requirements and no variance shall be required, provided that:

- A. Such lot does not adjoin any other lot or lots held by the same owner whose aggregate area is equal to or greater than the minimum lot area required for that district.
- B. Such lot has an area of at least 4,000 square feet and a minimum width of at least 50 feet at the front lot line and is to be used for residential purposes.
- C. The following minimum yard dimensions are required for residences and attached accessory buildings. **[Amended 6-17-1996 by L.L. No. 1-1996]**
- (1) Front yard: 50 feet.
 - (2) Side yard: 15 feet.

(3) Rear yard: 25 feet.

- D. No detached accessory building or use shall be located closer than 10 feet to a side or rear lot line, or closer to the front lot line than the existing principal residential building. **[Amended 6-17-1996 by L.L. No. 1-1996]**
- E. All other bulk requirements for that district are complied with.

§ 110-71. Alterations.

A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost of 50% of the assessed value of the building unless said building is changed to conform to the requirements of this chapter.

§ 110-72. Restoration.

No building damaged by fire or other causes to the extent of more than 50% of its assessed valuation shall be repaired or rebuilt except in conformity with the regulations of this chapter. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition any wall, floor or roof which has been declared unsafe by the Code Enforcement Officer.

§ 110-73. Reduction in lot area.

A building permit shall not be issued for any lot that is reduced in area so that it creates a nonconforming bulk or use in violation of any regulations contained in this chapter.

ARTICLE XII
General Exceptions

§ 110-74. Public properties.

Nothing in this chapter shall restrict construction or use of public buildings, lands or property in the exercise of a governmental function.

§ 110-75. Public utilities.

Nothing in this chapter shall restrict the construction or use of underground or overhead distribution facilities of public utilities operating under the law of the State of New York.

§ 110-76. Conforming lots of record. [Added 6-17-1996 by L.L. No. 1-1996]

Any conforming lot of record prior to the adoption of this chapter (Local Law No. 1-1992) shall comply with the following yard requirements:

A. Principal structures.

- (1) Front yard: 50 feet.
- (2) Side yard: 15 feet.
- (3) Rear yard: 25 feet.

B. Accessory structures (detached).

- (1) Front yard: 50 feet.
- (2) Side yard: 15 feet.
- (3) Rear yard: 15 feet.

ARTICLE XIII

Zoning Board of Appeals and Planning Board**§ 110-77. Establishment of Zoning Board of Appeals.**

Pursuant to the Town Law of the State of New York, the Town Board shall appoint a Zoning Board of Appeals consisting of five members, shall designate its Chairman, and shall provide for such expenses as may be necessary and proper. A member of the Zoning Board of Appeals shall not at the same time be a member of the Town Board. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after public hearing.

§ 110-78. Term of appointment of Zoning Board of Appeals.

Of the members of the Zoning Board of Appeals first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years, from and after his or her appointment. The appointment of a Chairman shall be for a period of one year. Their successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the duration of the unexpired term.

§ 110-79. Zoning Board of Appeals staff.

The Zoning Board of Appeals may employ such clerical or other staff assistance as may be necessary, and prescribe their duties, provided that it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for that purpose.

§ 110-80. Rules of procedure for Zoning Board of Appeals.

- A. The Zoning Board of Appeals shall have the power to make, adopt, and promulgate such written rules of procedure, by-laws, and forms as it may deem necessary for the proper execution of its duties in order to fulfill the intent of this chapter.
- B. It shall refer to the Planning Board such matters as required by this chapter, by New York State Law, including the New York State General Municipal Law §§ 239-1 and 239-m, and any other pertinent matters for review and recommendations and defer any decision thereon for a period of not more than 30 days pending a report from the Town or the County Planning Board. Upon failure to submit such report, the Planning Board shall be deemed to have approved the application or appeal.

§ 110-81. Alternate members. [Added 7-12-1999 by L.L. No. 1-1999]

- A. Declaration of policy. It is sometimes difficult to maintain a quorum on the Zoning Board of Appeals and Planning Board because members may find they have a conflict of interest situation on a specific matter before such Board; or that they have a schedule conflict which prevents their attendance. In such instances, official business cannot be conducted, which may delay or impede adherence to required timelines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- B. Authorization/effect.
 - (1) The Town Board of the Town of Benton shall appoint alternate members of the Planning Board and Zoning Board of Appeals. These individuals would serve when members are unable to participate on an application or matter before the respective Board because of the absence or conflict of interest of such member.
 - (2) Alternate members of the Planning Board and Zoning Board of Appeals shall be appointed by the Town Board or other duly authorized appointing authority for a term of five years.
 - (3) The Chairperson of the Planning Board and the Chairperson of the Zoning Board of Appeals may designate an alternate to substitute for a member when such member is absent or unable to participate on an application or matter before the Board because of a conflict of interest. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting and Zoning Board of Appeals meeting at which the substitution is made.
 - (4) All provisions of state law relating to Planning Board and Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law or local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

ARTICLE XIV
Administration

§ 110-82. Enforcement.

