



## **APPENDIX 24-A REVISED**

# **Town of Somerset Zoning Ordinance, Including Solar Law**

**Part I, Administrative Legislation**

**Chapter 1**

**GENERAL PROVISIONS**



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



ARTICLE I  
**Adoption of Code**  
**[Adopted 9-10-1996 by L.L. No. 2-1996]**

**§ 1-1. Legislative intent.**

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Town of Somerset, as codified by General Code, and consisting of Chapters 1 through 205, together with an Appendix, shall be known collectively as the "Code of the Town of Somerset," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Town of Somerset" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

**§ 1-2. Continuation of existing provisions.**

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 Only such provisions of former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

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

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of this local law and not contained in such Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this local law.

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

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

- A. Any right or liability established, accrued or incurred under any legislative provision of the Town of Somerset prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.
- B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of Somerset or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law brought pursuant to any legislative provision of the Town of Somerset.
- D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Somerset.
- E. Any local law or ordinance of the Town of Somerset providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Town of Somerset or any portion thereof.
- F. Any local law or ordinance of the Town of Somerset appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of

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Somerset or other instruments or evidence of the Town's indebtedness.

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- G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The annexation or dedication of property.
- J. Any legislation relating to salaries.
- K. Any local law or ordinance amending the Zoning Map.
- L. Any legislation adopted subsequent to March 12, 1996.
- M. Any legislation relating to or establishing a pension plan or pension fund for municipal employees.
- N. Ordinances adopted on 7-16-1953, 8-13-1962 and 10-27-1971, dealing with streets and sidewalks.

**§ 1-5. Severability.**

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

**§ 1-6. Copy of Code on file.**

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

**§ 1-7. Amendments to Code.**

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

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

It shall be the duty of the Town Clerk to keep up-to-date the certified copy of the book containing the Code of the Town of Somerset required to be filed in the office of the Town Clerk for use by the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the Town Board subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws, ordinances

§ 1-8 or resolutions until such changes, local laws, ordinances or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein. § 1-13

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

Copies of the Code may be purchased from the Town Clerk of the Town of Somerset upon the payment of a fee to be set by resolution of the Town Board, which Board may also arrange by resolution for procedures for the periodic supplementation thereof.

**§ 1-10. Penalties for tampering with Code.**

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

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

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

**§ 1-12. Incorporation of provisions into Code.**

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

**§ 1-13. When effective.**

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

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1. Editor's Note: In accordance with § 1-11B, the chapters, parts and sections which were added, amended, adopted or deleted by this local law are indicated throughout the Code by a footnote referring to Chapter 1, General Provisions, Article I. During routine supplementation, footnotes indicating amendments or additions will be replaced with the following history: "Amended (added) 9-10-1996 by L.L. No. 2-1996." Schedule A, which contains a complete description of all changes, is on file in the Town offices.





ARTICLE II  
**Definitions**  
[Adopted 9-10-1996 by L.L. No. 2-1996]

**§ 1-14. Definitions.**

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

CODE ENFORCEMENT OFFICER — Includes Building Inspector and Zoning Officer.



**Chapter 3**  
**(RESERVED)**



§ 1-14

**[Former Ch. 3, Alternate Members: Planning Board and Zoning Board of Appeals, adopted 4-11-2000 by L.L. No. 1-2000, was repealed 11-13-2012 by L.L. No. 3-2012.]**

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## **Chapter 5**

### **ASSESSMENTS**



§ 1-14

§ 1-14

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

**GENERAL REFERENCES**

**Taxation — See Ch. 177.**





ARTICLE I  
**Grievance Day**  
**[Adopted 1-8-2014 by L.L. 1-2014]**

**§ 5-1. Date change.**

Pursuant to the authority of § 512 1-a of the New York Real Property Tax Law, the Town Board of the Town of Somerset does hereby change the date for the meetings of the Somerset Board of Assessment Review from the fourth Tuesday in May to the first Wednesday following the fourth Tuesday in May.

**§ 5-2. Effectiveness to continue.**

This article shall remain in effect until rescinded or superseded by subsequent local law.



**Chapter 14**  
**ETHICS, CODE OF**



§ 5-2

**[HISTORY: Adopted by the Town Board of the Town of Somerset 8-10-1970. Amendments noted where applicable.]**

§ 5-2

**GENERAL REFERENCES**

**Gift policy — See Ch. 18.**

**Personnel policies — See Ch. 42.**



## ARTICLE I

**Intent****§ 14-1. Statement of legislative intent.**

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

**§ 14-2. Construal of provisions.**

The standards, prohibited acts and procedures established herein are in addition to any prohibited acts, conflicts of interest provisions or procedures prescribed by statute of the State of New York and also in addition to common law rules and judicial decisions relating to the conduct of Town officers to the extent that the same are more severe in their application than this chapter.





ARTICLE II  
Code of Ethics

**§ 14-3. Definitions.**

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

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

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

**§ 14-4. Conflicts of interest.**

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

**§ 14-5. Standards of conduct.**

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



ARTICLE III  
**Board of Ethics**

**§ 14-6. Establishment; membership. [Amended 9-10-1996 by L.L. No. 2-1996]**

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

**§ 14-7. Powers and duties.**

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

**§ 14-8. Rules and regulations; records.**

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



ARTICLE IV  
**Administration and Enforcement**

**§ 14-9. Distribution of Code of Ethics.**

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

**§ 14-10. Filing of Code of Ethics with state agency. [Amended 9-10-1996 by L.L. No. 2-1996]**

Within 30 days of the adoption of this chapter or any amendment thereto, the Town Clerk shall file a copy thereof with the appropriate state agency.

**§ 14-11. Appropriation of funds.**

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

**§ 14-12. Penalties for offenses.**

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



**Chapter 18**  
**GIFT POLICY**





§ 14-12

§ 14-12

**[HISTORY: Adopted by the Town Board of the Town of Somerset 5-14-1991. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Code of Ethics — See Ch. 14.**

**Personnel policies — See Ch. 42.**



**§ 18-1. Acceptance of gifts.**

- A. The Town of Somerset may accept gifts, upon Town Board approval, of articles which, in the view of the Board, add to the overall welfare of the Town. The Town Board, however, will not accept partial gifts which will place encumbrances on future Boards.
- B. The Town Board will not consider the acceptance of gifts until and unless it receives the offer in writing. The Town Board would prefer that the donor work first with the Town Board or its designated representative in determining the nature of the gift.



**Chapter 22**

**HAZARDOUS MATERIALS RESPONSE PLAN**



§ 18-1

§ 18-1

**[HISTORY: Adopted by the Town Board of the Town of Somerset 12-10-1991. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Solid waste — See Ch. 161.**





**§ 22-1. Guidelines; intent.**

- A. The Town of Somerset is primarily a suburban community in the center of Niagara County. There is one fire district: Barker Fire Department, Inc., a volunteer fire department. Law enforcement is handled by Niagara County Sheriff's Department and the New York State Police.
- B. It is the intent of this plan to be a reference for the personnel of these organizations and a guideline for the handling of hazardous materials incidents. It must be recognized that heavy reliance must be placed on obtaining information from outside sources.
- C. It must also be emphasized that the handling of hazardous material cannot be paralleled to firefighting operations. Quick, aggressive action has no place at a hazardous material incident and will only lead to unnecessary exposure. These incidents will be time-consuming and involved. All actions taken must be deliberate and planned after properly researching the materials involved.
- D. Should a hazardous materials emergency exist within the Town of Somerset, this plan shall be used in conjunction with the Niagara County Hazardous Materials Response Plan and any other plan that may impact the outcome of the incident.



**§ 22-2. Purpose of plan.**

- A. This comprehensive hazardous materials response plan for the Town of Somerset has been prepared to meet statutory planning requirements of the Occupational Safety and Health Administration 29 CFR 1910.120 (March 6, 1990) and to provide for a higher degree of preparedness to deal with incidents involving hazardous materials.
- B. This plan provides basic guidelines and establishes responsibility for the response to hazardous material incidents in the Town of Somerset. The plan is intended for response to a transportation accident or the release of hazardous material at a fixed site.



**§ 22-3. Objectives.**

- A. The objectives of this plan are to:
- (1) Set forth a course of action which will minimize hazards to life and property and adverse impacts upon the environment from the release of hazardous material.
  - (2) Establish procedures to provide for a coordinated effort on the part of the Town of Somerset and any outside agencies that may respond to such an emergency.
  - (3) Identify emergency response organizations, equipment and other resources which can be employed during such a response.
  - (4) Provide a mechanism to integrate community response procedures within each other.
- B. This hazardous material response plan for the Town of Somerset is intended to establish procedures in accordance with the Occupational Safety and Health Administration 29 CFR 1910.120(q)(2)(i) through (xii).



**§ 22-4. Preemergency planning.**

- A. This plan, in conjunction with the Niagara County Hazardous Materials Response Plan, provides basic guidelines and establishes responsibilities for response to hazardous material incidents in the Town of Somerset.
- B. The Fire Service of Niagara County is the lead agency in disaster preparedness and is the only organized mutual aid program currently in use in the county. It is made up of 29 volunteer and three career fire departments and is divided into four areas. Each local department has protective gear and self-contained breathing apparatus to handle minor incidents involving hazardous materials. Because a large number of this type of incident is beyond the capabilities of the local department, the Niagara County Hazardous Materials Response Team (NCHMRT) was formed and recognized in accordance with General Municipal Law (GML) § 209-y.
- C. Within the Town of Somerset, there is one of the aforementioned fire departments: Barker Fire Department, Inc. The objective of the Niagara County Hazardous Materials Response Plan is to establish procedures to provide for a coordinated effort on the part of the County Fire Service by using its established mutual aid plan (in accordance with GML § 204-f) in response to a hazardous materials emergency. In the event that such an incident should grow to the magnitude to exceed the resources of the Niagara County mutual aid plan, the Fire Coordinator, acting as regional fire administrator, will request that the State Fire Mobilization and Mutual Aid Plan be implemented in accordance with GML § 209-e.
- D. The Barker Fire Department, Inc., and the Sheriff's Department have radio communication capabilities with the Niagara County Control Center. Upon notification of a hazardous materials incident in the Town of Somerset, the Control Center will proceed as in Section III of the Niagara County Hazardous Materials Response Plan.
- E. The Niagara County Sheriff's Department and the Town of Somerset Highway Department will perform pursuant to provisions of 29 CFR 1910.120(q)(6)(i). The Fire Departments will perform pursuant to provisions of 29 CFR 1910.120(q)(6)(ii).





**§ 22-5. Contributing personnel; communication; training.**

- A. Upon notification of a hazardous material emergency, the ranking officer of the Fire Department with local jurisdiction and authority will act as on-scene commander. As such, he will assess the emergency situation and, if appropriate, establish a command post. He should declare a response level according to the response criteria listed in Section VI of the Niagara County Hazardous Material Response Plan. The responsibilities thereafter will be pursuant to Section 3A of the Niagara County Hazardous Materials Response Plan. [NOTE: See Addendum Nos. 1, 2 and 3.<sup>2</sup>]
- B. In the event of a crime-associated hazardous material emergency, the Niagara County Sheriff's Department will participate in a joint command operation.
- C. All communication will be coordinated through the Niagara County Control Center.
- D. Direction and control begins with the local response but is expanded as the emergency escalates to a larger response directed by the county or possibly the state.
- E. Local participating agencies, depending upon the circumstances, may also include:
  - (1) Supervisor.
  - (2) Public works departments.
  - (3) Volunteer groups.
- F. The fire department staff(s) are to be trained to function at the operations level [29 CFR 1910.120(q)(6)(ii)]. The police and departments of public works staff(s) are to be trained to respond at the awareness level [29 CFR 1910.120(q)(6)(i)].



