

Chapter 45**ADULT ENTERTAINMENT**

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[HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward 5-1-2000 by L.L. No. 2-2000.¹ Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 100.

§ 45-1. Purpose and intent.

It is the purpose of this chapter to promote the health, safety, morals and general welfare of the citizens of Fort Edward and to establish reasonable and uniform regulations regarding the location and concentration of adult businesses and the promotion of pornography within the village. The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor the effect of this chapter to restrict or deny

¹ Editor's Note: This local law also repealed former Ch. 45, Female Exposure, adopted 4-7-1986 by L.L. No. 1-1986.

access by adults to sexually oriented 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 the effect of this chapter to condone or legitimize the distribution of obscene materials. Therefore, it is recognized that special regulation of these adult businesses is necessary to:

- A. Preserve the character and quality of life in the village neighborhoods and business areas.
- B. Maintain property values.
- C. Prevent crime.
- D. Protect retail trade.
- E. Restrict minors' access to adult businesses.
- F. Maintain the general welfare and safety for Village of Fort Edward residents.

§ 45-2. Definitions.

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

ADULT — Any person 18 years of age or older. (A minor is any person under the age of 18.)

ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, videos, computer software, other periodicals, films or viewing on the premises, by use of motion-picture devices or any other coin-operated means, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or male or female genitalia or anatomical areas, or an establishment with a segment or section devoted to the sale or display of such material, and which establishment customarily excludes any minor by virtue of age.

ADULT BUSINESS — An adult bookstore, adult cabaret, massage establishment or any establishment that engages in the use, sale or display of sexually explicit materials or the use of sexually oriented entertainment.

ADULT CABARET — A public or private establishment, or any part thereof, which presents any of the following entertainments or services on one or more occasions for the observation by patrons therein and which is operated for profit: topless female dancers; strippers (male or female); male or female impersonators; exotic dancers; topless waitresses, bussing or service; or service or entertainment where the servers or entertainers wear pasties or G-strings, or both. Adult cabarets customarily exclude minors by reason of age.

DISSEMINATE — To manufacture, issue, publish, sell, lend, distribute, transmit, broadcast, exhibit or present materials or to offer or agree to do the same or to have in one's possession with intent to do the same.

MASSAGE ESTABLISHMENT — Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition also shall exclude any establishments which do not receive their primary source of revenue through the administration of massages.

§ 45-3. Local restrictions.

Adult businesses, including but not limited to adult bookstores, adult cabarets and massage establishments, shall be permitted, subject to the following restrictions:

- A. No such adult business shall be allowed within 500 feet of another adult business.
- B. No such adult business shall be located within 500 feet of the boundaries of any zoning district which is zoned for residential uses.
- C. No such adult business shall be located within 500 feet of recreational facilities, a preexisting school, place of worship, cemetery, park or playground or other area where a large number of minors travel or congregate.
- D. Adult businesses may be located only in a commercial zone (C1).

§ 45-4. Registration required; application.

The owner of a building or premises, his agent for the purpose of managing or controlling or collecting rents or any other person managing or controlling a building or premises, any part of which contains an adult business, shall register the following information with the Village Clerk of the Village of Fort Edward:

- A. The address of the premises.
- B. The name and address of the owner of the premises and the names and addresses of the beneficial owners if the property is in a land trust.
- C. The name of the business or the establishment subject to the provisions of this chapter.
- D. The date of initiation of the business use.
- E. The nature of the business.
- F. If the premises or building is leased, a copy of the lease.

§ 45-5. Live entertainment.

- A. The purpose of this section is to regulate nudity as a form of commercial exploitation, to avoid adverse consequences of having nudity presented in any establishment.
- B. No establishment shall permit entertainment on the licensed premises, whether provided by a professional entertainer(s), employee(s) of the licensed premises or any other person(s), when the entertainment involves:
 - (1) The performance of acts or simulated acts of any sexual activity or any other sexual acts, which are prohibited by law.
 - (2) The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals.
 - (3) The actual or simulated displaying of the genitals, pubic hair, buttocks, anus or any portion of the female breasts at or below the areola area thereof.
 - (4) The permitting by any licensee of any person to remain in or upon the licensed premises who exposes to any public view any portion of his or her genitals or anus or female breasts at or below the areola area thereof.
- C. For the purposes of this section, the words "displaying" and "expose" shall mean being unclothed or uncostumed or not covered by fully opaque cloth or textile material or employing any device or covering which is intended to give the appearance of or to simulate the genitals, pubic hair, buttocks, anus or the portions of the female breast at or below the areola area thereof.

§ 45-6. Promotion of pornography unlawful.

- A. Until a license is obtained by the village, it shall be unlawful for any person to promote pornography.

- B. A person commits the offense of promoting pornography if, knowing its content and character, he:
- (1) Disseminates or causes to be disseminated any pornographic material in or from a public place or vehicle or for valuable consideration or has in his possession any pornographic material with intent to so disseminate or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him for such dissemination of pornographic material.
 - (2) Sells an admission ticket or pass to premises where there is being exhibited or is about to be exhibited material or a performance which is pornographic.
 - (3) Admits, by accepting a ticket or pass, a person to premises where there is being exhibited or is about to be exhibited material or a performance which is pornographic.
 - (4) Produces, presents, directs or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him to be used for a pornographic performance before an audience.
 - (5) Participates in that portion of a live performance before an audience which makes it pornographic.
 - (6) Panders, displays publicly or disseminates door-to-door any pornographic material or performance or causes such pandering, public display or door-to-door dissemination.

§ 45-7. Penalties for offenses.

Any person found guilty of violating this chapter shall be subject to imprisonment not to exceed 15 days or a fine to be fixed by the court not to exceed \$1,000, or both.

Chapter 47

FIREARMS

§ 47-1. Title.

§ 47-2. Definitions.

§ 47-3. Discharge prohibited.

§ 47-4. Exceptions.

§ 47-5. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward 9-7-89 as L.L. No. 2-1989. Amendments noted where applicable.]

§ 47-1. Title.

This chapter shall be known as the "Firearms Local Law of the Village of Fort Edward."

§ 47-2. Definitions.

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

FIREARM — Any pistol, revolver, rifle, shotgun, air gun, sling shot or bow and arrow which discharges a bullet, cartridge, shell, shot, arrow, bolt or other missile propelled by the burning or explosion of gunpowder, by high pressure from pumping or other means, by a spring which is set by a cocking operation or by the application and release of tension or pressure to a bow spring attached to such weapon or instrument.

§ 47-3. Discharge prohibited.

No person shall, except in self defense and when reasonably necessary for the protection of life and property, fire or discharge or cause to be fired or discharged any projectiles firing ammunition from any firearm as defined in this chapter within the boundaries of the Village of Fort Edward.

§ 47-4. Exceptions.

- A. The prohibitions in this chapter shall not apply to any officer of the law while engaged in the protection of the safety of the people within the Village of Fort Edward.
- B. The Village Board of Trustees may permit the discharge of firearms within the Village of Fort Edward upon any appropriate occasion of public ceremony.

§ 47-5. Penalties for offenses.

Any person who violates any provision of this chapter shall, upon conviction thereof, be subject to a fine of no more than two hundred fifty dollars (\$250.) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment.