This chapter shall be enforced by the Code Enforcement Officer of the Town of Benton, who shall be appointed by the Town Board. No permit shall be issued by the Code Enforcement Officer except where all the provisions of this chapter have been complied with. The Code Enforcement Officer shall keep the Planning Board and Zoning Board of Appeals advised of all matters pertaining to the enforcement of this chapter other than routine duties, and shall submit a monthly report to the Town Board and Planning Board, enumerating the applications received, inspections made, permits issued or refused, and other actions taken.

§ 110-83. Building permits.

- A. No building or structure shall be erected, added to, or the exterior structurally altered until a permit thereof has been issued by the Code Enforcement Officer. Except on written order of the Zoning Board of Appeals, no such building permit shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this chapter.
- B. There shall be submitted with all applications for building permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such other information as may be necessary to determine and provide for the enforcement of this chapter.
- C. One copy of such layout or plot plan shall be returned when approved by the Code Enforcement Officer, together with such permit to the applicant, upon the payment of a fee as set by Town Board resolution.
- D. In the event that an application for a building permit is not approved, the applicant shall be entitled to a refund of 50% of the fee paid, provided that no construction has been commenced. If construction work has been started and the application is not approved, the fees paid shall not be refunded.
- E. Upon approval of the application, and upon receipt of the legal fees therefor, the Code Enforcement Officer shall issue a building permit to the applicant upon the form prescribed by him and shall affix his signature or cause his signature to be affixed thereto.
- F. Upon approval of the application, both sets of plans and specifications shall be endorsed with the word "approved." One set of such approved plans and specifications shall be retained in the Town files and the other set shall be returned to the applicant together with the building permit and shall be kept at the building site open to inspection by the Code Enforcement Officer or his authorized representative at all reasonable times.
- G. If the application, together with plan, specifications, and other documents filed therewith, describe proposed work which does not conform to all of the requirements of the applicable building regulations, the Code Enforcement Officer shall disapprove the same

and shall return the plans and specifications to the applicant. Upon the request of the applicant, the Code Enforcement Officer shall cause refusal, together with the reasons thereof, to be transmitted to the applicant in writing.

- H. A building permit shall expire one year from the date of issuance, at which time it shall be renewed if construction has not been completed. **[Amended 6-17-1996 by L.L. No. 1-1996]**

§ 110-84. Certificates of occupancy.

No land, building or structure shall be used or occupied, and no building or structure hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Code Enforcement Officer in accordance with the provisions of this chapter. Such certificate shall state that such land or buildings, or part thereof, and the proposed use thereof, are in complete conformity with the provisions of this chapter. It shall be the duty of the Code Enforcement Officer to issue a certificate of occupancy, provided that said Officer is satisfied that the land or buildings conform with all the requirements herein set forth and with the plan submitted with the application.

§ 110-85. Variances.

- A. Use variances.

- (1) A use variance may be requested when the applicant desires to utilize land for a use which is not allowed under the use regulations of this chapter. The established rule is that the Zoning Board of Appeals has the power to grant a use variance only when the applicant is able to prove that the strict application of this chapter will result in unnecessary hardship. When determining unnecessary hardship for a use variance, all of the following criteria shall be met:
 - (a) The land or building in question cannot yield a reasonable return if used only for uses permitted in the zoning district in which it is located.
 - (b) The variance requested will not alter the essential character of the locality and the spirit of this chapter will be preserved.
 - (c) The hardship faced by the applicant is due to the unique circumstances and characteristics of the land or building in question and not to the general conditions in the locality.
 - (d) The unnecessary hardship which is claimed by the applicant has not been created by the owner or a predecessor in title.
- (2) Where there are unnecessary hardships in the way of carrying out the strict letter of this chapter, the Zoning Board of Appeals shall have the power, after public notice and hearing, to grant a variance in the application of any of the use regulations or provisions of this chapter in such a way that the spirit of the law shall be observed and maintained, public health, safety and welfare secured and substantial justice done.

- (3) A variance of the use provisions of this chapter shall be granted by the Board of Appeals only if or whenever it finds:
 - (a) That there are unique circumstances or conditions, described in the findings of the Board of Appeals, applying to such land or building and not applying generally to land or buildings in the neighborhood, that said 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 buildings, and that the land or buildings in question cannot yield a reasonable return if used only for an activity which is permitted on said land; and
 - (b) That, for reasons set forth in the findings of the Zoning Board of Appeals, the granting of the use variance is the minimum variance that will accomplish this purpose; and
 - (c) That the granting of the use variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the locality or otherwise detrimental to the public welfare.
 - (4) All applications for use variances shall be referred to the Town of Benton Planning Board. No decision shall be made by the Zoning Board of Appeals until the Planning Board has completed its review and issued its report. If the Planning Board fails to issue a report within 30 days the Zoning Board of Appeals shall assume that a favorable report has been issued.
- B. Area variances. Where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height and all other regulations not specifically related to use of land or building unreasonable or impossible to comply with, the Zoning Board of Appeals shall have the power to vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In determining whether to grant an area variance the Zoning Board of Appeals must consider the following:
- (1) How substantial the variance is in relation to the requirement;
 - (2) Whether a substantial change will be produced in the character of the neighborhood;
 - (3) Whether the difficulty can be obviated by some method feasible for the applicant to pursue other than a variance; and
 - (4) Whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance.
- C. Financial gain not a criterion. A use or area variance shall not be granted solely for the reasons of additional financial gain on the part of the owner or occupant of the land or building involved.
- D. Conditions and compliance. In granting any variance, the Zoning Board of Appeals may prescribe any conditions that it deems to be necessary or desirable. The granting of a