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**§ 22-6. Emergency recognition and prevention.**

Responders other than the fire departments should immediately notify the Niagara County Control Center of the location along with any other available/pertinent information in order that the appropriate fire department may be activated to respond. Such responders will attempt to determine, from a safe distance, what material is involved by interpreting placard identification (ID) numbers, shipping papers, witness/driver interviews, etc. The United States Department of Transportation Guidebook (DOT P5800.5) is an excellent reference and will be carried in each Niagara County Sheriff patrol vehicle, as well as issued to the Town Highway Department and to the fire department (Barker Fire Department, Inc.).



**§ 22-7. Response to suspected hazardous materials incident.**

Response to a suspected hazardous materials incident shall be as follows:

- A. Advise the County Control Center of the location and any other available details.
- B. Note any weather conditions and make special note of the wind direction. Stay upwind.
- C. Stop and park far enough away from the incident site so as not to introduce an ignition source.
- D. Move people away from the incident scene and keep them away.
- E. Do not walk into or touch any spilled material.
- F. Avoid inhaling fumes, smoke and vapors.
- G. Do not assume that gases or vapor are harmless because of a lack of smell.
- H. Police will:
  - (1) Secure the area and set up an outer perimeter and isolate the hazard area supplying traffic control and support personnel.
  - (2) Assist in evacuation of the site if requested to do so by the site commander.
- I. The Fire Department will:
  - (1) Establish an inner perimeter. This area should be observed by all personnel until a tactical plan has been established.
  - (2) Identify the material or materials involved.
  - (3) Establish an incident command structure and relay the location to the County Control Center.
  - (4) Determine a response level for this incident (pursuant to guidelines as set forth in the Niagara County Hazardous Materials Response Plan) and follow the procedures as they are outlined.



**§ 22-8. Safe distances and places of refuge.**

- A. Safe distances and places of refuge will be determined by the incident commander. Each incident will be evaluated upon its location and circumstances.
- B. Places of refuge will also be determined by the location and magnitude of the incident and may include facilities, such as:
  - (1) Barker Fire Hall.
  - (2) Somerset Town Hall.
  - (3) Barker Central School.
- C. The determination of a need for notification/evacuation/sheltering will be by the incident commander. Support will be provided through the Sheriff's Department, Niagara County Management Office, Red Cross, etc.





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**§ 22-9. Site security and control.**

Site security and control will be designated by the incident commander and enforced by the Niagara County Sheriff's Department.



**§ 22-10. Evacuation routes and procedures.**

- A. Evacuation routes and procedures will be determined by the incident commander. Each incident will be evaluated based upon its location and circumstances. The appropriate shelter will be designated. Notification will be both door-to-door and emergency vehicle public-address (PA) systems. Persons needing shelter will be directed or transported (if necessary) to the designated shelter.
- B. Support will be provided by the Niagara County Sheriff's Department and the Niagara County Emergency Management Office, as well as the Red Cross, etc.



§ 22-10

§ 22-11

**§ 22-11. Decontamination.**

Decontamination will be at the direction of the incident commander and will be accomplished utilizing procedures as outlined within the Niagara County Hazardous Materials Response Plan.



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**§ 22-12. Emergency medical treatment and first aid.**

Emergency medical treatment and first aid will be at the direction of the incident commander and provided, as needed, pursuant to procedures as outlined within the Niagara County Hazardous Materials Response Plan.





**§ 22-13. Emergency alerting and response procedures.**

- A. A HazMat declaration by the incident commander will require him to determine the response level, based on the criteria as outlined in the Niagara County Hazardous Materials Response Plan. The incident commander will direct the County Control Center to notify those people and agencies as he deems necessary to respond to the incident.
- B. Alert will be done either by activation of the Community Alert Network (CAN System) and the Emergency Broadcast Network or by calling the television and radio stations to request their assistance.
- C. The primary means of alerting will be to utilize the PA system on the police and fire vehicles. The procedure will be a five-second siren, followed by the announcement, twice. The unit will continue on and follow the same steps at approximately 250 feet from the prior stop. Notification may also be made by going door-to-door.



**§ 22-14. Critique of response and follow-up.**

At a time agreed upon by the incident commander and the lead persons of each agency responding to an incident, there will be a critique of the event to discuss how to respond to similar incidents more safely and efficiently through the experience gained from the incident being addressed. The critique will also address how to present the current incident and any details that may need to be followed up on.



**§ 22-15. PPE and emergency equipment.**

- A. The Niagara County Sheriff's Department will respond pursuant to 29 CFR 1910.120(g)(6)(i). They will have no personal protection equipment (PPE). They will have mobile and portable radio communications equipment, marked and unmarked patrol units, barrier taps, etc.
- B. The highway departments will respond pursuant to 29 CFR 1910.120(g)(6)(i). They will have no personal protection equipment. They will be utilized as support as requested by the incident commander.
- C. The Fire Department will respond pursuant to 29 CFR 1910.120(g)(6)(ii). They will have personal protection equipment (PPE) and be trained as outlined in the aforementioned regulation.



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**§ 22-16. Emergency response.**

The Town of Somerset recognizes the Niagara County Hazardous Materials Response Plan as the primary source for implementing a response to such an emergency. The Town of Somerset Hazardous Materials Response Plan is designated to operate in conjunction with a part of the overall County Plan.





**Chapter 26**

**INVESTMENT POLICY**



§ 22-16

**[The current investment policy of the Town of Somerset is on file in the office of the Town Clerk, where it may be examined during regular business hours.]**

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**Chapter 42**

**PERSONNEL POLICIES**



§ 22-16

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

§ 22-16

**GENERAL REFERENCES**

**Code of ethics — See Ch. 14.**

**Gift policy — See Ch. 18.**



ARTICLE I  
**Residency Requirements**  
**[Adopted 8-14-1984]**

**§ 42-1. Policy.**

This policy is adopted by the Town Board after determination that a legitimate purpose of the Town is to encourage full-time Town employees to maintain a commitment and involvement with Town government by living in the Town. Therefore, it is hereby established as the policy of the Town of Somerset that all full-time employees of the Town, as a condition to employment, must be residents of the Town of Somerset.<sup>3</sup>

**§ 42-2. Dismissal of nonresident employees. [Amended 9-10-1996 by L.L. No. 2-1996]**

A dismissal of an employee on the grounds of nonresidency shall be subject to the procedural requirements of § 75 of the Civil Service Law of the State of New York.

**§ 42-3. Tenured employees.**

A tenured employee under state civil service shall be afforded all the protection of § 75 of the New York State Civil Service Law.

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3. Editor's Note: The former unnumbered paragraph, dealing with the absence of an employee from the Town for a period of time in excess of 30 days, which immediately followed this section, was deleted 9-10-1996 by L.L. No. 2-1996.





**Chapter 44**  
**PLANNING BOARD**



§ 42-3

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

§ 42-3



ARTICLE I  
**Membership and Terms**  
**[Adopted 11-13-2012 by L.L. No. 2-2012]**

**§ 44-1. Reduction in membership; terms.**

The Planning Board of the Town of Somerset, as duly established and constituted prior to adoption of Town Law § 271, is hereby reduced in membership from seven members to five members effective January 1, 2013. Such reduction shall be accomplished pursuant to Town Law § 271, Subdivision 7, by not reappointing or replacing members whose terms expire on December 31, 2012, and December 31, 2013, respectively. Members appointed or reappointed for terms commencing thereafter shall be appointed or reappointed for terms of five years.

**§ 44-2. Conflict with Town Law.**

The function of the Planning Board and the provisions of this article shall be governed by the provisions of Town Law § 271, except that as to any provision of this article, or as to any duty, authority, practice and/or procedure heretofore established by the Town Board regarding the Planning Board, which is in conflict with said law, this article, and/or such established duty, authority, practice and/or procedure, shall supersede said law pursuant to § 10, Subdivision 1(ii)a(1) and 1(ii)d(3) of the Municipal Home Rule Law.

**§ 44-3. Effective date.**

This article shall take effect January 1, 2013.



**Chapter 45**

**POLICE DEPARTMENT**





§ 44-3

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

§ 44-3



ARTICLE I  
**Powers and Duties**  
**[Adopted 2-8-2012 by L.L. No. 1-2012<sup>4</sup>]**

**§ 45-1. Purpose and intent.**

The purpose of this article shall be to promote the health, safety and general welfare of the Town of Somerset, including the protection and preservation of the property of the Town and its inhabitants, by specifying and establishing a Town Police Department within the Town of Somerset, as hereinafter set forth and described pursuant to such authority provided under Town Law § 150.

**§ 45-2. Special duties.**

Town Police Officers as defined pursuant to Criminal Procedure Law § 1.20(34)(d) shall be referred to hereafter as "Police Constables" in the Town of Somerset and shall have the following duties:

- A. Enforcement of the Vehicle and Traffic Law and issuance of simplified traffic informations pertaining thereto.
- B. Issuance of uniform appearance tickets for snowmobile violations pursuant to Parks, Recreation and Historic Preservation Law, Article 27.
- C. Enforcement of all local laws and ordinances of the Town of Somerset.
- D. Service of legal papers such as summonses, etc.
- E. Provision, upon request of such agencies, of assistance to the New York State Police and Niagara County Sheriff's Office.
- F. Performance of house/building checks within the Town of Somerset.
- G. Performance of traffic control functions for activities within the Town.
- H. Maintenance of order at all Justice Court sessions and official Town Board meetings only when necessary.
- I. Investigation of any situation which is brought to their attention upon complaint of any citizen or which is encountered by them while on duty and conducting any other assigned duty and which may involve a violation of the of New York Penal Law and to take any action within their authority as peace officers as may be warranted under the circumstances.
- J. Such other duties as may be assigned by the Town Board by order, resolution or local law.

**§ 45-3. Powers and authority.**

While engaged in the performance of their special duties as set forth above, Town Police Constables shall have the following powers and/or authority:

- A. To patrol, in vehicles or on foot, the entire Town, including Town parks and cemeteries.
- B. To operate a Town-owned vehicle equipped with emergency lights and siren.
- C. To control traffic and enforce the provisions of the Vehicle and Traffic Law; to issue simplified traffic informations for violations thereof pursuant to § 207 of such law; and to issue summonses for parking infractions.
- D. To assist with crowd control at accident scenes and other emergencies.

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4. Editor's Note: This local law was originally adopted as Chapter 84, but was renumbered to maintain the organizational structure of the Code.  
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- E. To protect Town property.
- F. To cooperate with and assist Niagara County Sheriff's Deputies and New York State Police upon the request for aid from those agencies.
- G. To appear at all sessions of Town Court to provide security, being authorized to handcuff defendants when in the Police Constable's sound discretion same is necessary to prevent escape, preserve decorum or insure safety.
- H. To serve civil process.
- I. To make collections pursuant to executions and garnishee executions issued upon judgments rendered in Town Court.
- J. Provide or assist in the provisions of dog control services under Article 7 of the Agriculture and Markets Law, to enforce the provisions of such article, and to enforce the provisions of Article 26 of such law.
- K. To also have, as a peace officer, the following powers as granted pursuant to § 2.20 of the Criminal Procedure Law:
- (1) The power to make warrantless arrests pursuant to § 140.25 of the Criminal Procedure Law.
  - (2) The power to use physical force and deadly physical force in making an arrest or preventing an escape pursuant to § 35.30 of the Penal Law.
  - (3) The power to issue appearance tickets pursuant to § 150.20(3) of the Criminal Procedure Law.
  - (4) The power to carry out warrantless searches whenever such searches are constitutionally permissible.
  - (5) The power to issue uniform appearance tickets pursuant to Article 27 of the Parks, Recreation and Historic Preservation Law, and to issue simplified traffic informations pursuant to § 100.25 of the Criminal Procedure Law, and § 207 of the Vehicle and Traffic Law.
  - (6) The power to issue uniform navigation summonses and/or complaints pursuant to § 19 of the Navigation Law.
  - (7) The power to issue uniform appearance tickets pursuant to Article 71 of the Environmental Conservation Law.
  - (8) The power to possess and take custody of firearms not owned by the Police Constable, for the purpose of disposing, guarding, or any other lawful purpose, consistent with his duties as a peace officer.
  - (9) Any other power which a particular peace officer is otherwise authorized to exercise by any general, special or local law or charter whenever acting pursuant to his special duties, provided such power is not inconsistent with the provisions of the penal law or this chapter.