FIRE PREV. & BLDG. CODE

Chapter 49

FIRE PREVENTION AND
BUILDING CODE, UNIFORM

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[HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward 11-7-88 as L.L. No. 3-1988. Amendments noted where applicable.]

GENERAL REFERENCES

Moving of buildings — See Ch. 29.

Unsafe buildings — See Ch. 32.

Flood damage prevention — See Ch. 52.

Zoning — See Ch. 100.

ARTICLE I
General Provisions

§ 49-1. Title.

The Board of Trustees of the Village of Fort Edward, pursuant to Section 1 of Chapter 707 of the Laws of 1981 [Executive Law, § 381 (2)] now formally adopts this chapter, to be known as, "A Local Law Authorizing Village Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code."

§ 49-2. Statutory authority.

This chapter is hereby enacted pursuant to the authority granted by § 10 of the New York State Municipal Home Rule Law.

§ 49-3. Purpose.

This chapter shall provide the method for administration and enforcement of the New York State Uniform Fire Prevention and Building Code ("the code") in the Village of Fort Edward and shall establish powers, duties and responsibilities in connection therewith.

§ 49-4. Standards of construction.

All new construction, alterations, improvements, removal or demolition of any building or structure shall be in compliance with the most recent edition of the New York State Uniform Fire Prevention and Building Code, prepared by the New York State Division of Housing and Community Renewal.

ARTICLE II
Enforcement Officials

§ 49-5. Code Enforcement Official designated. [Amended 6-27-1997 by L.L. No. 2-1997¹]

The Washington County Department of Code Enforcement is designated as the "Code Enforcement Official" with the approval of the Village of Fort Edward Board of Trustees.

§ 49-6. Powers and duties of Code Enforcement Official.

- A. The Code Enforcement Official shall be considered an official of the Village of Fort Edward.
- B. The Code Enforcement Official shall:
 - (1) Except as otherwise specifically provided by law or except as herein otherwise provided, administer and enforce all of the provisions of the Uniform Fire Prevention and Building Code applicable to the plans, specifications or permits for the construction, alteration and repair of buildings and structures, the installation and use of materials and equipment therein and the location, use and occupancy thereof in regard to building construction specifications and fire prevention requirements.
 - (2) Receive applications, approve plans and specifications and issue permits for the erection and alteration of buildings or structures or parts thereof and shall examine the premises for which such applications have been received, plans approved or such permits have been issued, for the purpose of insuring compliance with the code.
 - (3) Make inspections and issue in writing all appropriate notices or orders, including stop orders,

¹ Editor's Note: This local law also provided that this change in authority would take effect January 1, 1998.

to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to ensure compliance during the entire course of construction with the requirements of the code.

- (4) Make all building construction and fire prevention inspections which are necessary and proper for the carrying out of duties as required by the code.
- (5) Issue a certificate of occupancy, where appropriate, for a building constructed or altered in accordance with the provisions of the Uniform Fire Prevention and Building Code, which shall certify that the building conforms to the requirements of the code.

§ 49-7. Acting Code Enforcement Official.

In the absence of the Code Enforcement Official, or in the case of his inability to act for any reason, the Mayor of the Village of Fort Edward shall have the power, with the consent of the Board of Trustees of the Village of Fort Edward, to designate a person to act on behalf of the Code Enforcement Official and to exercise all the powers conferred upon him.

§ 49-8. Inspectors.

The Mayor, with the approval of the Board of Trustees, may appoint one inspector or more, as the need may appear, to act under the supervision and direction of the Code Enforcement Official and to exercise any portion of the powers and duties of the Code Enforcement Official as he may direct. The compensation of such inspector shall be fixed by the Board of Trustees.

ARTICLE III
Building Permits

§ 49-9. Permit required.

No person, firm, corporation, association or other organization shall commence the erection, construction, alteration, improvement, removal or demolition of any building or structure, except agricultural buildings or structures, or the installation of heating equipment without having applied for and obtained a building permit from the Code Enforcement Official. At the request of the applicant, building

(Cont'd on page 4907)

permit requirements may be waived where the work to be done involves minor interior or exterior alterations.

§ 49-10. Applications.

Applications for building permits shall be available through the Village Clerk's Office.

§ 49-11. Submission of applications.

Applications for building permits shall be delivered in person to the Village Clerk's Office.

§ 49-12. Application fees.

Building permit application fees must be paid and are set forth in § 100-31 of the Village Code of the Village of Fort Edward.

§ 49-13. Contents of applications.

The building permit applications shall specify, at a minimum: the items set forth in § 100-28 of the Village Code of the Village of Fort Edward; the requisite number of copies of certified plan specifications and maps; the signature of the applicant or authorized agent; the work site; a statement of the use or occupancy of all parts of the land and of the proposed building or structure; a brief description of the proposed work, including plans and specifications; the estimated cost of the proposed work; the name and address of the owner and applicant; the fee for the building permit as set forth under § 100-31 of the Village Code of the Village of Fort Edward; and, if either is a corporation, the names and addresses of responsible officers.

§ 49-14. Issuance of permit.

- A. The Code Enforcement Official shall examine or cause to be examined building permit applications and plans, specifications and documents filed therewith. The application shall be

approved or disapproved in accordance with § 100-38 of the Village Code of the Village of Fort Edward.

- B. Upon approval of the application, plans and specifications shall be endorsed with the word "approved." One (1) set of such approved plans and specifications shall be retained in the files of the Code Enforcement Official, and one (1) set shall be returned to the applicant, together with the building permit, and shall be kept by the applicant at the building site, open to inspection by the Code Enforcement Official at all reasonable times.
- C. If the application, together with plans, specifications and other documents filed therewith, describes proposed work which does not conform to all the requirements of the applicable building code regulations, the Code Enforcement Official shall disapprove the same and shall return the plans and specifications to the applicant. Upon request of the applicant, the Code Enforcement Official shall cause such refusal, together with the reasons thereof, to be transmitted to the applicant in writing.

§ 49-15. Revocation.

The Code Enforcement Official may revoke a building permit previously issued in the following instances:

- A. Where it is found that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based;
- B. Where it is found that the building permit was issued in error and should not have been issued in accordance with the applicable provisions of the code;
- C. Where it is found that the work performed under the permit is not being completed in accordance with the provisions of the application, plans or specifications of the code; or
- D. Where the person to whom a building permit has been issued fails or refuses to comply with a stop order issued by the Code Enforcement Official.

§ 49-16. Expiration; renewal.

A building permit shall expire one (1) year from the date of issuance or upon the issuance of a certificate of occupancy, whichever occurs first. A building permit may, upon written request, be renewed for successive one-year periods, provided that the permit has not been revoked or suspended at the time the application for renewal is made. The relevant information in the application for renewal must be up to date in order to obtain an extension.

**ARTICLE IV
Inspections****§ 49-17. Compliance with code.**

All dwellings, structures and uses regulated under the State Uniform Fire Prevention and Building Code, including but not limited to those buildings and structures for which a building permit has been obtained, shall be inspected for compliance with the building construction and fire prevention provisions of the code.

§ 49-18. Occupied dwelling units.

Except as otherwise required by the code, no regular or periodic inspections of occupied dwelling units shall be required. This shall not, however, be a limitation on inspections conducted at the invitation of the occupant or by an affected property owner where conditions on the premises are shown to threaten or present a hazard to public health, safety or welfare.