variance to any provisions of this chapter shall not prevent the necessity of complying in every other respect with the other provisions of this chapter.

§ 110-86. Notification of public hearings. [Added 6-17-1996 by L.L. No. 1-1996]

In addition to the required notification, all property owners within 500 feet of the property lines shall be notified of the hearing by regular mail.

**ARTICLE XV
Amendments**

§ 110-87. Procedures.

The Town Board may, from time to time, on its own motion, or on petition, or on recommendation from the Town Planning Board, amend the regulations and districts established under this chapter after public notice and hearing in each case. All proposed amendments of the regulations or districts herein established shall be filed in writing in a form required by the Town Board.

§ 110-88. Advisory report by Town Planning Board.

Every proposed amendment, unless initiated by the Town Planning Board, shall be referred to the Town Planning Board. The Town Planning Board shall report in writing its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Town Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Town Planning Board disapproves the proposed amendment, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by the adoption of a resolution fully setting forth the reasons for such contrary action.

§ 110-89. Public notice and hearing.

The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:

- A. By publishing notices of the proposed amendment and the time and place of the public hearing in a newspaper of general circulation in the Town, not less than 10 days prior to the date of public hearing.
- B. By giving written notice of hearing to any required municipal, county, regional, metropolitan, state or federal agency in a manner prescribed by law.

§ 110-90. Protest by owners.

If a protest against the proposed amendment is presented to the Town Board, duly signed and acknowledged by the owners of 20% or more of the area of land included in such proposed amendment, or by the owners of 20% or more of the area of land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the area of land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of at least a three-fourths majority of the Town Board.

§ 110-91. Decision by Town Board.

The Town Board shall set the public hearing as required and shall render its decision within 60 days of the receipt of the Planning Board's report.

§ 110-92. Notification of decision.

The Town Board shall notify the applicant for an amendment of its decision in writing within five days after the decision has been rendered.

ARTICLE XVI
Remedies

§ 110-93. 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 Code Enforcement Officer, who shall properly record such complaint and immediately investigate the report thereon.

§ 110-94. Procedure for abatement of violations; penalties for offenses.

- A. Whenever in the opinion of the Code Enforcement Officer, after proper examination and inspection, there appears to exist a violation of any provision of this chapter, or of any rule or regulation adopted pursuant thereto, the Code Enforcement Officer shall serve a written notice of violation upon the owner of the property in violation. Fourteen days after notification this shall be considered a violation and shall be subject to appropriate penalties and other remedies as provided for herein and under the laws of the State of New York.
- B. Such notice of violation shall:
- (1) Inform the owner of the nature and details of the violation;
 - (2) Recommend remedial action which, if taken, will effect compliance with this chapter and other rules and regulations of the Town of Benton; and
 - (3) State the date of compliance by which the violation must be remedied or removed.

- C. In the event the violation is not remedied, then the person notified of such violation shall be subject to conviction for a violation as defined by the Penal Laws of the State of New York and shall be subject to a fine of not more than \$250 or by sentence of imprisonment for a period of not more than 15 days, or both. Each week that the violation continues shall constitute a separate offense.

§ 110-95. Alternative penalty.

In addition to other remedies provided in this chapter, the Town Board or, with its approval, the Code Enforcement Officer may institute any appropriate action or proceeding 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 such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE XVII
Fee Schedule

§ 110-96. Establishment of fees.

A schedule of fees for all building permits and approval applications as required in this chapter shall be set from time to time by resolution of the Town Board.

ARTICLE XVIII
Adult Use and Entertainment Establishments
[Added 6-8-2005 by L.L. No. 1-2005]

§ 110-97. Title.

This article shall be known as the "Adult Use and Entertainment Establishments Law" of the Town of Benton.

§ 110-98. Legislative intent.

- A. Purpose. It is the purpose of this article to regulate adult entertainment businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location of adult entertainment businesses within the Town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult entertainment materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to adult entertainment materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

- B. In the development and execution of this article, the Town prepared an Adult Business Study, last dated August 2004, which recognized that adult uses and entertainment establishments create negative secondary effects on the community, including, but not limited to, increased crime, decreased market values, public resentment, a general blighting of the commercial districts or other districts in which they are situate and a negative influence upon community character.
- C. It is the purpose of this article to regulate the creation, opening and operation of adult use and entertainment establishments, as herein defined, in order to achieve the following:
- (1) To preserve the character of and the quality of life in the Town of Benton neighborhoods, business areas and tourist areas.
 - (2) To control such harmful and adverse secondary effects of adult uses on the surrounding areas.
 - (3) To restrict minors' access to adult uses.
 - (4) To maintain the general welfare and safety for the Town of Benton residents, business owners and tourists.