#### **§ 45-4. Special requirements.**

- A. Town Police Constables, upon appointment, are required to meet all training and other requirements to be registered with the NYS Division of Criminal Justice Services Official Registry as a Police Officer.
- B. Town Police Constables may exercise their powers to prevent, detect, and investigate crimes and to enforce the general criminal laws of the state and including other applicable laws, rules, ordinances and regulations as set forth in this article only when acting pursuant to their special duties as set forth by the Town Board.

**Chapter 46**

**PURCHASING PROCEDURES**



§ 45-4

**[The current purchasing procedures of the Town of Somerset are on file in the office of the Town Clerk, where they may be examined during regular business hours.]**

§ 45-4

**Chapter 54**

**SMOKING POLICY**





**[HISTORY: Adopted by the Town Board of the Town of Somerset 12-28-1989. Amendments noted where applicable.]**

**§ 54-1. Restrictions.**

- A. There will be no smoking in areas of common public assembly, including rest rooms, lunchrooms and employee lounges. Smoking in offices will be held at the discretion of the individual office holder, unless all employees assigned to the area agree that smoking shall be permitted.
- B. Department heads may restrict smoking in areas used by employees in common unless all employees assigned to that area agree that smoking shall be permitted.



§ 54-1

§ 54-2

**§ 54-2. Posting of signs.**

"Smoking" or "no smoking" signs or symbols must be posted prominently. Enforcement of this chapter shall be as provided for under the New York State Clean Indoor Air Act.<sup>5</sup>



**Chapter 56**

**TERMS OF OFFICE**



§ 54-2

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

§ 54-2

**GENERAL REFERENCES**

**Planning Board — See Ch. 44.**





ARTICLE I  
**Highway Superintendent**  
[Adopted 8-22-1997 by L.L. No. 4-1997<sup>6</sup>]

**§ 56-1. Term designated.**

Notwithstanding the provisions of § 24 of the Town Law, the term of office of the Superintendent of Highways in the Town of Somerset, elected at the election in November 1997, and of all Superintendents of Highways in the Town of Somerset elected thereafter, shall be four years.

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6. Editor's Note: This local law was subject to a mandatory referendum and was approved by a majority of the qualified electors at the election held 11-4-1997.



ARTICLE II  
Town Clerk  
[Adopted 8-22-1997 by L.L. No. 5-1997<sup>7</sup>]

**§ 56-2. Term designated.**

Notwithstanding the provisions of § 24 of the Town Law, the term of office of the Town Clerk in the Town of Somerset, elected at the election in November 1997, and of all Town Clerks in the Town of Somerset elected thereafter, shall be four years.

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7. **Editor's Note:** This local law was subject to a mandatory referendum and was approved by a majority of the qualified electors at the election held 11-4-1997.



**Part II, General Legislation**

**Chapter 65**

**ANIMALS**



§ 56-2

§ 56-2

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

**GENERAL REFERENCES**

Noise — See Ch. 131.





ARTICLE I  
**Dog Control**  
**[Adopted 4-14-2009 by L.L. No. 1-2009<sup>8</sup>]**

**§ 65-1. Purpose and intent.**

The purpose of this article shall be to promote the health, safety and general welfare of the Town of Somerset, including the protection and preservation of the property of the Town and its inhabitants, by specifying, establishing and imposing certain restrictions, regulations and responsibilities relating to the control of dogs within the Town of Somerset, as hereinafter defined.

**§ 65-2. Definitions.**

As used in this article, the words in the following list shall have the following respective meanings:

**AT LARGE** — Any dog shall be deemed to be "at large" if not accompanied by a person who is in control of the dog or who is providing restraint of the dog elsewhere than on the premises of the owner, keeper or another responsible person who has knowledge of the dog's presence and who assents thereto.

**ATTACK** — Any action by a dog that might cause reasonable apprehension of harm or injury to a person, together with the apparent ability of the dog to inflict such harm. An actual bite by the dog is unnecessary to meet the qualifications of this definition.

**CONTROL** — When a dog comes, heels, and stays promptly upon command.

**DANGEROUS DOG** — A dog that, without provocation, chases or approaches in either a menacing fashion or in an apparent attitude of attack or attempts to bite or otherwise endanger any person or domestic animal while that dog is off the premises of its owner, keeper or harborer and not under the control of its owner, keeper or harborer.

**DESTRUCTION** — Euthanasia of a dog; the act of painlessly causing the death of the dog.

**DISPOSAL** — Arrangement for the sale or destruction of a dog.

**DOG** — Includes the plural "dogs" and refers to any dog of either sex or any age unless otherwise indicated herein. Any member of the species *Canis familiaris*, regardless of age, male and female, licensed and unlicensed.

**DOG CONTROL OFFICER** — Any person who is appointed by the Town Board to assist in the enforcement of this article.

**DOMESTIC ANIMAL** — Any cat, other dog or any other animal defined as a domestic animal in Article 7, § 108, of the Agriculture and Markets Law of the State of New York.

**FEE SCHEDULE** — A list of all fees charged by the Town of Somerset in conjunction with this article.

**FORFEITURE** — The loss or giving up of any claim to a dog.

**GUIDE DOG** — Any dog trained to guide blind, deaf or other handicapped persons.

**HABITUAL LOUD HOWLING OR BARKING** — A dog that barks, bays, cries, howls, or makes any other noise for a period of 30 minutes or barks intermittently for one hour or more to the disturbance of any person at any time of day or night, regardless of whether the dog is physically situated in or upon private or commercial property; provided, however, that a dog shall not be deemed a "barking dog" for purpose of this article if, at the time the dog is barking or making any noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other legitimate cause which teased or provoked the dog.

**HARBOR** — To provide food and shelter for any dog.

**IDENTIFICATION TAG** — A tag issued by the Town Clerk which sets forth the identification number together

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**8. This article also repealed former Chapter 65, Animals, consisting of Art. I, Running at Large, adopted 7-9-1974, as amended; Art. II, License Fees, adopted 9-25-1979 by L.L. No. 1-1979, as amended; and Art. III, Adoption of Dogs, adopted 3-9-2004 by L.L. No. 1-2004.**

§ 65-2 with the name of the Town and state, the telephone number of the Town Clerk, and any other information deemed necessary by the Town Clerk. [Added 12-14-2010 by L.L. No. 5-2010] § 65-4

LEASH, LEASHED or RESTRAINED BY A LEASH — That the dog is equipped with a collar or harness to which is attached a leash of sufficient strength to restrain the dog, unless the dog is accompanied by its owner or other responsible person able to control the animal by voice command.

MENACING FASHION — The behavior of a dog which would cause a person to reasonably believe that the dog would cause physical injury to such person.

OWNER — Any person who is a licensed owner of a dog. This term also includes any person who owns, keeps or harbors or who has the care, custody or control of a dog, and can include more than one person. Dogs owned by minors shall be deemed to be in the care, custody and control of the minor's parents or other head of the household where the minor resides.

PENALTIES — Punishment fixed by law.

PERMIT TO BE KEPT — Any person who harbors a dog for an individual or owner who lives off the premises.

SECURITY DOG — Any dog owned or harbored by any state or municipal police department.

SERIOUS INJURY — Any injury to humans, domestic animals, or deer that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

TOWN — Includes all who reside in the Town of Somerset.

VICIOUS DOG — A dog that, without provocation, bites, injures or kills a human being, other dog, cat or domestic animal.

WITHOUT PROVOCATION — The dog was not teased, tormented or abused by a person or the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

WORKING DOG — Any dog being used to shepherd or guard cows, sheep or any other domestic animals.

### § 65-3. General regulations and restrictions.

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

- A. Run at large unless accompanied by its owner or a responsible person able to control the animal. For the purposes of this article, a dog or dogs lawfully hunting or field training in the company with a hunter(s) or handler(s) shall be considered as accompanied by and under the control of its owner.
- B. Engage in habitual loud howling or barking or to conduct itself in such manner so as to habitually annoy any person other than the owner or person harboring such dog.
- C. Cause damage or destruction to property or commit a nuisance upon the premises of a person other than the owner or person harboring such a dog.
- D. Chase or otherwise harass any person in such a manner as to reasonably cause intimidation or to put any person present in reasonable apprehension of bodily harm or injury.
- E. Habitually chase or bark at motor vehicles.

### § 65-4. Enforcement.

- A. An animal control officer or other proper authority designated by the Town Board, as provided by § 114 of the Agriculture and Markets Law and other applicable laws and provisions, may enforce the provisions of this article and may also investigate and report to a Town Justice any dangerous dog as described in § 121 of the

§ 65-4 Agriculture and Markets Law and see that the order or orders of the Town Justice in such case are carried out. § 65-6

- B. The Town Board shall appoint a Dog Control Officer or Officers as needed pursuant to Article 7 of the Agriculture and Markets Law of the State of New York. It shall be the duty of such Dog Control Officer or officers, as well as all peace officers within the Town of Somerset, to enforce appropriate provisions of this article, as well as the Agriculture and Markets Law, with respect to dogs in the Town of Somerset. The Town Board authorizes the Niagara County Sheriff's Office and the New York State Police to enforce any provisions of this article, as well as applicable provisions of the Agriculture and Markets Law of the State of New York. In addition, any Dog Control Officer or peace officer of the Town is hereby authorized to serve any process related to any proceeding, whether criminal or civil in nature, including any appearance ticket (pursuant to § 150.20 of the Criminal Procedure Law), in accordance with the provisions of this article. If the Dog Control Officer serves said appearance ticket and it is disregarded, the Town Justice shall permit the filing of any information from said officer and shall issue a warrant of arrest for such person.
- (1) Authority of the Dog Control Officer. The Dog Control Officer or Officers of the Town of Somerset may seize a dog or any dogs, tagged or untagged, which are found to be in violation of any provision of this article, as well as any dog or dogs otherwise required to be seized under and by virtue of Article 7 of the New York State Agriculture and Markets Law.
  - (2) Appearance tickets; filing of complaints.
    - (a) Any Dog Control Officer in the employ of or under contract with the Town of Somerset, observing a violation of this article in his presence, shall issue and serve an appearance ticket for such violation.
    - (b) Any person who observes a dog causing damage or destruction to property other than its owner or committing a nuisance upon the premises of a person other than its owner may file a signed complaint, under oath, with the Town Clerk, and such complaint shall be referred by the Clerk to the Dog Control Officer, specifying the objectionable conduct of the dog, the date thereof, the damage caused, a description of the dog, if known, and the name of the owner or person harboring said dog, if known.
    - (c) Oral complaints made to the Town Clerk or Dog Control Officer must include the complainant's name and address and may be used only as a basis for investigation by the Dog Control Officer or peace officer.

**§ 65-5. Procedure.**

- A. The Dog Control Officer may issue an appearance ticket to any person believed to be in violation of this article.
- B. Upon receiving an appearance ticket in proper form, the Town of Somerset Justice shall proceed in accordance with all applicable criminal procedures. Upon a conviction, the Town of Somerset Justice may, in addition to imposing the penalty authorized by § 65-7 of this article, order:
  - (1) That the dog be restrained by a collar and leash at all times.
  - (2) That the dog be kept on the owner's premises at all times.
  - (3) That the dog be confined.
  - (4) Such other remedy as may be warranted by the circumstances of the case.
- C. A violation of any order issued by a Town of Somerset Justice pursuant to this section shall itself be an offense punishable as provided in § 65-7 of this article.