§ 49-19. Access to premises.

Access to building and premises by the Code Enforcement Official to conduct inspections shall be made only after reasonable prior notice has been given to the owner or his authorized representative, with the following exceptions:

- A. In the event that the owner or his authorized representative can not be located with due diligence; or

B. In the event that the occupant makes a complaint that the conditions within the premises pose a threat to the health, safety or welfare of its occupants.

§ 49-20. Warrants for inspection.

If entrance to make an inspection is refused or cannot be obtained, the Code Enforcement Official may apply for a warrant to make an inspection to any court of competent jurisdiction.

§ 49-21. Responsibility of owner for building construction inspections.

Upon issuance of a building permit, it shall be the responsibility of the owner, the applicant or their authorized agent to arrange inspections with the Code Enforcement Official.

§ 42-22. Fire prevention inspections.

The Department of Code Enforcement shall conduct required inspections for compliance with the fire prevention provisions of the code.

ARTICLE V
Certificates of Occupancy

§ 42-23. Issuance required for use.

The Code Enforcement Official or the Enforcement Officer, as designated in § 100-21 of the Village Code of the Village of Fort Edward, upon determination that a dwelling or structure undergoing construction or alteration has complied with the provisions of the code, shall issue a certificate of occupancy. A certificate of occupancy must be issued before any occupancy or use of the dwelling or structure is allowed.

§ 49-24. Temporary certificates of occupancy.

Upon request from the owner, the applicant or his agent, the Code Enforcement Official or the Enforcement Official, as designated in § 100-21 of the Village Code of the Village of Fort Edward, may issue a temporary certificate of occupancy for a building or structure, or a part thereof, before the entire work covered by the building permit shall have been completed, provided that such portion or portions as have been completed may be occupied safely without endangering life or the public health or welfare. A temporary certificate of occupancy shall remain effective for a period not exceeding three (3) months from its date of issuance. For good cause, the Code Enforcement Official or the Enforcement Official, as designated in § 100-21 of the Village Code of the Village of Fort Edward, may allow a maximum of two (2) extensions for periods not exceeding three (3) months each.

**ARTICLE VI
Contents of Documents****§ 49-25. Building permits.**

The building permit issued pursuant to this chapter shall specify, at a minimum: the address of the proposed construction or structural alteration activity; the activity for which the permit is issued; the date of permit issuance; any conditions relevant or required as part of the issuance; and the signature of the Code Administrator or Code Enforcement Officer.

§ 49-26. Certificates of occupancy.

The certificate of occupancy issued pursuant to this chapter shall specify, at a minimum: the address of the dwelling or structure inspected; the use for which the certificate of occupancy is issued; the date the dwelling or structure was inspected and the date the building permit was issued; any conditions relevant or required as part of the issuance; and the signature of the Code Enforcement Official.

ARTICLE VII
Enforcement

§ 49-27. Compliance required.

It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any building or structure or portion thereof in violation of any provision of the New York State Uniform Fire Prevention Building Code or this chapter, as well as any regulation or rule promulgated by the Code Enforcement Official in accordance with applicable laws, or to fail in any manner to comply with a notice, directive or order of the Code Enforcement Official or to construct, alter, use or occupy any building or structure or part thereof in a manner not permitted by an approved building permit or certificate of occupancy. In the event of a violation and the failure to comply, neither a building permit nor a certificate of occupancy shall be issued. If a certificate of occupancy has been previously issued and thereafter a violation is found, the certificate shall be revoked if such violation is not remedied.

§ 49-28. Stop-work orders.

Whenever the Code Enforcement Official has reasonable grounds to believe that work on any building or structure is being done in violation of the applicable provisions of the code or it is not in conformity with the provisions of an application, plans or specifications on the basis of which a building permit was issued or the work is being done in an unsafe and dangerous manner, the owner of the property, or the owner's agent, shall be notified, in the form of a stop order, to stop all work. Such persons shall forthwith stop such work and suspend all building activities until the stop order has been rescinded. Such order and notice shall be in writing and shall state the conditions under which the work may be resumed. It may be served upon a person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the building where the work is being performed and sending a copy of the order to him by certified mail at the address set forth in the building permit application, if such application shall have been made.

§ 49-29. Failure to comply.

Any person who shall fail to comply with a written order of the Code Enforcement Official within the time fixed for compliance and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building, who shall knowingly violate any of the applicable provisions of this chapter or any lawful order, notice, permit or certificate of the Code Enforcement Official shall be subject to a fine and/or penalty consistent with the provisions of Article 18, § 382, of the Executive Law of the State of New York and the penalties imposed under this chapter.

§ 49-30. Penalties for offenses; other remedies.

- A. Any person, firm or corporation who violates any provision of the code or any rule or regulation of this chapter or the terms or conditions of any building permit or any certificate of occupancy issued by the Code Enforcement Official shall be liable to a civil penalty of not more than two hundred fifty dollars (\$250.) 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 the Village Board on its own initiative or at the request of the Code Enforcement Official.
- B. Alternatively, or in addition to an action to recover the civil penalties provided by Subsection A of this section, the Village Board may institute any appropriate action or proceeding to present, restrain, enjoin, correct or abate any violation of, or to enforce, any provisions of the code or the terms or conditions of any certificate of occupancy issued by the Code Enforcement Official.
- C. Any person who shall willfully fail to comply with a written order of the Code Enforcement Official within the time fixed for compliance herewith and any owner, builder, architect, tenant, contractor, subcontractor, plumber, construction superintendent or their agents, or any other person taking part in assisting in the construction or use of any building,

who shall violate any of the applicable provisions of this chapter or any lawful order, notice, directive, permit or certificate of the Code Enforcement Official made thereunder or, in addition to any other remedies provided for in this chapter, any person who shall violate any of the provisions of this chapter, the code, any rules or regulations adopted pursuant to this chapter or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, shall severally for each and every such violation be guilty of a misdemeanor, punishable by a fine of not less than fifty dollars (\$50.) nor more than two hundred fifty dollars (\$250.) or by imprisonment for not more than thirty (30) days, or both fine and imprisonment. The imposition of one (1) penalty for any violation shall not excuse the violation nor permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that the prohibited condition(s) or violation continues shall constitute a separate offense. The imposition of any such penalty shall not be held to prohibit the enforced removal of prohibited conditions by any appropriate remedy, including immediate application for an injunction.

ARTICLE VIII Records and Appeals

§ 49-31. Records.

- A. The Code Enforcement Official shall keep permanent official records of all transactions and activities conducted by him, including all applications received, plans approved, permits and certificates issued, fees charged and collected, inspection reports, all rules and regulations promulgated by the municipality and notices and orders issued. All such reports shall be public information open to public inspection during normal business hours.

- B. The Code Enforcement Official shall submit to the Mayor and Village Board a written report of all business conducted. Said report is to be submitted on a monthly basis or any periodic basis that the Mayor or Board of Trustees deems proper.

§ 49-32. Actions which may be appealed.