§ 110-99. Regulated uses.

Uses subject to these controls and special regulations are as follows and hereinafter collectively referred to as "regulated uses":

- A. Adult use and entertainment establishments.
- B. Adult arcade.
- C. Adult bookstore or adult video store.
- D. Adult cabaret.
- E. Adult motel.
- F. Adult motion-picture theater/adult theater.
- G. Escort agency.
- H. Massage parlor.
- I. Nude model studio.
- J. Sexual encounter center.

§ 110-100. Allowed zoning district.

All uses regulated by this article may only be created, opened, commenced or operated within the Agricultural-Residential-Business (A-R-B) District.

§ 110-101. Special use permit.

All uses regulated by this article shall be permitted only upon the Town of Benton Zoning Board of Appeals issuing a special use permit in accordance with Article VI of the Town of Benton Zoning Law and in accordance with the following additional standards:

- A. A structure utilized for any use regulated by this article must be 1,000 feet or more from the nearest point of a dwelling, as that term is defined in the Town of Benton Zoning Law.
- B. The property lines of any uses regulated by this article must be 1,000 feet or more from the property lines of a property containing a church, synagogue, other place of worship, library, school or day-care facility whether within the Town of Benton or outside the Town.
- C. A structure utilized for any use regulated by this article must be 1,000 feet or more from the property lines of a park, playground or a public, civic, or governmental facility whether within the Town of Benton or outside the Town.
- D. A structure utilized for any use regulated by this article must be 1,000 feet or more from a school bus stop.
- E. A structure utilized for any use regulated by this article must be 1,000 feet or more from the property lines of another use regulated by this article, whether or not such other establishment is located in the Town.
- F. A use regulated by this article is not allowed on the same parcel as another regulated use or adult use and entertainment establishment.
- G. All uses regulated by this article shall be conducted in an enclosed building. Regardless of location or distance, no one who is passing by an enclosed building having a use governed by these provisions shall be able to visually see any specified anatomical area or any specified sexual activity by virtue of any display which depicts or shows said area or activity. This requirement shall apply to any display, decoration, sign, window or other opening.
- H. Only one exterior sign will be allowed and it will be limited to only the name of the establishment and it must conform to all other Town of Benton signage requirements or regulations.

§ 110-102. Display prohibited.

All uses regulated by this article shall be conducted in an enclosed building. It shall be a violation to display or exhibit in the open air (outside of the establishment), through a window or by means of a depiction or decoration, or to allow to be displayed or exhibited, any specified anatomical area or specified sexual activity.

§ 110-103. Penalties for offenses.

- A. Any person, firm, corporation or entity who or which shall violate any portion of this article shall be guilty of a violation and, upon conviction thereof, shall be subject to a fine in an amount not to exceed \$250 for each violation or imprisonment for a period of not more than 15 days, or both. Regardless of the provisions in § 110-94C of the Town of Benton Zoning Law, continuation of a violation of the provisions of this article shall constitute, for each day the violation is continued, a separate and distinct offense.
- B. The owner and/or any occupant and/or any tenant and/or general agent of a building, premises or part thereof where such a violation has been committed or does exist shall be guilty of such a violation.
- C. Any person, firm, corporation or entity violating any of the provisions of this article shall become liable to the Town for any expense or loss or damage occasioned the Town by reason of such violation.
- D. The Code Enforcement Officer may issue a cease-and-desist order on any regulated use covered by this article that is operating without a valid and current special use permit or is otherwise operating in violation of this article. Such cease-and-desist order will prohibit such business from any further operation until the violation is cured.

ARTICLE XIX

Miscellaneous Provisions**[Added 11-9-2011 by L.L. No. 4-2011]****§ 110-104. Manure storage facility regulations.**

- A. The regulations in this section shall apply to all manure storage facilities.
- B. Construction requirements.
 - (1) No manure storage facility, or addition to an existing manure storage facility, shall be constructed unless a building permit has been issued by the Town of Benton Zoning Officer to the owner of the subject property under these regulations.
 - (2) To obtain the building permit, the owner of the property on which the manure storage facility is proposed must submit to the Town Zoning Officer:
 - (a) An application for the building permit;
 - (b) Any required fee;
 - (c) A site plan; and
 - (d) Yates County Soil and Water Conservation District written recommendations or stamped engineered plans.
 - (3) The applicant shall comply with and follow the Yates County Soil and Water Conservation District written recommendations or stamped engineered plans,

whichever was provided as part of the building permit application, throughout the construction process.