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**§ 65-6. Seizure of dogs.**

- A. The seizure and redemption of dogs in violation of this article shall be as provided in § 118 of the Agriculture and Markets Law of the State of New York.
- B. The owner of any seized dog shall be required to pay the fees as set forth in § 65-9 of this article, whether or not such owner chooses to redeem his or her dog.

**§ 65-7. Penalties for offenses.**

A violation of this article shall be deemed an offense against such law, and any person convicted hereunder shall be fined an amount not less than \$50 and not more than \$150; provided, however, that if the person committing such offense shall have been convicted of an offense in violation of this article within the preceding two years, the fine shall be not less than \$150 and not more than \$550; and if such person shall have been convicted of two or more offenses within the preceding two years, the fine shall not be less than \$550 and not more than \$1,000; and if such person shall have been convicted of four or more offenses within the preceding two years, the penalty, in addition to applicable fines, may also include the seizure of the dog pursuant to the requirements of § 65-6 of this article. Any dog ordered seized shall be immediately adopted, sold or euthanized pursuant to the provisions of § 118 of the Agriculture and Markets Law.

**§ 65-8. Dog license fees and identification. [Amended 12-14-2010 by L.L. No. 5-2010]**

- A. In accordance with (Chapter 59; Part of the Laws of 2010) Article 7 of the NYS Agriculture and Markets Law, all dogs reaching the age of four months shall be licensed and identified. Application for license shall be made in accordance with the provisions of the law.
  - (1) The following dogs, as defined in Article 7 of the Agriculture and Markets Law, shall be exempt from licensing fees: guide dog, hearing dog, service dog, war dog, working search dog, detection dog, police work dog and therapy dog. In addition, any dog harbored within the Town of Somerset which is owned by a nonresident of New York State and licensed by a jurisdiction outside of the State of New York shall, for a period of 30 days, be exempt from the licensing and identification provisions.
  - (2) The annual fee for each dog license issued shall be:
    - (a) Spayed or neutered dog shall be \$6 (includes New York State Animal Control surcharge of \$1).
    - (b) Unspayed or unneutered dog shall be \$16 (includes New York State Animal Control surcharge of \$3).
    - (c) Replacement tags shall be \$3.
    - (d) The following license fees shall apply to purebred licenses:
      - [1] For each purebred license, if no more than 10 registered purebred dogs: \$50, plus any applicable surcharges imposed by New York State.
      - [2] For each purebred license, if no more than 25 registered purebred dogs: \$75, plus any applicable surcharges imposed by New York State.
      - [3] For each purebred license, for more than 25 registered purebred dogs: \$125, plus any applicable surcharges imposed by New York State.
    - (e) If dog remains unlicensed for 60 days, there will be a late fee of \$10 in addition to the licensing fee.
  - (3) In addition to any other applicable fee, any person applying for a dog or purebred license for a dog identified as unlicensed during a dog enumeration shall pay a surcharge of \$10. Such addition surcharge

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shall be used to pay the expenses incurred by the Town in conducting an enumeration.

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- (4) Each license issued pursuant to this article shall be valid for a period of one year and shall expire on the last day of the last month of the period for which it is issued. No license shall be issued for a period expiring after the last day of the 11th month following the expiration date of the current rabies certificate for the dog being licensed.
- (5) Upon validation by the Town Clerk of the Town of Somerset, a dog license shall be issued and a record of its issuance retained in the office of the Town Clerk of the Town. Such record shall be made available upon request to the State Commissioner of Agriculture and Markets, or successor thereof.
- (6) No license shall be transferable. Upon the transfer of ownership of any dog, the new owner shall immediately apply for a new license for the dog. A license cannot be transferred to another dog.
- (7) Change of ownership; lost or stolen dogs.
  - (a) Upon the transfer of ownership of any dog, the new owner shall immediately make application for a license for such dog.
  - (b) In the event of a change in ownership of any dog which has been assigned an official identification number or in the event of a change of address of the owner of record of any such dog, the owner of record shall, within 10 days of such change, notify the Town Clerk.
  - (c) In the case of a dog's death, the owner of record shall so notify the Town Clerk either prior to renewal of license or upon the time of such renewal.
    - [1] The Town Clerk shall assign a Town permanent official identification number to a dog when it is first licensed. Such identification number shall be carried by the dog on an identification tag which shall be affixed to the collar of the dog at all times.
    - [2] The official permanent identification number shall constitute the official identification of the dog to which it is assigned, regardless of changes of ownership and the number shall not be reassigned to any other dog during the lifetime of the dog to which it is assigned.
    - [3] No tag carrying an identification number shall be affixed to the collar of any dog other than the one to which the number has been assigned.

- B. Pursuant to Municipal Home Rule § 10, by the adoption of this article, the Town of Somerset, County of Niagara, hereby authorizes the Town Board of the Town of Somerset to establish, by resolution, a schedule of dog license fees, enumeration fees and tag replacement fees. The Town Board of the Town of Somerset, County of Niagara may exercise this authority as needed.

#### **§ 65-9. Impoundment fees; additional costs.**

- A. Any dog which has been seized pursuant to § 118 of the Agriculture and Markets Law of the State of New York, or this article, shall pay the following impoundment fees:
  - (1) For the first impoundment of any dog owned by that person: \$20.
  - (2) For the second impoundment of any dog owned by that person: \$40.
  - (3) For the third impoundment of any dog owned by that person: \$60.
  - (4) For the fourth impoundment of any dog owned by that person: \$75.
  - (5) For the fifth and any subsequent impoundment of any dog owned by that person: \$100.
- B. In addition to the aforesaid impoundment fee, the owner shall be responsible to pay the sum of \$10 for 24

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hours or part thereof for sheltering, feeding and watering said dog.

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- C. In the case where veterinary care is necessary to protect the health and welfare of a dog, in addition to the impoundment fee, the Town shall also charge \$25 for each trip to the veterinarian and for all cost of such veterinary care.
- D. The owner of any dog not redeemed within seven days of the date of his sentencing shall forfeit all title to the dog(s), and the dog(s) shall be sold or destroyed pursuant to the provisions of § 118 of the Agriculture and Markets Law.

**§ 65-10. Liability of Town.**

The owner, possessor or harbinger of any dog destroyed under the provisions of this chapter shall not be entitled to any compensation, and no action shall be maintainable thereafter to recover the value of the dog.

**§ 65-11. Severability.**

The sections, paragraphs, sentences, clauses and phrases of this article are severable, and if any phrase, clause, sentence, paragraph or section of this article shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this article.

**§ 65-12. Filing; when effective.**

This article shall become effective upon its filing with the Office of the New York Secretary of State.

**BATTERY ENERGY STORAGE SYSTEMS**





**[HISTORY: Adopted by the Town Board of the Town of Somerset 1-5-2022 by L.L. No. 2-2022.**

**Amendments noted where applicable.]**

**§ 67-1. Authority.**

The Town Board of the Town of Somerset enacts this Battery Storage System chapter under the authority granted by:

- A. Article IX of the New York State Constitution, § 2(c)(6) and (10).
- B. New York Statute of Local Governments, § 10, Subdivisions 1, 6 and 7.
- C. New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii)a(6), (11), (12) and (14).
- D. The supersession authority of New York Municipal Home Rule Law, § 10, Subdivision 1(ii)d(3), specifically as it relates to determining which body shall have power to grant variances under this section, and what variances may be granted to the extent such grant of power is different than under Town Law §§ 267 and 274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this chapter differ from the authority granted to the Town by Article 16 of the Town Law.
- E. New York Town Law, Article 16 (Zoning).
- F. New York Town Law § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
- G. New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests), and Subdivision 23 (General powers).
- H. New York Real Property Tax Law § 487.
- I. Police powers of the Town of Somerset; and the laws of the State of New York.



**§ 67-2. Statement of purpose and findings.**

- A. The Town Board of the Town of Somerset recognizes that battery energy storage is a clean, readily available and renewable energy source, and the Town of Somerset intends to accommodate the use of battery energy storage systems. However, the Town Board finds a growing need to properly site all types of battery energy storage systems within the boundaries of the Town of Somerset to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Somerset, to promote the effective and efficient use of battery energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Somerset.
- B. This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Somerset by creating regulations for the installation and use of battery energy storage systems, and to be consistent with the Town's Comprehensive Plan and Local Waterfront Revitalization Program (LWRP) with the following objectives:
- (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems.
  - (2) To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems.
  - (3) The Comprehensive Plan sets basic Town policies for protecting the Town's important drainage features: the creeks, the floodplains and the wetlands. To mitigate the impacts and damage of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources, and to minimize the adverse impacts on the Town's character and environment and economy, health and safety of the Town's residents, and property values; to minimize negative impacts on the unique resources, including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways and the residential and farming communities of the Town. These features add natural beauty to the Town and provide important habitats for wildlife.
  - (4) To protect the health and economic well-being of residents, farms and businesses of the Town in the event of an explosion or fire.
  - (5) Battery energy storage systems need to be regulated from permitting through construction and ultimately for their removal when no longer utilized.
- C. The Town Board of the Town of Somerset makes the following findings:
- (1) Shortsighted planning has often resulted in creation of problem industries which adversely affect public health and quality of life; examples are found in Somerset, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Battery energy storage system facilities are not exempt from these problems, and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning, been primary protectors of their citizenry. This chapter will contribute to this effort. The existence of Article 10 of the Public Service Law and Section 94-c of the Executive Law does not negate this responsibility, and in fact recognizes it. Further, Article 10 and Section 94-c remain untested by judicial review addressing several potential legal issues. This section is not unduly burdensome to the mandates or the process set forth in Article 10 and Section 94-c but is rather compatible with them.
  - (2) The findings set forth in this section are cumulative and interactive and shall be liberally interpreted in conjunction, one with another.
    - (a) Battery energy storage systems have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.

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- (b) The Town of Somerset is a rural community devoid of large hills and consists of mostly flat terrain.
- (c) The Town of Somerset is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region.
- (d) The Town of Somerset has very few tall structures.
- (e) The Town of Somerset is bordered on the north by Lake Ontario and on the east, south and west by towns which share Somerset's agricultural and rural residential character and are similarly low, flat areas.
- (f) The only other municipality in the Town of Somerset is the Village of Barker, which is a small village bedroom community, and which is also part of the rural, residential community devoid of high structures.
- (g) If not properly regulated, installation of battery energy storage systems can create drainage problems through erosion and lack of sediment control for facility and access road sites and can harm farmland through improper construction methods.
- (h) Battery energy storage systems, when improperly sited, are known to adversely affect property values and cause economic hardship to property owners.
- (i) The Town of Somerset contains clusters and stretches of homes, including along the Lake Ontario shoreline, in and around the Village of Barker and West Somerset, along Route 18 and Lake Road, as well as dispersed residences which residents have chosen as their homes, often because of a love for a rural-pastoral lifestyle.
- (j) Battery energy storage systems may be significant sources of noise, including infrasound, that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents.
- (k) Construction of battery energy storage systems can create traffic problems and can cause damage to local roads and infrastructure due to the weight of the units.
- (l) Battery energy storage systems have the potential to cause electromagnetic interference with various types of communications.
- (m) Battery energy storage systems need to be regulated for removal when no longer utilized.
- (n) Funding and mechanisms for removal of battery energy storage systems when the facilities are no longer operating need to be in place.
- (o) The Town of Somerset Local Waterfront Revitalization Program and Law have been considered and reviewed for compliance; the Town of Somerset Comprehensive Plan has been considered and complied with; and an ad hoc committee was appointed to review the need for this chapter and to make recommendations; and its conclusions and recommendations have been duly considered and given great weight.
- (p) When considering large-scale construction and maintenance, due weight should be given to the following:
  - [1] The relative distress caused to a community and its residents;
  - [2] The actual necessity for such facility given energy production in the area and region, including clean energy production;
  - [3] Past and present stresses and disruption imposed upon an area due to all types of energy

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production;

- [4] Alternatives to facilities, including location in other areas, location in areas where demand is needed, and alternative methods of producing clean energy;
- [5] Location in areas of highest consumption; and
- [6] The burden on a community and its residents versus reward to the community and its residents, with emphasis upon quality of life.