Any owner or authorized representative of a building or premises affected by the State Uniform Fire Prevention and Building Code or this chapter may appeal the following actions to the appropriate New York State Regional Board of Review:

- A. The application of the code where practical difficulties or unnecessary hardship may result.
- B. Any order or determination, or the failure within a reasonable time to make such order or determination, by an administrative official charged with the enforcement of, or purporting to enforce, the code.

§ 49-33. Forms for appeals; fee.

An appeal to the Regional Board of Review shall be in writing, on forms prescribed by the Secretary of State, and accompanied by a fee determined by the state.

ARTICLE IX
Miscellaneous Provisions

§ 49-34. Promulgation of rules and regulations.

The Board of Trustees may, after public notice and publication at least five (5) days prior to the effective date thereof in the official Village newspaper and in other newspapers with general circulation in the village, adopt by resolution further procedural/administrative rules and regulations as the Board deems reasonable to carry out the provisions of this chapter. The Code Enforcement Official may also make recommendations to the Village Board to adopt, amend or appeal such rules and regulations as they may relate to efficient administration and enforcement of the provisions of the Uniform Fire

Prevention and Building Code. Such rules and regulations shall not conflict with the code, this chapter or any other provisions of law.

§ 49-35. Severability.

Should any section or provisions of this chapter be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any part thereof, other than the section or part so decided to be unconstitutional or invalid.

§ 49-36. When effective.

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

§ 49-37. Municipal cooperation.

To effectuate implementations of the New York State Uniform Fire Prevention and Building Code, the Village Board of the Village of Fort Edward is hereby authorized, pursuant to Article 5G of the General Municipal Law, to contract with the Town of Fort Edward or any other municipality for services on an as-needed basis in the administration and enforcement of the Uniform Fire Prevention and Building Code.

FLOOD DAMAGE PREVENTION

Chapter 52

FLOOD DAMAGE PREVENTION

- § 52-1. Findings.
- § 52-2. Purpose.
- § 52-3. Objectives.
- § 52-4. Definitions.
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- § 52-6. Basis for establishing areas of special flood hazard.
- § 52-7. Interpretation; construal of provisions.
- § 52-8. Penalties for offenses.
- § 52-9. Warning and disclaimer of liability.
- § 52-10. Local administrator designated.
- § 52-11. Development permit.
- § 52-12. Powers and duties of local administrator.
- § 52-13. Certificate of compliance.
- § 52-14. General standards.
- § 52-15. Specific standards.
- § 52-16. Floodways.
- § 52-17. Variances.

[HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward 3-30-87 as L.L. No. 1-1987.¹ Amendments noted where applicable.]

¹ Editor's Note: This local law superseded former Ch. 52, Flood Damage Prevention, adopted at time of adoption of Code 4-7-86 by L.L. No. 1-1986.

GENERAL REFERENCES

Zoning — See Ch. 100.

§ 52-1. Findings.

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

§ 52-2. Purpose.

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

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

§ 52-3. Objectives.

The objectives of this chapter are:

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

§ 52-4. Definitions.

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

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

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

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-99, V, VO, VE or V1-30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

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

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

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

BUILDING — Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR — Same as "basement."

COASTAL HIGH-HAZARD AREA — The area subject to high-velocity waters, including but not limited to hurricane wave wash. The area is designated on a FIRM as Zone V1 - 30, VE, VO or V.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations located within the area of special flood hazard.

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

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community, published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The "FBFM" delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD or FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or the unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation is provided.

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

FLOOD INSURANCE STUDY — The official report provided by the Federal Emergency Management Agency. The report contains flood profiles as well as the Flood Boundary - Floodway Map and the water surface elevations of the base flood.

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

FLOODWAY — Same as "regulatory floodway."

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

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

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

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

MANUFACTURED HOME — A structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

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

MOBILE HOME — Same as "manufactured home."

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

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

ONE-HUNDRED-YEAR FLOOD — Same as “base flood.”

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

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 52-12B of this chapter.

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

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

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

SUBSTANTIAL IMPROVEMENT — Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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

§ 52-5. Applicability.

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

§ 52-6. Basis for establishing areas of special flood hazard.

The areas of special flood hazard are identified by the Federal Emergency Management Agency in a scientific and engineering report entitled the "Flood Insurance Study for the Village of Fort Edward of Washington County, New York," dated February 15, 1984, with accompanying Flood Insurance Rate Maps and Flood Boundary - Floodway Maps, which is hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at the Village Clerk's office, 118 Broadway, Fort Edward, New York.

§ 52-7. Interpretation; construal of provisions.

- A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

§ 52-8. Penalties for offenses.

No structure shall hereafter be constructed, located, extended, converted or altered, and no land shall be excavated or filled, without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than two hundred fifty dollars (\$250.) or imprisoned for not more than fifteen (15) days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Village of Fort Edward 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 § 52-17, will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 52-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or that uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Village of Fort Edward, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 52-10. Local administrator designated.

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

§ 52-11. Development permit.

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in § 52-6. Application for a development permit shall be made on forms furnished by the local administrator and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing.

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

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

- (3) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 52-14C(1).
 - (4) A certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 52-15.
 - (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- B. Construction stage. Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the 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.

§ 52-12. Powers and duties of local administrator.

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

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

- (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this chapter "adversely affects" means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
 - (4) Review all development permits for compliance with the provisions of § 52-14E, Encroachments.
- B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 52-6, Basis for establishing areas of special flood hazard, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 52-14D(4), in order to administer § 52-15, Specific standards, and § 52-16, Floodways.
- C. Information to be obtained and maintained. The local administrator shall:
- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar, of all new or substantially improved structures and whether or not the structure contains a basement or cellar.
 - (2) For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed.
 - (b) Maintain the floodproofing certifications required in §§ 52-14 and 52-15.

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

D. Alteration of watercourses. The local administrator shall:

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

E. Interpretation of FIRM boundaries.

- (1) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
- (2) Base flood elevation data established pursuant to § 52-6 and/or § 52-12B, when available, shall be used to accurately delineate the area of special flood hazards.
- (3) The local administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the areas of special flood hazard when base flood elevations are not available.

F. Stop-work orders.

- (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 52-8 of this chapter.
- (2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a

stop-work order shall be subject to the penalties described in § 52-8 of this chapter.

- G. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of either the development permit or the approved variance.

§ 52-13. Certificate of compliance.

- A. It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or 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. All other development occurring within the designated flood hazard area will have, upon completion, a certificate of compliance issued by the local administrator.
- C. All certifications shall be based upon the inspections conducted subject to § 52-12G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

§ 52-14. General standards.

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

- A. Anchoring.
- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

- (2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Manufactured homes shall be elevated to or above the base flood elevation or two (2) feet above the highest adjacent grade when no base flood elevation has been determined. Methods of anchoring may include but are not to be limited to the use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction materials and methods.

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

C. Utilities.

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

D. Subdivision proposals.

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

E. Encroachments.

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the areas of special flood hazard set forth in § 52-12A(3). This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 52-12B or 52-14D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.
- (3) In all areas of special flood hazard where floodway data is provided or available pursuant to § 52-12B, the requirements of § 52-16, Floodways, shall apply.

§ 52-15. Specific standards.