- (4) The site plan for the manure storage facility submitted with the building permit application shall demonstrate that construction of the manure storage facility will comply with the following stipulations:
 - (a) **Setbacks.** The manure storage facility will be set back a minimum of 300 feet from any occupied residence not affiliated with that agricultural operation. The manure storage facility will be located behind the primary living structure and a minimum of 120 feet from the road right of way in front and a minimum of 85 feet from the side property line.
 - (b) **Size.** The size of the manure storage facility will be a minimum of eight months' capacity based on manure produced by the number of livestock planned to be using the facility.
 - (c) **Fencing.** All manure storage facilities shall be surrounded by a fence and the fence shall be a minimum of four feet in height.
 - (d) **Visual barrier.** All facilities that are a part of a manure storage facility shall have a visual barrier if manure can be seen from the road or from a neighboring residence.
 - (e) **Core trenching.** Core trenching will be required for every earthen facility, regardless of size. Core trenching will be a minimum of eight feet wide and four feet deep centered underneath proposed dike and will include compacting.
 - (f) **Setback from wells, open ditches, streams, and other waterways** will be according to NYS Department of Health Regulations.
- (5) The Town Zoning Officer shall oversee inspection of the construction of the manure storage facility and ensure that the recommendations of Yates County Soil and Water Conservation District or the stamped engineered plans were followed.
- (6) The contractor building the manure storage facility shall sign off to the Town of Benton Zoning Officer that the Yates County Soil and Water Conservation District written recommendations or stamped engineered plans were fully followed prior to the Town of Benton Zoning Officer issuing a certificate of occupancy.

§ 110-105. Solar energy systems. [Added 7-11-2018 by L.L. No. 1-2018]

- A. **Intent and purpose.** The purpose of this section is to facilitate the development and operation of renewable energy systems based on sunlight. It is in the public interest to provide for and encourage renewable energy systems and a sustainable quality of life. Solar energy systems are appropriate in all zoning districts within the Town of Benton when measures are taken to minimize adverse impacts on neighboring properties, protect the public health, safety, and welfare, and preserve the beauty of scenic vistas.

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

COMMERCIAL SOLAR COLLECTION SYSTEMS, COMMUNITY SOLAR SYSTEMS OR SOLAR FARMS (over 110% of domestic usage) — An area of land or other area used for a solar collection system principally used to capture solar energy and convert it to electrical energy to transfer to the public utility's electric grid in order to sell electricity to or receive a credit from a public utility entity, but also may be for on-site use. Solar facilities consist of one or more freestanding ground- or roof-mounted solar collector devices, solar-related equipment and other accessory structures and buildings, including light reflectors, concentrators, and heat exchanges, substations, electrical infrastructure, transmission lines, and other appurtenant structures and facilities. (Community solar system or solar farm, where more than one off-takers or owners may utilize the electric energy output remote from the solar array site, shall be considered a commercial solar collection system or solar farm.)

MINOR OR ACCESSORY SOLAR COLLECTION SYSTEM (up to 110% of domestic usage) — A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for collection, inversion, storage, and distribution of solar energy for electricity generation or transfer of stored heat, secondary to the use of the premises for other lawful purposes, with the total output power of all solar collectors on the lot not to exceed 110% of domestic energy use on that lot.

- C. Standards.

- (1) Minor or accessory solar collection system (up to 110% domestic energy use): All minor or accessory solar collector installations must be performed in accordance with applicable electrical and building codes, the manufacturer's installation instructions and industry standards, and prior to operation the electrical connections must be inspected by the Town Code Enforcement Officer and by an appropriate electrical inspection person or agency, as determined by the Town. In addition, any connection to the public utility grid must be inspected by the appropriate public utility.
- (2) Commercial solar collection systems or solar farms (over 110% of domestic use):
 - (a) Where applicable, and unless more restrictive regulations also apply, the requirements of this section shall apply to solar collectors and installations for commercial solar collection solar systems or solar farms.
 - (b) Commercial solar collection systems or solar farms shall be constructed pursuant to a site plan permit from the Town Planning Board and must meet the criteria set forth below and must obtain all other necessary approvals.
 - (c) Areas of potential sensitivity that should be avoided:
 - [1] One-hundred-year flood hazard zones considered a V or AE Zone on the FEMA flood maps.
 - [2] Within 100 feet landward of a freshwater wetland.

- [3] Adjacent to or within the control zone of any airport, including temporary agricultural spraying landing fields.
 - [4] High yield agricultural farmland consisting largely of prime or unique soils or soils of statewide or local significance.
- D. A commercial solar collection system or solar farm may be permitted in all zoning districts in the Town when authorized by site plan permit from the Planning Board, subject to the following terms and conditions:
- (1) Height and setback restrictions.
 - (a) The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 20 feet in height above the ground.
 - (b) The location of the solar collectors meets all applicable setback requirements of the zone in which they are located.
 - (c) A landscaped buffer shall be provided around all equipment and solar collectors to provide screening from adjoining residential properties and roads.
 - (d) Maintenance of any ground cover shall be provided.
 - (2) Design standards.
 - (a) Removal of trees and other existing vegetation should be minimized or offset with planting elsewhere on the property.
 - (b) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
 - (c) All on-site utility and transmission lines shall, to the extent feasible, be placed underground.
 - (d) Solar collectors and other facilities shall be designed and located to prevent reflective glare toward any inhabited buildings on adjacent properties and roads.
 - (e) All mechanical equipment, including any structure for transformers, circuit breakers, batteries, or storage cells, shall be enclosed by a minimum six-foot-high fence with a self-locking gate and shall provide landscape screening.
 - (f) Solar collectors to be connected to the utility grid shall provide a "proof of concept" letter from the utility company, acknowledging the solar system will be connected to the utility grid in order to sell electricity to the public utility.
 - (3) Signs.