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**§ 67-3. Definitions.**

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

ANSI — American National Standards Institute.

**BATTERY ENERGY STORAGE MANAGEMENT SYSTEM** — An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

**BATTERY ENERGY STORAGE SYSTEM** — One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a standalone twelve-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2 or Tier 3 battery energy storage system as follows:

- A. Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600kWh that are an accessory use or structure to the principal use; and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600kWh and less than 1m Wh that are an accessory use or structure to the principal use and are generating electricity to be used on site. These systems may be either in a room or an enclosed area.
- C. Tier 3 battery energy storage systems (utility/industrial grade system) are systems that are associated with a large-scale solar or wind energy system and are designed with a purpose to store energy and then put that energy back into the power grid and have an aggregate energy capacity less than 1m Wh.

**BATTERY ENERGY STORAGE SYSTEM PERMIT** — A special building permit application specifically created for battery energy storage system projects.

**BATTERY(IES)** — A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this chapter, batteries utilized in consumer products are excluded from these requirements.

**CELL** — The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

**COMMISSIONING** — A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

**DEDICATED-USE BUILDING** — A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

- A. The building's only use is battery energy storage, energy generation, and other electrical-grid-related operations.
- B. No other occupancy types are permitted in the building.
- C. Occupants in the rooms and areas containing battery energy storage systems are limited to certified personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- D. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
  - (1) The areas do not occupy more than 10% of the building area of the story in which they are located.
  - (2) A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other



energy system equipment.

**ENERGY CODE** — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

**FIRE CODE** — The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, and New York State Fire Code 1206, as currently in effect and as hereafter amended from time to time.

**LWRP (Local Waterfront Revitalization Program)** — A New York State program designed to work with local governments to promote effective and sustainable regulation of waterfront areas in a manner consistent with state and federal coastal zone management, while addressing local and regional waterfront issues. Goals of the program are to improve water quality and natural areas; provide for revitalization of underutilized waterfronts; guide development to areas with adequate infrastructure and services and away from sensitive resources; and promote public waterfront access. New York State towns that reside along the shore of a body of water are eligible to have a local revitalization plan.

**NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL)** — A United States Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**NEC** — National Electric Code.

**NFPA** — National Fire Protection Association.

**NON-DEDICATED-USE BUILDING** — All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

**NON-PARTICIPATING PROPERTY** — Any property that is not a participating property.

**NON-PARTICIPATING RESIDENCE** — Any residence located on non-participating property.

**OCCUPIED COMMUNITY BUILDING** — Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, day-care facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

**PARTICIPATING PROPERTY** — A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

**UL** — Underwriters Laboratory, an accredited standards developer in the United States.

**UNIFORM CODE** — The New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**UPS** — An uninterruptible power supply or uninterruptible power source is an electrical apparatus that provides emergency power to a load when the input power source or main power fails. A UPS differs from an auxiliary or emergency power system or standby generator in that it will provide near-instantaneous protection from input power interruptions, by supplying energy stored in batteries, supercapacitors, or flywheels. The on-battery run-time of most uninterruptible power sources is relatively short but sufficient to start a standby power source or properly shut down the protected equipment. It is a type of continual power system.

**§ 67-4. Applicability.**

The requirements of this chapter shall apply to all battery energy storage systems permitted, installed, or modified in Town of Somerset after the effective date of this chapter, excluding general maintenance and repair.

- A. Battery energy storage systems constructed or installed prior to the effective date of this chapter shall not be required to meet the requirements of this chapter.
- B. Modifications to, retrofits or replacements of an existing battery energy storage system that maintain or increase the total battery energy storage system designed discharge duration or power rating shall be subject to this chapter.
- C. The applicant shall pay the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.



**§ 67-5. General requirements.**

- A. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
- B. Issuance of permits and approvals by the Somerset Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].
- C. Liability insurance to protect the health and safety of the homeowner, neighbors and first responders will be required for Tier 2 and Tier 3 battery energy storage system tiers.
- D. All battery energy storage systems, all dedicated-use buildings, and all other buildings or structures that: 1) contain or are otherwise associated with a battery energy storage system; and 2) are subject to the New York State Fire Code 1206, Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Fire Code, Uniform Code, the Energy Code, and the Town Code. All materials within the insulation of the battery containers and the chosen ventilation and suppression system shall only contain noncombustible materials. All battery storage systems must use a single type of battery cell and not a mixture of battery cells or types.
- E. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.
- F. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Zoning Code or any other general or local law, ordinance, rule or regulation, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that:
  - (1) All work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code; and
  - (2) All work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- G. Fee. The fee as set by the Town Board periodically by resolution must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.
- H. Maintenance. The buildings, improvements and appurtenances erected and situate upon any lot in the district shall at all times be kept in a safe, clean, wholesome condition and shall comply with all government, health and police requirements. All rubbish of any kind which may accumulate on any such building lot shall be promptly removed.



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**§ 67-6. Permitting requirements for Tier 1 battery energy storage systems.**

Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Uniform Code requirements and the "Battery Energy Storage System Permit," and must include battery replacement schedule and guarantee. Tier 1 battery energy storage systems are exempt from site plan review.



**§ 67-7. Permitting requirements for Tier 2 battery energy storage systems.**

Tier 2 battery energy storage systems are permitted through the issuance of a special use permit and site plan approval within the Agricultural District, Business District, Industrial District, General Industrial District and Planned Unit Development District (PUD Zone) to be used as an UPS (uninterruptible power source) backup generator and shall be subject to the Uniform Code and the site plan application requirements set forth in this chapter. Tier 2 battery energy storage systems shall not be placed on wetlands, streams, tributaries, or land designated as a watershed protection area as designated by the Town, county or other agency, land of statewide importance or environmentally sensitive, as shown on a Town, county, or state map.

**A. Applications for the installation of Tier 2 battery energy storage system shall be:**

- (1) Reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this chapter including, but not necessarily limited to: i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code; and ii) matters relating to the proposed battery energy storage system and floodplain, utility lines and electrical circuitry, signage, lighting, vegetation and tree cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, and permit time frame and abandonment and emergency access road dimensions approved by the local fire code officials. Applicants shall be advised within 10 business days (of the first Planning Board meeting on the application) of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
- (2) Subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have a notice printed in a newspaper of general circulation in the Town in accordance with the Town's special use permit requirements. Applicants shall also have delivered the notice by first class mail to adjoining landowners or landowners within 500 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
- (3) Referred to the County Planning Board pursuant to General Municipal Law § 239-m, if required.
- (4) Upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing (or after the SEQR process is completed, if not completed on the day of the public hearing), which can include approval, approval with conditions, or denial of the special use permit. The sixty-two-day period may be extended upon consent by both the Planning Board and applicant.
- (5) The Planning Board can then take final action on the site plan.

**B. Utility lines and electrical circuitry.** All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way and must comply with New York State Department of Agriculture and Markets requirements, where applicable.**C. Signage.**

- (1) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and twenty-four-hour emergency contact information, including reach-back phone number.
- (2) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.



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- D. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties minimizing light trespass. § 67-7
- E. Vegetation and tree cutting. Areas within 20 feet on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Woodlands are important environmental features of the Town that merit some degree of protection from development. Woodlands provide attractive natural settings, offer important habitats for wildlife and contribute to the rural character of the Town. Removal of trees should be minimized to the extent possible, with no more than 10% of total acreage of trees on the site to be removed.
- F. Noise. The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from World Health Organization. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.
- G. Soil removal. All topsoil disturbed during construction, reconstruction or modification of each Battery Storage System will be stockpiled and returned to the site upon completion of the activity that disturbed the soil. In the event of a fire or explosion, all contaminated soil must be removed and disposed of at an approved facility.
- H. Decommissioning.
- (1) Decommissioning plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
- (a) A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
  - (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
  - (c) The anticipated life of the battery energy storage system;
  - (d) The estimated decommissioning costs and how said estimate was determined;
  - (e) The method of ensuring that funds will be available for decommissioning and restoration;
  - (f) The method by which the decommissioning cost will be kept current;
  - (g) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  - (h) A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

§ 67-7 (2) Decommissioning fund. The owner and/or operator of the energy storage system shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Attorney for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. All costs of the financial security shall be borne by the applicant. § 67-7

I. Site plan application. For a Tier 2 battery energy storage system requiring a special use permit, site plan approval shall be required. Any site plan application shall include the following information:

- (1) Property lines and physical features including the location and layout of the battery storage energy system, and roads, for the project site.
- (2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- (3) A one- or three-line (as determined by the Town) electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
- (4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed, a description of the energy storage management system, the fire resistance rating, and an explanation of the smoke, fire, ventilation, exhaust and deflagration systems to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- (5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- (6) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
- (7) Zoning district designation for the parcel(s) of land comprising the project site and those immediately adjoining the site.
- (8) Commissioning plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.
- (9) Fire safety compliance plan and security plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the New York State Fire Code 1206, the Uniform Code and is designed for battery energy storage modules. The rooms in which the battery energy storage system equipment is located shall not be used for storage purposes. Fire walls shall also be included in the design of the project. These shall be constructed of concrete or composite materials and positioned between containers. Site security is important to protect the equipment as well as to prevent injury to curious neighbors. Perimeter access monitoring and notification of security breach to the site operator shall be required. The operator shall follow all recommendations of the operator's energy storage insurance coverage policy.

(10) Operation and maintenance manual.

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- (a) Such plan shall describe continuing battery energy storage system maintenance and property upkeep and weed control, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- (b) Remote and continuous online monitoring, early detection sensors, and appropriate venting to avoid the build-up of gas and automatic fire suppression systems to NFPA 855 standards shall also be in place.
- (11) Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established in the Town of Somerset and by the Planning Board through the approval process.
- (12) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State licensed professional engineer and signed off by Town Building Inspector and Town Engineering firm.
- (13) Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. Prior to activation of the facility, the system operator must meet with the Niagara County Fire Coordinator and Director of Emergency Services and the local first responders to review the emergency operations plan in its entirety and to determine if specialized personal protective equipment (PPE) or fire suppression/containment equipment is needed. If any additional PPE or fire suppression/containment is required that is not currently available, the system operator must purchase those items. The emergency operations plan shall include the following information:
- (a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe startup following cessation of emergency conditions.
- (b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
- (c) Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
- (d) The property must be inspected by a subject matter engineer or other subject matter certified inspector after a National Weather Service designation of a Severe Weather Watch or Severe Weather Warning to ensure that the property did not sustain damage.
- (e) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and/or extinguishing the fire.
- (f) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- (g) Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility. System owner shall provide guaranteed nonemergency and emergency response times of a qualified subject matter expert to the Town Hall and local first responders.
- (h) Other procedures as determined necessary by the Town to provide for the safety of occupants,

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- neighboring properties, and emergency responders, that shall include but not limited to a smoke plume test for evacuation purposes. All smoke plume test findings shall be made public.
- (i) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures and a map of the area showing emergency access roads with turning radii dimensions and turnaround loop. Training of local first responders shall be done biannually. Training in a classroom setting shall be done annually in the winter and an on-site training session shall be done annually in the spring. This training shall include local and mutual aid first responders.
  - (j) The system owner shall notify the local fire department, County Emergency Management office and the Town Hall at least one week prior to any scheduled maintenance or battery swap out.
  - (k) In the event of a fire or explosion, all expenses related to cleanup and remediation shall be paid by the system operator/owner and all contaminated soil must be removed and placed in a landfill approved for such materials by the system owner.
- (14) Construction inspections.
- (a) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection I(14)(b) of this section is ready for inspection.
  - (b) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
    - [1] Work site prior to the issuance of a building permit;
    - [2] Footing and foundation;
    - [3] Preparation for concrete slab;
    - [4] Framing;
    - [5] Building systems, including underground and rough-in;
    - [6] Fire-resistant construction;
    - [7] Fire-resistant penetrations;
    - [8] Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
    - [9] Energy Code compliance; and
    - [10] Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector and Town Engineer.
    - [11] A final inspection by the fire marshal must be completed prior to activation.
  - (c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
  - (d) Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4,

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Fees, required by this chapter must be paid prior to or at the time of each inspection performed pursuant to this section.