A. In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 52-6, Basis for establishing areas of special flood hazard, and § 52-12B, Use of other base flood and floodway data, the following standards are required:

- (1) Residential construction. New construction and substantial improvements of any resident structure shall:
 - (a) Have the lowest floor, including basement or cellar, elevated to or above the base flood elevation.
 - (b) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - [1] A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
 - [2] The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - [3] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (2) Nonresidential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar, elevated to or above the base flood elevation or be floodproofed so that the structure is watertight below the base flood level, with

walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

- (a) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically, without human intervention, allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

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

- (b) If the structure is to be floodproofed:

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

[2] A licensed professional engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level, to which the structure is floodproofed.

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

B. Construction standards for areas of special flood hazard without base flood elevations. New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the base flood elevation as may be determined in § 52-12B or two (2) feet above the highest adjacent grade where no elevation data is available.

(1) New construction or substantial improvement of structures, including manufactured homes, shall have the lowest floor, including basement, elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.

(2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically, without human intervention, allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

(a) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.

(b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.

(c) Openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

§ 52-16. Floodways.

Located within areas of special flood hazard are areas designated as floodways. (See § 52-4.) The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by §§ 52-6 and 52-12B, all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 52-17. Variances.**A. Appeals Board.**

- (1) The Zoning Board of Appeals, as established by the Village Board, shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (2) The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.
- (3) Those aggrieved by the decision of the Zoning Board 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 Zoning Board 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 floodwaters and the effects of wave action, if applicable, expected at the site.
 - (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 § 52-17A(4) and the purposes of this chapter, the Zoning Board 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 ($\frac{1}{2}$) acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the items in § 52-17A(4)(a) through (l) have been fully considered. As the lot size increases beyond the one-half ($\frac{1}{2}$) acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the contributing structures procedures set forth in the remainder of this section.
- (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) of this section are met.
 - (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.
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (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 that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

Chapter 59

LITTERING

§ 59-1. Legislative intent.

§ 59-2. Word usage; definitions.

§ 59-3. Litter in public places.

§ 59-4. Litter from vehicles.

§ 59-5. Litter in parks, beaches and bodies of water.

§ 59-6. Litter on private property.

§ 59-7. Handbills.

§ 59-8. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward at time of adoption of Code 4-7-86 by L.L. No. 1-1986; see Ch. 1, General Provisions, Art. I. Amendments noted where applicable.]

§ 59-1. Legislative intent.

It is hereby declared the policy of the Village of Fort Edward to preserve and maintain the clean and wholesome character of its environs and to preserve and maintain the health and welfare of its residents within the incorporated area of the village, and in so doing it is necessary to establish regulations restricting the disposal of litter within the Village of Fort Edward.

§ 59-2. Word usage; definitions.

- A. Word usage. When not inconsistent with the context, words used in the present tense include the future; words used in the plural number include the singular; words used in the singular number include the plural; and words in the masculine

include the feminine and the neuter. The word "shall" is always mandatory and not merely directory.

- B. Definitions. For the purpose of this chapter, the following words, phrases and terms and their derivations shall have the meanings given herein:

AUTHORIZED PRIVATE RECEPTACLE — A litter storage and collection receptacle of steel, aluminum or plastic, of ten (10) to thirty (30) gallons' capacity, with tight cover, or larger steel container with closed lid, not exceeding forty (40) gallons' capacity. [Amended 7-7-86 by L.L. No. 2-1986]

GARBAGE — Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

HANDBILL — Any printed or written matter, circular, leaflet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature.

LITTER — Garbage, refuse and rubbish, as defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare or tends to create blight.

NEWSPAPER — A printed publication issued at regular intervals, including any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public, commonly containing news, comments, features and advertisements, including any "newspaper" duly entered with the Post Office Department of the United States in accordance with federal statute or regulation.

PARK — A park, reservation, playground, beach, recreation center or any other public area in the village, owned or operated by the village and devoted to active or passive recreation.

PERSON — Any person, firm, partnership, association, corporation, company or organization of any kind.

PRIVATE PREMISES — Any house, building or other structure not owned or operated by the village, whether inhabited or temporarily or continuously uninhabited or vacant, including any yard, ground, parking lot, walk, driveway,

porch, steps, vestibule or mailbox belonging or appurtenant to such house, building or other structure.

PUBLIC PLACE — Any and all streets, sidewalks, boulevards, alleys or other public ways, and any and all public parks, beaches, squares, spaces, grounds and buildings.

REFUSE — All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and solid market and industrial wastes.

RUBBISH — Nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as but not limited to paper, wrappings, cardboard, tin cans, wood, glass, bedding and crockery.

VEHICLE — Every device in, upon or by which any person or property is or may be transported or drawn upon a highway or public street.

VILLAGE — The Village of Fort Edward.

§ 59-3. Litter in public places.

- A. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the village except in public receptacles or in authorized private receptacles for collection.
- B. Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements or animals upon any street, sidewalk or other public place or upon private property. [Amended 7-7-86 by L.L. No. 2-1986]
- C. No person shall sweep into or deposit in any gutter, street, catch basin or other public place within the village the accumulation of dirt or litter from any building or lot or from any public or private sidewalk or driveway.
- D. Persons owning or occupying property shall keep the sidewalks in front of their premises free of litter.

§ 59-4. Litter from vehicles.

- A. No person shall throw or deposit litter from any vehicle upon any street or public place within the village or upon private property.
- B. No person shall drive or move any vehicle or truck within the village, the wheels or tires of which carry onto or deposit in any street, alley or other public place sticky substances or foreign matter of such kind as adheres to the road surface.

§ 59-5. Litter in parks, beaches and bodies of water.

- A. No person shall throw or deposit litter in any park or beach within the village except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or beach or upon any street or other public or private place. Where public receptacles are not provided, all such litter shall be carried away from the park or beach by the person responsible for its presence and properly disposed of elsewhere, as provided herein.
- B. No person shall throw or deposit litter in any pond, river, stream or other body of water within the village.

§ 59-6. Litter on private property.

- A. No person shall throw or deposit litter on any private property within the village, whether owned by such person or not and whether occupied or vacant, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.
- B. The owner and/or person in control of private property or any portion thereof shall at all times maintain the premises or that portion controlled by him free of litter, except when stored properly in authorized private receptacles for collection, no

sooner than 12:00 noon the day before the scheduled day of collection, when such person shall have actual notice thereof or when said litter shall have been present a sufficient length of time to constitute constructive notice.
[Amended 7-7-1986 by L.L. No. 2-1986]

§ 59-7. Handbills.

- A. In public places. No person shall throw or deposit any handbill in or upon any sidewalk, street or other public place within the village. No person shall hand out or distribute any handbill in any public place except to persons willing to accept it.
- B. On vehicles. No person shall throw or deposit any handbill in or upon any vehicle, except it shall not be unlawful in any public place for a person to hand out or distribute a handbill to any occupant of a vehicle who is willing to accept it.
- C. On private property. No person shall throw or deposit any handbill in or upon any private premises which are:
 - (1) Temporarily or continuously uninhabited or vacant.
 - (2) Posted with a sign placed in a conspicuous position near the entrance thereof, bearing the words "No Peddlers or Agents," "No Advertisements" or words of similar import indicating the desire of the occupants not to have such handbills left upon such premises, or where an occupant expressly directs the person not to throw, deposit or distribute the handbill on the premises.
 - (3) Inhabited but not posted or subject to an express warning by an occupant, except by handing or transmitting any such handbill directly to an occupant, unless the person so distributing places or deposits any such handbill so as to secure or prevent it from being blown or drifted about the premises or sidewalks, streets or other public ways.