- (a) A sign, not to exceed eight square feet, shall be displayed on or near the main access point and shall list the facility name, owner, and phone number.
 - (b) A clearly visible warning sign concerning high voltage must be placed at the base of all pad-mounted transformers and substations.
- (4) Removal of unsafe structures, abandonment, or decommissioning.
- (a) Upon determination by the Town of Benton Code Enforcement Officer, any building or structure associated with a solar system may be ordered removed or repaired for any cause that may now be or hereafter become dangerous or unsafe.
 - (b) In the event the facility is not completed and functioning within 18 months of the issuance of the final site plan approval, the Town may notify the owner and/or operator to complete construction and installation of the facility within 180 days. If the owner and/or operator fail to perform, the Town may notify the owner and/or operator to implement decommissioning.
 - (c) Upon cessation of activity of a constructed facility for a period of one year, the Town may notify the owner and/or operator of the facility to implement decommissioning. Within 180 days of notice being served, the owner and/or operator can either restore operation equal to 80% of approved capacity or implement decommissioning.
 - (d) Decommissioning must ensure the site will be restored to a useful, nonhazardous condition without delay, including, but not limited to the following:
 - [1] Removal of above-ground and below-ground equipment, structures, and foundations.
 - [2] Restoration of the surface grade and soil after removal of equipment.
 - [3] Revegetation of restored soil areas with native seed mixes, excluding any invasive species.
 - [4] Completion of site restoration work shall be within 180 days of notification by the Town.
- E. If the owner and/or operator fail to fully implement decommissioning or removal within the one-hundred-eighty-day time period, the Town may, at its discretion, provide for the restoration of the site and may recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and tax upon the property, and shall be enforced and collected with interest by the same officer and in the same manner as other taxes.

ZONING

110 Attachment 1

**Town of Benton, Yates County, New York
Zoning Law
Use Regulation Table**

[Amended 3-10-2003 by L.L. No. 1-2003; 11-14-2007 by L.L. No. 3-2007;
3-13-2013 by L.L. No. 2-1013; 7-11-2018 by L.L. No. 1-2018]

Key to Abbreviations

P	Permitted
PSPR	Permitted Site Plan Review
SP	Special Uses Requiring Special Permits
No letter	Not Permitted
Districts:	
A-R-1	Agricultural-Residential-One
A-R-B	Agricultural-Residential-Business
H-C	Hamlet Center
L-R	Lakefront Residential

	Districts			
	A-R-1	A-R-B	H-C	L-R
AGRICULTURAL USES				
Farm	P	P		
Farm-related business	SP	SP	SP	
RESIDENTIAL USES				
Bed-and-breakfast	SP	PSPR	PSPR	SP
Cluster development residential	SP	SP	SP	
Dwelling, multifamily	SP	SP	SP	
Dwelling, one-family	P	P	P	PSPR
Dwelling, one-family, semidetached	P	P	P	PSPR
Dwelling, two-family	P	P	P	
Dwelling unit above first-floor business		P	P	
Townhouse (condos)	SP	SP	SP	SP
Mobile home	P	P	P	
ACCESSORY USES				
Antenna less than 3 feet in diameter	P	P	P	P
Boat launching facility				SP
Boat storage, more than 2 boats (outside)	SP	SP	SP	SP
Garage, private	P	P	P	P
Home occupation	SP	SP	SP	SP
Shed, storage	P	P	P	P
GENERAL USES				
Cemetery	SP	SP	SP	
Church or place of worship	PSPR	PSPR	PSPR	
Club membership	SP	SP	SP	
Cultural facilities (library, museum, tourist attractions)	SP	SP	SP	
Day-care center/nursery	SP	SP	SP	

BENTON CODE

Key to Abbreviations

P	Permitted
PSPR	Permitted Site Plan Review
SP	Special Uses Requiring Special Permits
No letter	Not Permitted
Districts:	A-R-1 Agricultural-Residential-One
	A-R-B Agricultural-Residential-Business
	H-C Hamlet Center
	L-R Lakefront Residential