J. Special use permit standards.

- (1) Setbacks. Tier 2 battery energy storage systems shall comply with the setback requirements of the underlying zoning district for principal structures.
- (2) Height. Tier 2 battery energy storage systems shall comply with the building height limitations for accessory structures of the underlying zoning district.
- (3) Fencing requirements. Tier 2 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.
- (4) Screening and visibility. Tier 2 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

K. Ownership changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, reporting requirements and decommissioning plan including decommissioning bond. A new owner or operator of the battery energy storage system shall notify the Town of Somerset of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Town in the required time frame. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this chapter.

L. Landscaping plan: a plan depicting vegetation and forest cover, describing the areas to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added identified by species and size of specimens at installation and their locations. Landscaping plans should aid in the creation of a uniform and aesthetically pleasing viewshed. Landscaping plans, however, should also be designed with functionality in mind as the location of plantings should not impede first responder access, nor should they be placed in areas that may contribute to a fire.

M. Transportation plan: a transportation plan describing routes to be used in delivery of project components, equipment and building materials and those to be used to provide access to the site during and after construction. Commercial traffic must adhere to operating on commercially designated roads. Such plan shall also include any anticipated improvements to existing roads, bridges or other infrastructure and measures to restore damaged/disturbed access routes and all other infrastructure following construction. Roads shall include all state highways, county highways, Town highways, village streets and highways, which will be or may be used by the applicant.

- (1) The Town of Somerset requires the applicant to complete all the requirements of the Town Infrastructure Preservation Law.<sup>9</sup>

N. Groundwater impacts. An analysis of impacts on local groundwater resources shall be prepared regarding impacts anticipated during construction, reconstruction, modification or operations, decommissioning and postdecommissioning of each battery storage facility.

O. Due to the location of the Town to the Lake Ontario shoreline corridor and adjacent lands and waterways, all

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9. Editor's Note: See Ch. 118, Infrastructure Preservation Law.

§ 67-7 battery storage systems will be placed on a nonpermeable surface with a nonpermeable moat type system § 67-7  
surrounding the battery storage system to minimize and mitigate any migration of hazardous chemicals to  
those waterways in the event of a fire.



**§ 67-8. Permitting requirements for Tier 3 battery energy storage systems (utility-scale).**

- A. Tier 3 battery energy storage systems are permitted only in the Industrial District and Planned Unit Development District (PUD) Zone of the Town through the issuance of a special use permit and site plan approval and shall be subject to the Uniform Code, application and the site plan application requirements set forth in the Tier 2 section and other applicable sections of these regulations and the Town Code. Standalone Tier 3 battery energy storage systems are not allowed and must be accompanied by a large-scale solar energy conversion system (Tier 3 or 4 per the Town's Code) or an industrial wind energy conversion system. Their location shall be further restricted by the restrictions for the location of Tier 3 and 4 solar energy systems and wind systems (see the Town laws on these facilities) and limited to an aggregate energy capacity of less than 1m Wh.
- B. The following additional requirements (additional or superseding to the Tier 2 requirements) are required for Tier 3 projects:
- (1) Road use permit for heavy equipment in accordance with the Town Infrastructure Preservation Law.<sup>10</sup>
  - (2) Semiannual report provided to the Town Board, Town Planning Board and Code Enforcement Officer. The report shall include a copy of a recent inspection report by a licensed professional engineer including any sustained structural damage and a copy of proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
  - (3) As these types of battery energy storage systems are only allowed when accompanied by a Tier 3 or 4 solar energy system or wind energy system; these systems must also meet the requirements and restrictions of the laws for Tier 3 and 4 solar energy systems and wind systems, whichever is appropriate.

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10. Editor's Note: See Ch. 118, Infrastructure Preservation Law.





**§ 67-9. Safety.**

System certification. Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 (standard for battery energy storage systems and equipment) with subcomponents meeting each of the following standards as applicable:

- A. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications).
- B. UL 1642 (Standard for Lithium Batteries).
- C. UL 1741 or UL 62109 (Inverters and Power Converters).
- D. Certified under the applicable electrical, building, and fire prevention codes as required.
- E. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- F. The local fire marshal shall inspect all areas of the battery energy storage system prior to activation.
- G. Site access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 or Tier 3 battery energy storage system is located in an ambulance district, the local ambulance corps. Combination locks shall be used for all gates and the combinations provided to the local fire department and the Town Hall.
- H. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.



**§ 67-10. Permit time frame and abandonment.**

- A. The special use permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and/or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 or Tier 3 battery energy storage system and restoration of the site in accordance with the decommissioning plan.



**§ 67-11. Enforcement; penalties for offenses; remedies for violations.**

This chapter shall be enforced by the Town Code Enforcement Officer.

- A. Any person owning, controlling or managing any building, structure or land who shall undertake a battery energy storage system in violation of this chapter, or who operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this chapter, shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.
- B. The Code Enforcement Officer may, after notice of violation, enter into a consent order with the applicant/owner/operator to remedy the violation with specifications to be taken and an agreed schedule.
- C. Special proceeding. In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a battery energy storage system, and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the court deems appropriate.



**§ 67-12. Stop-work orders.**

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, the Zoning Code or any other general or local laws, ordinances, rules or regulations without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work;
  - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
  - (3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall:
- (1) Be in writing;
  - (2) Be dated and signed by the Code Enforcement Officer;
  - (3) State the reason or reasons for issuance; and
  - (4) If applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property and, if the owner is not the permit holder, on the permit holder personally or by registered mail or certified mail. Service by registered or certified mail shall be sufficient if addressed to the address set forth in the building permit application. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any new applicant, owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.
- D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-work order.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 205-67.3, Violations; penalties for offenses, of this Code or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.





§ 67-12

§ 67-13

**§ 67-13. Severability.**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.



**Chapter 68**

**BED-AND-BREAKFAST ESTABLISHMENTS**



§ 67-13

§ 67-13

**[HISTORY: Adopted by the Town Board of the Town of Somerset 7-9-1991. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Zoning — See Ch. 205.**



**§ 68-1. Permit required.**

Bed-and-breakfast uses, as defined below, are permitted in all districts of the Town, provided that all requirements set forth below are observed. No person, firm, corporation, association, partnership or any other entity or business shall operate a bed-and-breakfast establishment in any zone without first having obtained a permit from the Town of Somerset Planning Board.





§ 68-1

§ 68-2

**§ 68-2. Definitions.**

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

**BED-AND-BREAKFAST** — Any establishment occupied by the owner which lets three or less rooms for hire for transient occupancy and which is not a hotel or motel.

**TRANSIENT OCCUPANCY** — Occupancy for hire for a period of 18 consecutive days or less.



**§ 68-3. Permit regulations.**

- A. The Town Planning Board shall have sole authority to issue special permits for bed-and-breakfast use.
- B. Said permits shall be issued on a one-year nontransferable, renewable basis. No bed-and-breakfast establishment shall operate at any time in violation of the provisions of this chapter.
- C. The form of the permit and application therefor shall be prescribed by the Town of Somerset Planning Board. The applicant shall provide all information required by the application, as well as the following:
- (1) A drawing of the building floor plan with accurate dimensions. The drawing shall designate rooms for use by guests, designate exits and access to exits and identify and specify the off-street parking spaces that are required by this chapter.
  - (2) Proof of adequate liability insurance.
  - (3) The application shall be signed by the owner of the premises and shall contain at least the following: the name, address and telephone number of the owner.
- D. Requirements. Before a permit may be issued and/or renewed, the following requirements shall be fulfilled:
- (1) The premises shall be inspected by the Code Enforcement Officer or his deputy. **[Amended 9-10-1996 by L.L. No. 2-1996]**
  - (2) Each dwelling shall have exits clearly marked.
  - (3) Each dwelling shall have adequate exits (number, location and size) for the maximum number of guests which can be housed pursuant to this chapter.
  - (4) Each guest room shall have a functioning smoke detector that complies with the New York State Uniform Fire Prevention and Building Code requirements. **[Amended 9-10-1996 by L.L. No. 2-1996]**
  - (5) Each guest room shall have written information, clearly posted, showing the location of all means of exiting the building in the event of an emergency.
  - (6) Each establishment shall have a minimum of one fire extinguisher (2A-10BC rated) on each floor with sleeping quarters and may, in the discretion of the Code Enforcement Officer, be required to have additional such fire extinguishers available.
  - (7) The required fee shall be paid each year to the office of the Code Enforcement Officer.
  - (8) There shall be at least one bathroom and shower for every six people who may reside or stay at the establishment as authorized by Subsection E(2) below.
- E. Additional requirements.
- (1) There shall be no more than three rooms occupied in the residence by bed-and-breakfast guests.
  - (2) The minimum square footage of each room shall be 120 square feet. Up to two guests shall be permitted in a room with said 120 square feet. An additional 60 square feet is required for every guest over two guests per room.
  - (3) The quarters to be utilized by the guest or the occupants of the premises shall not be permitted in any accessory structure.
  - (4) The use by guests shall be no longer than 18 consecutive calendar days.
  - (5) The serving of meals to paying guests shall be limited to breakfast.

- § 68-3
- § 68-3
- (6) One off-street parking space shall be provided for each living quarter designated as a rented room, as described in the application and permit, plus such additional parking spaces as the Board shall deem necessary for the residents. All parking spaces shall be graveled or paved.
  - (7) No inventory of goods produced off the premises shall be maintained for sale on the premises.
  - (8) Only one nonilluminated identification sign shall be permitted. Such sign shall not be larger than four square feet.
  - (9) Each permit shall be renewed annually on March 1.
  - (10) The permit issued by the Planning Board shall be posted inside in a conspicuous place at all times.
- F. The Code Enforcement Officer shall keep a directory setting forth a current listing of all premises for which a permit has been issued. The Code Enforcement Officer shall send a copy of said directory to the Fire Department.
- G. The issuance of a permit under this section shall in no way excuse or waive compliance with all provisions of Chapter 205, Zoning, or relieve the owner from fully complying with all provisions of Chapter 205, Zoning, or any other local, state or federal requirements and shall not be evidence of compliance with the provisions of Chapter 205, Zoning, or any other ordinance or law.

§ 68-3

§ 68-4

**§ 68-4. Fees.**

The fee for the permit hereby required shall be established periodically by the Town Board by resolution, which fee shall be incorporated herein and made part hereof.



§ 68-4

§ 68-5

**§ 68-5. Penalties for offenses. [Amended 9-10-1996 by L.L. No. 2-1996]**

Any person, corporation, business, association, firm, partnership or bed-and-breakfast establishment found to be operating in violation of any provision of this chapter shall be guilty of a violation and shall be subject to a fine not exceeding \$250. Each day a violation exists shall be considered a separate violation.





**§ 68-6. Permit modification or revocation.**

Any permit may be revoked or modified by the Town of Somerset Planning Board, after a public hearing, on any one or more of the following grounds:

- A. That the approval of the permit was obtained by fraud.
- B. That the permit granted is being or recently has been exercised contrary to the terms or conditions of such approval of in violation of any statute, ordinance, law or regulation.
- C. That the permit has been so exercised as to be detrimental to the public health or safety or so as to constitute a public nuisance.