D. The provisions of this section shall not apply to the distribution of mail by the United States Postal Service nor to newspapers (as defined herein), except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

§ 59-8. Penalties for offenses. [Amended 5-6-1996 by L.L. No. 1-1996]

Any person violating the provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed two hundred fifty dollars (\$250.) for each offense, each day considered a separate offense, and/or by imprisonment of not more than fifteen (15) days, and/or the requirement of a signed agreement with either a private waste hauler or by arranging for weekly collection with the Town of Fort Edward.

Chapter 61**NOISE**

§ 61-1. Intent and purpose.

§ 61-2. Prohibited acts.

§ 61-3. Exceptions.

§ 61-4. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward 5-3-1999 by L.L. No. 2-1999. Amendments noted where applicable.]

§ 61-1. Intent and purpose.

It is the intent of the Fort Edward Village Board to allow residents to enjoy the environment of the village without subjecting residents to disturbing, excessive or offensive noise which creates a detriment to the life, health or enjoyment of their property. This chapter is to be construed literally, but is not intended to discourage the enjoyment by residents of normal, reasonable and useful activities.

§ 61-2. Prohibited acts.

- A. No person shall cause, suffer, allow or permit to be made unreasonable noise. For the purpose of this chapter, unreasonable noise is any disturbing, excessive or offensive sound which disturbs a reasonable person of normal sensitivities.
- B. The following acts are declared to be evidence of a violation of this chapter:

- (1) Any unnecessary noise from any source between the hours of 11:00 p.m. and 7:00 a.m.
- (2) Noise from a dog or other pet that is continuous and exceeds 15 minutes.
- (3) Noise from a burglar alarm or other alarm system of any building, motor vehicle or boat which is continuous.
- (4) Noise from any sound reproduction system, operating or playing any radio, portable radio or tape player, television, tape deck or similar device that reproduces or amplifies sound in such a manner as to be heard 60 feet from its source or over any property line.
- (5) The erection, excavation, demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 9:00 p.m. except in the case of public safety or emergency.
- (6) The operation of power equipment between the hours of 10:00 p.m. and 7:00 a.m.
- (7) The sounding of any horn or signaling device of an automobile, motorcycle or other vehicle for any unnecessary reason or unreasonable period of time.
- (8) The making of improper noise or disturbance or operating a motor vehicle, snowmobile, all terrain vehicle or other motorized vehicle in such a manner as to cause excessive squealing or other excessive noise of tires.
- (9) Offering for sale anything by shouting or crying out upon the public streets and sidewalks.
- (10) The use of "jake brakes" is prohibited and may be used only in an emergency.

§ 61-3. Exceptions.

- A. The emission of sound for the purpose of alerting persons to the existence of any emergency.
- B. Noise from municipality-sponsored celebrations or events.
- C. Noise from individually sponsored events where a permit for public assembly has been obtained.
- D. The operation or use of any organ, radio, bell, chimes or other instrument, apparatus or device by any church or synagogue.
- E. Noise generated by the installation and maintenance of utilities.
- F. Noise generated by normal operations of the Village of Fort Edward.

§ 61-4. Penalties for offenses.

Any person violating any provision of this chapter shall be guilty of a violation and shall be subject to a fine not to exceed \$250 for each offense or imprisonment of 15 days, or both.

Chapter 63**OUTSIDE BURNING**

§ 63-1. **Purpose.**

§ 63-2. **Restrictions.**

§ 63-3. **Outdoor grills; fireplaces.**

§ 63-4. **Burning by Village officials or Fire District.**

§ 63-5. **Penalties for offenses.**

[**HISTORY:** Adopted by the Board of Trustees of the Village of Fort Edward 2-4-2002 by L.L. No. 1-2002. Amendments noted where applicable.]

GENERAL REFERENCES

Brush, grass and weeds — See Ch. 26.
Littering — See Ch. 59.
Property maintenance — See Ch. 65.

§ 63-1. **Purpose.**

The purpose of this chapter shall be to prevent the danger to the public health and safety posed by uncontrolled and unregulated outside burning.

§ 63-2. **Restrictions.**

- A. No person or business shall burn, allow or permit the outside burning of any brush, leaves, lumber, plastic, tires, chemicals, trash, garbage, construction demolition, refuse or other related items within the limits of the Village of Fort Edward.
- B. The use of burn barrels will be prohibited within the limits of the Village of Fort Edward.

- C. Exceptions. The requirements of Subsection A shall not apply where the outside burning operations result from:
- (1) Any contained fire set solely for recreational purposes.
 - (2) Any fire set solely for cooking food.
 - (3) Any contained fire for ceremonial purposes. All ceremonial fires must be approved by the Village Board.
- D. No fire shall be allowed in such a manner that:
- (1) The emissions interfere with the reasonable enjoyment of life or property.
 - (2) The emissions cause damage to vegetation or property.
 - (3) The emissions are or may be harmful to human or animal health.
- E. The Board of Trustees reserves the right to ban all fires within the limits of the Village of Fort Edward due to drought and any other unforeseen circumstance.

§ 63-3. Outdoor grills; fireplaces.

- A. Nothing contained herein shall prevent the operation of outdoor grills or fireplaces for the preparation of food or the use of said outdoor grills and fireplaces solely for recreational purposes where such fires are properly controlled and a hazard or a nuisance is not created.
- B. The following restrictions apply to fireplaces:
- (1) Fireplaces must be constructed so as to prevent the spread of fire and the flying of ashes therefrom.
 - (2) Newly constructed fireplaces shall not be closer than five feet to any property line, fence or any structure.
 - (3) Permissible burning in fireplaces must be attended at all times.

§ 63-4. Burning by Village officials or Fire District.

The Village Board may authorize the Highway Superintendent or the Fire District to burn structures, lumber, brush or other items.

§ 63-5. Penalties for offenses.

Any person convicted of violating any provision of this chapter shall be guilty of a violation punishable as follows: a fine of not more than \$250 or by imprisonment of not more than 15 days, or by both such fine and imprisonment.

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§ 63A-1

PARKING FINES

§ 63A-3

Chapter 63A

PARKING FINES

§ 63A-1. **Title.**

§ 63A-2. **Purpose.**

§ 63A-3. **Penalties for offenses.**

§ 63A-4. **When effective.**

[**HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward 8-5-2002 by L.L. No. 2-2002. Amendments noted where applicable.**]

GENERAL REFERENCES

Abandoned and junked vehicles — See Ch. 85.
Vehicles and traffic — See Ch. 90.
Unlicensed motor-driven vehicles — See Ch. 92.

§ 63A-1. **Title.**

This chapter shall be known as the "Parking Fine Law of the Village of Fort Edward."

§ 63A-2. **Purpose.**

It is the purpose of this chapter to promote safe parking habits within the Village of Fort Edward and to ensure the safety of vehicular and pedestrian traffic.

§ 63A-3. **Penalties for offenses.**

The following penalties will be levied for the following; in addition, penalties will double if not paid within 30 days of issuance.