	Districts			
	A-R-1	A-R-B	H-C	L-R
GENERAL USES (continued)				
Essential utility service	SP	SP	SP	SP
Government use	SP	SP	SP	SP
Group home	SP	SP	SP	
Hospital	SP	SP	SP	
Institutional use (government or philanthropic)	SP	SP	SP	
Lodge or fraternal order	SP	SP	SP	
Nursing or convalescent home	SP	SP	SP	
Private, public school	PSPR	PSPR	PSPR	
Public parks and recreational use	SP	SP	SP	SP
Public utilities or transportation use	SP	SP	SP	SP
COMMERCIAL USES				
Manufacture, fabrication, extraction, assembly, and other handling of material, including offices and showrooms	SP	SP		
Manufactured towers (cel, met, large windmills)	SP	SP		
Small wind energy systems	PSPR	PSPR		
INDUSTRIAL USES				
Contractor yard (and equipment)	SP	PSPR	SP	
Excavation of sand, gravel	SP	SP		
Lumber yard	SP	SP	SP	
Research laboratory	SP	SP	SP	
Trucking terminal	SP	SP		
Warehouse and wholesale and retail distribution establishments, including offices and showrooms	SP	SP	SP	
BUSINESS USES				
Antique or craft shop	SP	PSPR	PSPR	
Art gallery	SP	PSPR	PSPR	
Automobile sales and service area	SP	SP	SP	
Automobile service station	SP	SP	SP	
Bank, financial institution	SP	PSPR	PSPR	
Barber and beauty shop	SP	PSPR	PSPR	
Boarding or lodging house	SP	PSPR	PSPR	
Clubhouse	SP	PSPR	PSPR	
Campgrounds, recreational vehicle parks, tourist camps, travel trailer parks	SP			

ZONING

Key to Abbreviations

P	Permitted
PSPR	Permitted Site Plan Review
SP	Special Uses Requiring Special Permits
No letter	Not Permitted
Districts:	
A-R-1	Agricultural-Residential-One
A-R-B	Agricultural-Residential-Business
H-C	Hamlet Center
L-R	Lakefront Residential

	Districts			
	A-R-1	A-R-B	H-C	L-R
BUSINESS USES (continued)				
Convenience/mini-market	SP	PSPR	PSPR	
Drive-in uses	SP	SP	PSPR	
Dry-cleaning business and self-service laundry		SP	SP	
Farm-winery	SP	SP	SP	
Funeral homes	SP	PSPR	PSPR	
General business office	SP	PSPR	PSPR	
Golf course	SP	PSPR		
Greenhouse	SP	PSPR	PSPR	
Hotel and motel	SP	SP	SP	
Kennel, Boarding	SP			
Kennel, Commercial	SP			
Kennel, Private	SP			
Photographic studio	SP	PSPR	PSPR	
Professional office building, medical clinic	SP	SP	SP	
Repair shops	SP	SP	SP	
Rescue Organization	SP			
Restaurant	SP	SP	SP	
Retail business and commercial use other than listed above	SP	SP	SP	
Riding academy, stable	SP	SP		
Roadside stand	PSPR	PSPR	PSPR	
Saw mill	SP	SP		
Theater		SP	SP	
Tourist camp	SP			
Veterinary hospital	PSPR	PSPR	PSPR	

ZONING

110 Attachment 2

**Town of Benton, Yates County, New York
Zoning Law
Density Control Schedule**

[Amended 6-11-2001 by L.L. No. 2-2001; 11-14-2007 by L.L. No. 3-2007; 7-11-2018 by L.L. No. 1-2018]

District	Minimum Lot Area/D.U. (square feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Lot Area Other Principal Permitted Use (square feet)	Yard Requirements			Maximum Lot Coverage (percent)	Building Height (feet)
					Front (feet)	Side (feet)	Rear (feet)		
A-R-1	40,000	200	200	40,000	80	15	15	25%	35
A-R-B	40,000	200	200	40,000	80	15	15	25%	35
H-C	20,000	100	200	20,000	20	15	15	50%	50
L-R	15,000	100	150	N/A	50 (principal buildings)/ 50 (accessory buildings)	15 (principal buildings)/ 5 (accessory buildings)	15 (principal buildings)/ 15 (accessory buildings)	25%	35

Use Districts:

- A-R-1 Agricultural-Residential-One
- A-R-B Agricultural-Residential-Business
- H-C Hamlet Center
- L-R Lakefront Residential

NOTES:

General: Linear dimensions are average dimensions.
*See text description of Clustering, Residential