**Chapter 71**

**BINGO**



§ 68-6

§ 68-6

**[HISTORY: Adopted by the Town Board of the Town of Somerset 5-15-1958. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Games of chance — See Ch. 111.**



**§ 71-1. Authority.**

The game of bingo, as defined and authorized by Article 14-H of the General Municipal Law of the State of New York, including the conduct of such game on Sunday, shall be legalized and permitted within the Town of Somerset.





§ 71-1

§ 71-2

**§ 71-2. Licenses; conduct of game.**

The procedure for the issuing of licenses therefor, the conduct of the game, the restrictions and regulations governing the same and all other matters pertaining thereto shall be the same as described in said Article 14-H of the General Municipal Law of the State of New York, and each and every part of said Article 14-H of the General Municipal Law of the State of New York is hereby incorporated in and made a part of this chapter.



§ 71-2

§ 71-3

**§ 71-3. Amendments to statute.**

Any amendments or changes in said Article 14-H of the General Municipal Law of the State of New York which may hereafter be made by the Legislature of the State of New York and which shall be applicable to the Town of Somerset shall become and be a part of this chapter and effective at the time such amendments or changes become generally effective in the State of New York.



§ 71-3

§ 71-4

**§ 71-4. When effective.**

This chapter shall become effective in the Town of Somerset upon its approval by a majority of the qualified electors of the Town of Somerset, voting therefor at a special election to be held for that purpose.<sup>11</sup>

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11. Editor's Note: This chapter was approved by a majority of the qualified electors of the Town of Somerset in November 1958.



§ 71-4

§ 71-5

**§ 71-5. Penalties for offenses. [Added 9-10-1996 by L.L. No. 2-1996]**

Any person who violates any provisions of this chapter shall, upon conviction, be liable to a penalty of not more than \$250.





**Chapter 78**

**BUILDINGS, UNSAFE**



§ 71-5

§ 71-5

**[HISTORY: Adopted by the Town Board of the Town of Somerset 6-11-1985. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Property maintenance — See Ch. 142.**



**§ 78-1. Purpose.**

The purpose of this chapter is to provide for the removal or repair of buildings in the Town of Somerset that from any cause may now be or shall hereinafter become dangerous or unsafe to the public.



**§ 78-2. Definitions. [Added 9-10-1996 by L.L. No. 2-1996]**

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

**BUILDING** — A structure wholly or partly enclosed within exterior walls or within exterior or party walls and a roof, affording shelter to persons, animals or property.

**DANGEROUS OR UNSAFE BUILDINGS** — A building or structure which is structurally unsound, unsanitary or not provided with adequate ingress or egress or which constitutes a fire hazard or which has become unsafe by reason of damage by fire, the elements, age or general deterioration or which, in relation to an existing use, constitutes a hazard to public health, safety or welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment or which is otherwise dangerous to human life.

**STRUCTURE** — An assembly of materials forming a construction framed of component structural parts for occupancy or use, including buildings.





**§ 78-3. Inspection of complaints; notice to owner.**

- A. Any complaint of an unsafe building or collapsed structure shall be inspected and reported upon by the Town of Somerset Code Enforcement Officer.
- B. Upon the Code Enforcement Officer's determination that the building is unsafe or in a collapsed condition, notice of the same shall be served upon the owner of said building or structure or on the owner's executor, legal representatives, agents, lessees or any other person having a vested or contingent interest in the same, either personally or by certified mail, addressed to the last known address, if any, of the owner, or on the owner's executors, legal representatives, agents, lessees or other persons having a vested or contingent interest in the same, as shown by the records of the receiver of taxes and/or in the office of the County Clerk or County Registrar, containing a description of the premises, a statement of the particulars in which the building or structure is unsafe or dangerous and an order requiring the same to be made safe and secure or removed. If said service shall be made by certified mail, a copy of such notice shall be posted on the premises.



**§ 78-4. Repair or removal.**

- A. The owner or the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in said property shall commence the satisfactory repair or removal of the building or structure within 10 days after service of the notice and complete the same within 20 days after service.
- B. If the owner refuses or neglects to repair or remove said structure within the time prescribed by Subsection A, the Code Enforcement Officer shall file a copy of the notice served on the owner or his representative in the office of the County Clerk of Niagara County, which notice shall be filed by such Clerk in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this subsection. The notice so filed shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon the order of a Judge or Justice of a court of record or upon the consent of the Town Attorney. The Clerk of Niagara County shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or of a certified copy of such order.



**§ 78-5. Failure of owner to complete work; hearing; costs.**

- A. In the event that the owner or his representative shall not complete the required work within the time provided in § 78-4A, the Town Board shall call a hearing upon notice of the time and place, the purpose of which is to require repair or demolition of the building or structure. Said notice shall be served upon the owner and such persons having an interest in the property or structure as determined by the Code Enforcement Officer of the Town. The service shall be as provided in § 78-3 herein.
- B. After said hearing, the Town Board may order removal of the building or structure by the Town in the event that the owner fails or refuses to repair or remove the same within a time period provided by the Town Board.
- C. The Town Board shall assess all costs and expenses incurred by the Town in connection with the proceedings, including legal fees, to remove or secure the building or structure; which shall include the cost of actually removing said building or structure; and said assessment shall be against the land on which the building or structure is located and shall be assessed on the next Assessor roll to be filed by the Town Assessor.



§ 78-5

§ 78-6. Penalties for offenses. [Added 9-10-1996 by L.L. No. 2-1996; amended 1-14-1997 by L.L. No. 1-1997]

Any person who violates the provisions of this chapter, removes notices without authorization or interferes with Town officials in the enforcement of this chapter shall be liable to a penalty of not more than \$250 per day.





**Chapter 80**  
**CAMPGROUNDS**



§ 78-6

§ 78-6

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

**GENERAL REFERENCES**

**Zoning — See Ch. 205.**



ARTICLE I  
**Campgrounds and Recreational Vehicle Parks**  
**[Adopted 5-9-1978 as Art. XII of the Zoning Ordinance]**

**§ 80-1. Title.**

This article shall be known as the "Recreational Vehicle Park and Camping Ground Ordinance of the Town of Somerset."

**§ 80-2. Purpose.**

The purpose of this article is to promote the health, safety and general welfare of the community by establishing specific requirements and regulations governing the occupancy and maintenance of recreational vehicle parks, travel trailer parks and camping grounds.

**§ 80-3. Definitions.**

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

**CAMPING GROUND** — A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of camping trailers, tents or movable temporary dwellings, rooms or sleeping quarters of any kind.**[Amended 9-10-1996 by L.L. No. 2-1996]**

**PERMIT** — A written permit approved by the Town Planning Board and issued by the Code Enforcement Officer, allowing a person to construct and operate a trailer parking area under the provisions of this article.**[Amended 6-10-1980; 9-10-1996 by L.L. No. 2-1996]**

**PERSON** — An individual, firm, trust, partnership, public or private association or corporation.

**RECREATIONAL VEHICLE** — Any of the following:

- A. **TRAVEL TRAILER** — A portable recreational vehicle built on a chassis designed to be towed and used as a temporary dwelling for travel, recreational and vacation uses.
- B. **PICKUP COACH** — A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation.
- C. **MOTOR HOME** — A portable, temporary dwelling to be used for travel, recreation and vacation constructed as an integral part of a self-propelled vehicle.
- D. **CAMPING TRAILER** — A canvas, folding structure mounted on wheels and designed for travel, recreation and vacation use.

**RECREATIONAL VEHICLE PARK** — A parcel of land in which two or more spaces are provided for the occupancy of recreational vehicles.

**RECREATIONAL VEHICLE LOT** — A parcel of land in a recreational vehicle park for the occupancy of a single trailer and its towing vehicle.

**SANITARY STATION** — A facility used for disposing of wastes from recreational vehicle holding tanks.

**SELF-CONTAINED RECREATIONAL VEHICLE OR TRAILER** — One which can operate independently of sewer, water and electrical connections. It contains a water-flush toilet, lavatory and kitchen sink, all of which are connected to water storage and sewage holding tanks located within the unit.

**SERVICE SINK** — A sink for the disposal of liquid wastes from recreational vehicle.

**§ 80-4. Permit required.**

Any person being the owner of any land within the Town of Somerset shall not use or allow the use of such land for a recreational vehicle park or campground unless a permit and certificate of occupancy has been obtained as provided herein.

**§ 80-5. Permit regulations.**

- A. An application for a permit for a recreational vehicle park or campground shall be filed with the Code Enforcement Officer and accompanied by a fee in an amount as set forth from time to time by resolution of the Town Board for each recreational vehicle lot.<sup>12</sup> The number of such lots shall be determined by the number certified by the Health Department of the County of Niagara to be in use by the applicant. The permit issued shall be for a period of one year and must be renewed annually. Each renewal shall be accompanied by the required fee as stated herein. The application for a permit or the renewal thereof shall be made on forms prescribed by the Planning Board of the Town of Somerset and shall include the name and address of the owner in fee of the tract. (If the fee is vested in some person other than the applicant, a duly verified statement by the owner that the applicant is authorized by him to construct or maintain such recreational vehicle park shall accompany the application.) **[Amended 9-10-1996 by L.L. No. 2-1996]**
- B. Each permit or renewal thereof shall expire on the 31st day of December following the issuance thereof. If the original permit is granted on or after July 1, the applicant shall be required to pay 1/2 the annual permit fee for the period expiring December 31.
- C. Before such permit may be issued by the Code Enforcement Officer, there must be approval by a majority of the Town Board of the Town of Somerset, after a public hearing. Building and site plans must be in compliance with all the provisions of this article and all other applicable ordinances of the Town of Somerset. **[Amended 9-10-1996 by L.L. No. 2-1996]**
- D. Any applicant for a recreational vehicle permit shall state that he as owner or operator shall be responsible for the proper maintenance and upkeep of the proposed park and shall further submit a park plan containing but not limited to the following information:
- (1) Boundaries and areas of the plot.
  - (2) Entrances, exits, roadways and walkways.
  - (3) Layout of lots.
  - (4) Perimeter planting of trees and shrubs to provide a screen for adjoining highway and adjacent property.
  - (5) Number and location of service buildings and number of facilities therein.
  - (6) Plan of the sewer system and disposal arrangements.
  - (7) Method and plan of garbage and refusal disposal.
  - (8) Water supply.
  - (9) Electric power distribution and general lighting.
  - (10) Means of providing for surface water runoff.
  - (11) Owner's and operator's name, address and telephone numbers.
  - (12) Certificates of approval of Niagara County Health Department and compliance with the New York State

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12. Editor's Note: The current fee schedule is on file in the office of the Town Clerk.

§ 80-5

Sanitary Code, if applicable.

§ 80-10

(13) A list of the owner's campground regulations.

(14) A telephone available to public.

**§ 80-6. Park requirements.**

- A. The minimum tract size shall be 20 acres, and such tract shall front on a collector street.
- B. A front setback of 100 feet and a side and rear yard setback of 20 feet shall be maintained from the right-of-way line of any public road bordering the tract and property lines of adjoining properties to any recreational vehicle in the park.
- C. All interior two-way roads shall be 20 feet wide, one-way roads 12 feet wide; with the full width a compacted surface (stone or better); with a minimum overall depth, including foundation base and wearing course, of six inches; and no road shall be dead-ended.
- D. Entrances and exits shall be located to provide a minimum sight distance on the adjacent public road in both directions from the interior road of not less than 300 feet at a point not less than 10 feet from the intersection.
- E. A recreational vehicle park shall set aside a portion of the total acreage as open space and recreation area.
- F. It is recommended that consideration in each instance be given to the construction of all utilities underground.
- G. Auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers, utility trailers, incapacitated or unregistered vehicles and similar such equipment and vehicles. Such areas are to be a minimum of 200 feet from the boundary of any public highway and a minimum of 50 feet from any lot line.
- H. Recreational vehicle sales. No lot or plot for the display or recreational vehicles for sale or rental or for the conduct of a sales agency for recreational vehicles shall be permitted within any recreational vehicle park or campground.
- I. Conditions of soil and topography shall be suitable for the use and surface drainage provided to prevent accumulation of surface water.
- J. Density shall not exceed 20 self-contained recreational vehicle lots per acre of the area assigned to them.