§ 63A-3

FORT EDWARD CODE

§ 63A-4

Violation	Fine
Angle parking	\$25
Blocking intersection	\$25
Blocking driveway	\$25
Blocking sidewalk	\$25
Exceeding posted time limit	\$25
Parking in no parking zone	\$25
Parking during restricted hours	\$25
Parking too close to corner	\$25
Overnight parking violation	\$25
Parking in tow-away zone	\$25
Parking by fire hydrant	\$50
Parking in fire zone	\$50
Handicapped zone (state mandated)	\$55

§ 63A-4. When effective.

This chapter will become effective upon filing with the New York Secretary of State.

within the Village of Fort Edward. The registration of persons engaged in the above-mentioned activities is required so that the identity of persons going door to door or distributing materials within the village may be established, so that general regulations may be more effectively enforced, for the protection and maintenance of the health, safety and welfare of the inhabitants of the village and to prevent dishonest business practices and dishonest solicitation of funds in the village.

§ 64-2. Definitions.

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

DISTRIBUTOR — Any person who distributes or causes to be distributed on any street or public place within the village any newspaper, periodical, book, magazine, handbill, circular, card or pamphlet or printed material of any kind.

GARAGE SALE — All sales of a private, non-retail nature, including but not limited to garage sales, yard sales, tag sales, moving sales and cellar sales, will require a registration certificate. [Added 7-7-86 by L.L. No. 2-1986]

MERCHANDISE — All goods, wares, food, meat, fish, ice cream, fruit, vegetables, magazines, periodicals, printed material, farm products, services and orders or contracts for services, home improvement or alterations and anything that may be sold or distributed by peddlers, solicitors or distributors as used herein.

PEDDLER — Any person, whether a resident of the village or not, who goes from house to house, from place to place or from street to street, traveling by foot, automotive vehicle or any other type of conveyance, carrying or transporting merchandise for the purpose of selling and delivering the merchandise to customers. The word "peddler" shall also include the words "hawker" and "huckster."

PERSON — Any individual, firm, partnership, corporation, organization, club, association or any principal or agent thereof.

Chapter 64

PEDDLING AND SOLICITING

§ 64-1. Purpose.

§ 64-2. Definitions.

§ 64-3. Registration certificate required.

§ 64-4. Application for registration certificate.

§ 64-5. Investigation of applicant.

§ 64-6. Denial or issuance of certificate.

§ 64-7. Registration fee; renewal.

§ 64-8. Bonds.

§ 64-9. Appeals from denial of certificate.

§ 64-10. Conditions of registration.

§ 64-11. Restrictions on license holders.

§ 64-12. Revocation of certificate.

§ 64-13. Exemptions.

§ 64-14. Penalties for offenses.

[HISTORY: Adopted by the Board of Trustees of the Village of Fort Edward at time of adoption of Code 4-7-86 by L.L. No. 1-1986; see Ch. 1, General Provisions, Art. I. Amendments noted where applicable.]

GENERAL REFERENCES

Public entertainment — See Ch. 41.

§ 64-1. Purpose.

This chapter is enacted for the purpose of regulating the distribution of certain materials, peddling, soliciting and related activities

SOLICITOR — Any person, whether a resident of the village or not, who goes from house to house, from place to place or from street to street, traveling by foot, automotive vehicle or any other type of conveyance, soliciting, taking or attempting to take orders for the sale of merchandise or services of any kind for future performance or delivery, whether or not such individual has, carries or exposes for sale a sample of the merchandise or services and whether or not he is collecting advance payments on such sales or orders, or who engages in any of the foregoing activities from a stationary location on any street or other public place. The word "solicitor" shall also include the word "canvasser" or any person who goes from door to door as described above for the purpose of soliciting and/or collecting funds from a stationary location or from any street or other public place.

TRANSIENT MERCHANT — Any person engaging in the activities commonly referred to as "transient merchant" or "itinerant vendor" who merchandises or sells with the intent to close out or discontinue such business within a period of one (1) year from the date of commencement and occupies a room, building, tent, lot or other premises for the purpose of selling merchandise.

§ 64-3. Registration certificate required.

- A. It shall be unlawful for any peddler, solicitor, distributor or transient merchant to sell, offer for sale or distribute merchandise, printed material or services within the village without first applying for and obtaining a registration certificate therefor from the Village Clerk.
- B. Garage sales. [Added 7-7-86 by L.L. No. 2-1986]
 - (1) It shall be unlawful for any person to conduct a garage sale within the village without first applying for and obtaining a registration certificate. A garage sale shall not exceed three (3) consecutive days. Each registration certificate shall be valid for a sale not to exceed a three-day period from the first day of sale.

- (2) Application for a garage sale registration certificate shall contain the following:
 - (a) The name of the applicant.
 - (b) The location of the residence at which the sale will be held.
 - (c) The tax map location number.
- (3) Registration certificate limitations.
 - (a) No more than three (3) registration certificates will be issued per calendar year to any one (1) tax residence.
 - (b) Registration certificates for additional garage sales will require a New York State sales tax identification number. A fee of twenty-five dollars (\$25.) will be charged per registration certificate.
 - (c) Nonprofit organizations are exempt from the provisions of this section.

§ 64-4. Application for registration certificate.

Every applicant for a registration certificate under the provisions of this chapter shall file with the Village Clerk a sworn written application, on a form to be furnished by said Clerk, which shall give or be accompanied by the following information or documents:

- A. The name and description of the applicant.
- B. The permanent home address and full local address of the applicant.
- C. A brief statement of the nature of the business and a description of the merchandise or service to be sold.
- D. If employed, the name and address of the employer, together with credentials establishing the exact relationship.
- E. The length of time for which the certificate is desired.
- F. If a vehicle is to be used, a description of such vehicle and its license number.

- G. The place where the merchandise or services to be sold or offered for sale are manufactured or produced, where such merchandise is located at the time such application is filed and the proposed method of delivery.
- H. Two (2) business references located in the County of Washington, State of New York, or, in lieu thereof, such other available evidence of the character and business responsibility of the applicant as will enable an investigator to properly evaluate such character and responsibility.
- I. A statement as to whether the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.

§ 64-5. Investigation of applicant.

- A. When the application is properly filled out and signed by the applicant, the original and duplicate thereof shall be filed with the Clerk, and the Clerk shall refer the original to the Chief of Police, who shall make or cause to be made within five (5) days such investigation of the applicant's business responsibility and character as he deems necessary for the protection of the public good.
- B. If, as a result of such an investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons therefor and shall return said application to the Clerk. Any determination by the Chief of Police that an

(Cont'd on page 6405)

application is unsatisfactory shall be based on one (1) or more of the following findings with respect to the applicant:

- (1) Conviction of a crime involving moral turpitude.
 - (2) Prior violation of a peddling or soliciting ordinance or law.
 - (3) Previous fraudulent acts or conduct.
 - (4) Record of breaches of solicited contracts.
 - (5) Concrete evidence of bad character.
- C. In the absence of any such finding, the Chief of Police shall find the application satisfactory, shall endorse his approval on the application and shall return the application to the Clerk.

§ 64-6. Denial or issuance of certificate.