DISPOSITION LIST

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Benton 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 L.L. No. 1-1999, adopted 7-12-1999. 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	Adoption Date	Subject	Disposition
L.L. No. 1-2000	5-8-2000	Dog control	Ch. 6, Art. II
L.L. No. 2-2000	10-9-2000	Water supply	Ch. 106, Art. I
L.L. No. 1-2001	5-8-2000	Senior citizens tax exemption amendment	Ch. 100, Art. I
L.L. No. 2-2001	6-11-2001	Zoning amendment	Ch. 110
L.L. No. 3-2001	9-10-2001	Adoption of Code	Ch. 1, Art. I
L.L. No. 1-2003	3-10-2003	Zoning amendment	Ch. 110
L.L. No. 1-2004	9-13-2004	Water: cross connections	Ch. 106, Art. II
L.L. No. 1-2005	6-8-2005	Zoning amendment	Ch. 110
L.L. No. 2-2005	9-14-2005	Zoning amendment	Ch. 110
L.L. No. 1-2006	3-15-2006	Zoning amendment	Ch. 110
L.L. No. 2-2006	6-14-2006	Moratorium on wind farms	NCM
L.L. No. 3-2006	11-8-2006	Fire prevention and building construction	Repealed by L.L. No. 3-2023
L.L. No. 1-2007	3-14-2007	Zoning amendment	Ch. 110
L.L. No. 2-2007	5-9-2007	Fire prevention and building construction amendment	Repealed by L.L. No. 3-2023
L.L. No. 3-2007	11-14-2007	Zoning amendment	Ch. 110
L.L. No. 1-2008	4-9-2008	Annexation	NCM
L.L. No. 2-2008	7-9-2008	Employment policy	Ch. 68, Art. I
L.L. No. 3-2008	11-12-2008	Senior citizens tax exemption amendment; alternative veterans tax exemption amendment	Ch. 100, Arts. I and II

Enactment	Adoption Date	Subject	Disposition
L.L. No. 1-2009	1-14-2009	Subdivision regulations	Ch. 98
L.L. No. 2-2009	2-11-2009	Senior citizens tax exemption amendment	Ch. 100, Art. I
L.L. No. 3-2009	12-9-2009	Zoning amendment	Ch. 110
L.L. No. 1-2010	9-8-2010	Property maintenance	Ch. 76
L.L. No. 2-2010	12-8-2010	Dog licensing	Ch. 6, Art. I
L.L. No. 1-2011	1-12-2011	Employment policy amendment	Ch. 68, Art. I
L.L. No. 2-2011	9-14-2011	Temporary moratorium on horizontal and directional gas drilling and hydraulic fracturing	NCM
L.L. No. 3-2011		Tax levy limit override	NCM
L.L. No. 4-2011	11-9-2011	Zoning amendment	Ch. 110
L.L. No. 1-2012	2-8-2012	Tax levy limit override	NCM
L.L. No. 2-2012	7-11-2012	Second moratorium on horizontal and directional gas drilling and hydraulic fracturing	NCM
L.L. No. 3-2012	9-12-2012	Employment policy amendment	Ch. 68, Art. I
L.L. No. 1-2013	2-13-2013	Tax levy limit override	NCM
L.L. No. 2-2013	3-13-2013	Zoning amendment	Ch. 110
L.L. No. 1-2014	2-12-2014	Tax levy limit override	NCM
L.L. No. 2-2014	12-10-2014	Taxation: Exemption for solar, wind or farm waste energy systems	Ch. 100, Art. III
L.L. No. 1-2015	11-11-2015	Tax levy limit override	NCM
L.L. No. 1-2016	2-10-2016	Taxation: senior citizens exemption amendment	Ch. 100, Art. I
L.L. No. 2-2016	10-12-2016	Tax levy limit override	NCM
L.L. No. 1-2017	3-8-2017	Tax levy limit override	NCM
L.L. No. 1-2018	7-11-2018	Zoning Amendment	Ch. 110

Enactment	Adoption Date	Subject	Disposition	Supp. No.
L.L. No. 2-2018	11-15-2018	Tax Levy Limit Override	NCM	9
L.L. No. 1-2019	11-13-2019	Tax Levy Limit Override	NCM	9

Enactment	Adoption Date	Subject	Disposition	Supp. No.
L.L. No. 1-2020	11-11-2020	Tax Levy Limit Override	NCM	9
L.L. No. 1-2021	8-11-2021	Cannabis: Retail Dispensaries and On- Site Consumption Sites	Ch. 15, Art. I	9
L.L. No. 2-2021	11-10-2021	Tax Levy Limit Override	NCM	9
L.L. No. 1-2023	1-11-2023	Taxation: Exemption for Cold War Veterans	Ch. 100, Art. IV	9
L.L. No. 2-2023	1-11-2023	Taxation: Alternative Veterans Exemption Amendment	Ch. 100, Art. II	9
L.L. No. 3-2023	3-8-2023	Fire Prevention, Building Construction and Energy Conservation	Ch. 30	9
L.L. No. 4-2023	10-11-2023	Taxation: Senior Citizens Exemption Amendment	Ch. 100, Art. I	9
L.L. No. 5-2023	11-8-2023	Tax Levy Limit Override	NCM	9
L.L. No. 1-2024	4-16-2024	Wastewater	Ch. 104	9
L.L. No. 2-2024	5-8-2024	Personnel Policies: Employment Policy Amendment	Ch. 68, Art. I	9
L.L. No. 1-2025	2-12-2025	Short-Term Rentals	Ch. 91	10
L.L. No. 2-2025	2-12-2025	Personnel Policies: Employment Policy Amendment	Ch. 68, Art. I	10
L.L. No. 3-2025	5-14-2025	Flood Damage Prevention	Ch. 35	10

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