- A. If an application is found unsatisfactory by the Chief of Police and he has endorsed his disapproval upon the application, the Clerk shall notify the applicant, by mail, that the application is disapproved and shall deny the applicant any registration certificate.
- B. If an applicant is found satisfactory by the Chief of Police, the Clerk shall issue a registration certificate addressed to the applicant to conduct the business applied for upon the payment of the proper fee by the applicant. Such certificate shall contain the signature of the issuing officer and shall show the name, address and photograph of the applicant, the type of business (peddler, solicitor, distributor or transient merchant) for which the applicant has registered, the kind of goods or services to be sold thereunder, the date of issue, the length of time the certificate shall be operative and the license number and other identifying description of any vehicle used in the activity licensed.

§ 64-7. Registration fee; renewal.

- A. At the time of the issuance of a registration certificate, a fee of twenty-five dollars (\$25.) per year or fraction thereof shall

be paid by the applicant to cover the costs of investigation and the administration and enforcement of this chapter.

- B. Where an organization has several agents peddling, soliciting or distributing merchandise or printed material, each agent shall be registered separately, and each shall pay the appropriate fee.
- C. Upon the expiration of a certificate, a new certificate will be issued upon compliance with all the provisions of this chapter and the payment of fees and the posting of the bond, except that the investigation and waiting period therefor may be waived if approved by the Clerk and Chief of Police.

§ 64-8. Bonds.

- A. Prior to the issuance of any certificate, the applicant shall file with the Village Clerk a bond running to the village in the amount of one thousand five hundred dollars (\$1,500.), with good and sufficient surety, in such form as shall be approved by the Village Attorney or his designated representative. Said bond shall remain in force for the term of the certificate and shall be conditioned to indemnify and pay the village for any penalties or costs incurred in the enforcement of any of the provisions of this chapter and to indemnify or reimburse any purchase of personal property from the holder of the certificate in a sum equal to at least the amount of any payment such purchaser of personal property may have been induced to make through the misrepresentation as to the kind, quality or value of the personal property, whether the misrepresentations were made by the licensee or said licensee's agents, servants or employees either at the time of making the sale or through any advertisement printed or circulated with reference to such personal property or any parts thereof.
- B. The aforesaid bond shall be declared forfeited upon proof of:
 - (1) Falsification in the application for a certificate.
 - (2) Violation of any of the provisions of this chapter by the applicant or his agents, servants or employees.

- C. The Board of Trustees may, by resolution, exempt persons from the bond and fee requirements, provided that the applicant satisfies the Board that the nature of his activity does not jeopardize the position of the village or the protection given herein to the residents.

§ 64-9. Appeals from denial of certificate.

Any person aggrieved by the action of the Chief of Police or of the Village Clerk in the denial of a certificate, as provided in § 64-6 of this chapter, shall have the right of appeal to the Board of Trustees. Such appeal shall be taken by filing with the Board, within fourteen (14) days after the notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for appeal. The Board of Trustees shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given in the same manner as provided in § 64-12 of this chapter for notice of hearing on revocation. The decision of the Board on such appeal shall be final and conclusive.

§ 64-10. Conditions of registration.

- A. Upon obtaining a registration certificate as hereinafter provided, a peddler, solicitor, distributor or transient merchant may conduct his activities within the village only as long as he adheres to the regulations set forth in this chapter.
- B. All certificates shall expire one (1) calendar year from the date of issuance.
- C. A registration certificate shall not be assignable. Any holder of a certificate who permits it to be used by any other person and any person who uses a certificate issued to any other person shall be guilty of an offense against this chapter.
- D. No applicant to whom a certificate has been refused or who has had a certificate revoked shall make further application until a period of at least twelve (12) months shall have elapsed since the last previous rejection or revocation, unless he can show that the reason for such rejection or revocation no longer exists.

- E. Every peddler, solicitor, distributor or transient merchant shall, while conducting his activities, carry the certificate with him and shall exhibit the same upon demand to any police officer or citizen.

§ 64-11. Restrictions on license holders.

No person or license holder shall:

- A. Peddle, solicit or distribute merchandise, except between the hours of 8:00 a.m. and 6:00 p.m., unless specifically having been invited into a house by the occupant or having made an appointment with a person previously.
- B. Attempt to peddle, solicit or distribute merchandise or printed material without first having identified himself as a peddler, solicitor or distributor registered with the Clerk and displaying his certificate.
- C. Have exclusive right to any location in the public streets or operate in any congested area where his operations might impede or inconvenience the public.
- D. Leave at a property or house or in any public place circulars, samples or other matter, except a newspaper, which shall be defined as a periodical with a paid circulation of at least ninety percent (90%) of its total circulation, except when handed to a person willing to accept the same.
- E. Enter or attempt to enter the land of any resident in the village without an express invitation from the occupant of such land.
- F. Conduct himself in such a manner as to become objectionable to or annoy an occupant of any house.
- G. Shout, cry out, blow a horn, ring a bell or use any sound-making or -amplifying device upon any of the streets, parks or public places of the village or upon private premises in such a manner that sound of sufficient volume is emitted or produced to be capable of being plainly heard upon the streets, avenues, parks or other public places of the village or upon private premises therefrom, for the purpose of attracting attention to any merchandise or services.

- H. Distribute obscene merchandise or printed material or that which advocates unlawful conduct.
- I. Litter the streets, public places or properties within the village with any merchandise or printed material.

§ 64-12. Revocation of certificate.

- A. Certificates issued under the provisions of this chapter may be revoked by the Board of Trustees after notice and hearing for any of the following causes:
 - (1) Fraud, misrepresentation or a material incorrect statement contained in the application for a certificate.
 - (2) Fraud, misrepresentation or a material incorrect statement made in the course of carrying on the business of solicitor, peddler, distributor or transient merchant.
 - (3) Any violation of this chapter.
 - (4) Conviction of any crime or misdemeanor.
 - (5) Conducting the business of peddler, solicitor, distributor or transient merchant in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- B. A notice of a hearing for the revocation of a certificate shall be given by the Village Clerk, in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the holder of the certificate at the address given on the application at least five (5) days prior to the date set for the hearing or shall be delivered by an agent of the village in the same manner as a summons at least three (3) days prior to the date set for the hearing.
- C. Upon revocation, the certificate shall be surrendered to the Clerk.

§ 64-13. Exemptions.

- A. No part of this chapter shall be enforced so as to conflict with Article 4, § 32, of the General Business Law of the State of New York, providing for exemptions for veterans.
- B. The requirements of this chapter shall not apply to the following, provided that an official uniform, clothing or other suitable identification approved by the Board of Trustees is displayed:
- (1) Any recognized local nonprofit religious, charitable, educational, civic or political organization.
 - (2) Any such organizations as the Boy Scouts, Girl Scouts or local volunteer firemen.
- C. Nothing in this chapter shall be held to apply to:
- (1) Sales conducted pursuant to statute or by order of any court.
 - (2) Persons selling personal property at wholesale to dealers in such articles.
 - (3) Merchants having an established place of business within the village or their employees.
 - (4) The peddling of meats, fish, fruit and similar produce by farmers and persons who produce such commodities.
 - (5) Dealers in milk, baked goods, heating oil and daily newspapers.
 - (6) Licensed real estate brokers.

§ 64-14. Penalties for offenses.

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