**§ 80-7. Water supply.**

An adequate, safe and potable water supply shall be provided in the park. When such public supply is not available, a private water supply system may be developed and used as approved by the Niagara County Health Department in compliance with the New York State Sanitary Code.

**§ 80-8. Service buildings. [Amended 9-10-1996 by L.L. No. 2-1996]**

Service buildings housing sanitation, laundry or other facilities shall be permanent structures complying with the New York State Fire Prevention and Building Code, New York State Sanitary Code and any other applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems.

**§ 80-9. Refuse disposal.**

Ample garbage cans with tight-fitting covers shall be provided. The cans shall be kept in a sanitary condition at all times. It shall be the responsibility of the park operator to ensure that the garbage and refuse shall be collected and properly disposed of outside the park as frequently as may be necessary to ensure that garbage cans do not overflow.



§ 80-10

§ 80-16

**§ 80-10. Lot requirements.**

- A. A hard surface shall be provided on each trailer lot for a trailer and one automobile.
- B. Each lot shall face on an interior street.

**§ 80-11. Maintenance.**

- A. The entire park shall be policed to preclude the accumulation of litter, trash, discarded items or other debris.
- B. Provision shall be made for the regular and continuing maintenance of the landscaping which was required as condition of initial approval and all portions of lots and other areas within the park which are not surfaced, covered by buildings or otherwise improved.

**§ 80-12. Supervision.**

The operator of the park or a duly authorized attendant shall be in responsible charge at all times to keep the park, its facilities and equipment in a clean, orderly and sanitary condition. The attendant shall be answerable, with the permittee, for any violation of this article to which the permittee is subject.

**§ 80-13. Inspection.**

Upon the construction of a new recreational camp, park or camping ground, the Code Enforcement Officer shall make an inspection of the premises to determine that all requirements of this article have been met. Further, the Code Enforcement Officer shall inspect the premises prior to issuing the annual permit as required under this article.

**§ 80-14. Camping season.**

The camping season for either the recreational vehicle park or camping ground permit under this article shall be divided into a summer season and winter season. The summer season shall consist of the months of May, June, July, August, September and October; the winter season shall consist of the months of December, January and February. No camping trailer shall be used as a residence for a longer period than during the summer season or the winter season, or both.

**§ 80-15. Inspection; revocation of suspension of permit.**

- A. The Town Code Enforcement Officer shall have the authority to enter and inspect any recreational vehicle park or campground, for purposes of health, safety and sanitation at any time.
- B. If, upon inspection by the Code Enforcement Officer, it shall be found that the operator has violated any provisions of this article, the Planning Board shall have the power to revoke or suspend the permit and order the recreational vehicles removed or the recreational vehicle park or campground closed after notice and an opportunity heard.

**§ 80-16. Penalties for offenses. [Amended 6-10-1980; 9-10-1996 by L.L. No. 2-1996]**

Any person found guilty of violating any provisions of this article, whether or not such violation shall be found sufficient by the Board of Appeals for revocation of the permit, shall be guilty of a violation punishable by a fine of not more than \$250. Each week that a violation of this article is permitted to exist shall constitute a separate offense.

ARTICLE II  
**Recreational Vehicles and Camping Units**  
**[Adopted 7-12-2005 by L.L. No. 3-2005]**

**§ 80-17. Legislative intent.**

It is the purpose of this article to regulate the occupancy of recreational vehicles/camping units, to preserve peace and good order; to promote the aesthetic beauty of the community; and to promote the health, safety, and general welfare of the inhabitants of the Town of Somerset.

**§ 80-18. Definitions.**

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

RECREATIONAL VEHICLE/CAMPING UNIT — A vacation trailer, travel trailer, fifth wheel, "porch home," motor home, motor coach, tent, boat or camper of any description, either towed or self-contained, motorized or nonmotorized, intended to be used or occupied as a vacation vehicle or trailer and not intended to be located with permanent sewer, water or electric hookups.

**§ 80-19. Use and occupancy of units outside campgrounds restricted.**

- A. Recreational vehicles/camping units shall not be occupied outside of an approved campground for more than 16 days on any basis in any calendar year, at any location, in the Town. A special permit shall be granted by the CEO upon request for single camping units to be occupied outside of approved campgrounds for a period not to exceed a total of 30 days' duration per calendar year. In any event, whether by permit or not, no recreational vehicle/camping unit shall be occupied for more than 30 days per calendar year.
- B. No more than one recreational vehicle/camping unit shall be occupied on any property at the same time.
- C. Any recreational vehicle/camping unit occupied shall either have self-contained sanitation or be connected to adequate sanitation facilities.
- D. Any recreational vehicle/camping unit occupied shall have a current valid registration allowing it to travel on the highway.

**§ 80-20. Penalties for offenses.**

Any person who violates any provision of this article shall, upon conviction, be punished by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or both. Each day that a violation continues shall constitute a separate offense.



**Chapter 81**  
**CANNABIS**



§ 80-20

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

§ 80-20



ARTICLE I  
**Retail Dispensaries and On-Site Consumption Establishments**  
**[Adopted 12-8-2021 by L.L. No. 1-2022]**

**§ 81-1. Legislative intent.**

It is the intent of this chapter to opt the Town of Somerset out of hosting retail cannabis dispensaries and on-site cannabis consumption establishments within its boundaries.

**§ 81-2. Authority.**

This chapter is adopted pursuant to Cannabis Law § 131, which expressly authorizes towns to opt out of allowing retail cannabis dispensaries and on-site cannabis consumption establishments to locate and operate within their boundaries.

**§ 81-3. Local cannabis retail dispensary and/or on-site consumption opt-out.**

The Town Board of the Town of Somerset, County of Niagara, hereby opts out of allowing retail cannabis dispensaries and on-site cannabis consumption establishments from locating and operating within the boundaries of the Town of Somerset, excluding the Village of Barker.

**§ 81-4. Severability.**

If a court determines that any clause, sentence, paragraph, subdivision, or part of this chapter or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court's order or judgment shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this chapter or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

**§ 81-5. Effective date; permissive referendum.**

This law is subject to permissive referendum, and shall become effective immediately upon the filing of the law with the office of the Secretary of State.<sup>13</sup>

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13. Editor's Note: No valid petition for referendum was filed as of 3-2-2022.





**Chapter 82**  
**CEMETERIES**



**[HISTORY: Adopted by the Town Board of the Town of Somerset 3-14-2018 by L.L. No. 4-2018.<sup>14</sup>**

**Amendments noted where applicable.]**

**§ 82-1. Rules and regulations.**

- A. All graves sold for Somerset Cemeteries shall be in accordance with the provisions of the laws of the State of New York and shall not be used for any other purpose than as a burial place for deceased human beings. The sale of graves shall be limited to past or present Town of Somerset residents and their spouses or distributees. A sworn affidavit of residence in the Town is required of all purchasers before a deed conveying a burial space will be issued. Full purchase price of graves must be paid before a deed will be issued or a burial permitted in a grave. All graves sold are under the permanent care of the cemetery.
- B. Graves shall be used only by the purchaser or the purchaser's spouse or distributees.
- C. Only the Superintendent of Grounds of the Town of Somerset is permitted to plant trees/shrubbery within Town cemeteries. The Superintendent of Grounds of the Town of Somerset has the right to order the removal of any trees and shrubs within Town cemeteries.
- D. Placement of items on graves.
  - (1) One non-glass crock, non-glass vase of flowers, shepherd's hook or wreath per grave is allowed, and it must be located immediately next to the headstone. Two eternal flames are allowed and must be located immediately next to each side of the headstone. Crocks, vases and shepherd's hooks may be placed on the graves after May 15 and shall be removed by November 1 of each year. Wreaths may be placed on the graves after November 1 and shall be removed by April 1. Eternal flames may be left year round. The Town of Somerset reserves the right to remove all items from graves as soon as they become unsightly or according to the schedule above.
  - (2) The placing or installation of signs, boxes, shells, toys, metal designs, ornaments, chairs, settees, glass vases, glass crocks, wood or iron crosses and similar articles upon or within graves or lots is prohibited, and the Superintendent of Grounds may order the removal of any of said articles. Vigil lights are permitted, subject, however, to the owner's risk of damage or loss.
  - (3) The placing of glass blocks or vases as receptacles for flowers, either artificial or grown on graves or plots, is prohibited.
- E. Headstones.
  - (1) Only headstones of the flat, bevel, slant or monument types are allowed.
    - (a) The base maximum for a single grave is 14 inches in depth, 36 inches in length and six inches in height.
    - (b) The base maximum for a double and triple grave is 14 inches in depth, 54 inches in length and six inches in height.
    - (c) The base maximum for a quadruple grave is 14 inches in depth, 72 inches in length and six inches in height.
  - (2) The overall height for all headstone and bases combined shall not exceed 34 inches.
  - (3) All foundations shall be constructed under the direction and according to specifications of the Superintendent of Grounds at a charge to the owner.
  - (4) Only headstones shall be permitted on a grave. No headstone shall be placed on the grave until the foundation is installed and ready to receive the headstone. No headstone shall be placed in the center or

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**14. Editor's Note: This local law also repealed former Ch. 82, Cemeteries, adopted 5-14-2013 by L.L. No. 3-2013.**

§ 82-1

§ 82-1

at the foot of a grave.

- (5) Inscriptions upon monuments, headstones or other memorials must bear the family name which appears on the deed to the lot or grave on which the monument, headstone or other memorial is to be situated, except that the deed owner of such grave or lot may, upon his or her own election and upon written notice to the Town, add an additional name thereon.
  - (6) Inscriptions shall be in English letters, except that foreign inscriptions may be added after approval of the Superintendent of Grounds obtained upon application containing a translation of the foreign inscription into English.
- F. Concrete, steel or fiberglass vaults shall be used.
- G. Burial of cremation ashes shall be done by the Town.
- (1) One regular and one cremains burial will be allowed in one grave.
  - (2) Four cremains burials will be allowed in one grave.
- H. No internment shall be allowed without a permit furnished by the Funeral Director, properly issued by the Registrar of Vital Statistics, on the prescribed form provided by the New York State Department of Health. Payment for burial services shall accompany the burial permit. No prepayment for burial services will be allowed.
- I. Corner posts or markers of a suitable material may be installed by the Town of Somerset at the corners of lots upon written request to the Superintendent of Grounds. A lot is considered a group of four consecutive graves owned by one family. Only the Town of Somerset may install such corner markers, and the expense shall be incurred by the grave owner requesting the marker.
- J. The Town Board reserves the right to remove any article found within the grounds of the Town of Somerset cemeteries not permitted in accordance with the rules and regulations set forth herein. In addition, agents and employees of the Town Board shall have the right to enter upon or use any adjoining grave or lot to carry out its responsibilities as to internment or maintenance of the cemetery.
- K. The Town of Somerset assumes no responsibility for monuments, memorials or markers or any other articles of any nature removed from any plot or grave or for damage or destruction of any such articles.
- L. Schedule of internments.
- (1) Hours of burials and disinterments shall be as follows:
    - (a) Weekdays, Monday through Friday, beginning at 9:00 a.m. to be completed by 2:00 p.m.
  - (2) No holiday or weekend burials will be conducted; however, and only in the event that an extremely exigent circumstance exists, the Town will consider such request(s) and weigh the matter accordingly.
    - (a) Such request for holiday or weekend burial should be made to the Town and include the facts and circumstances surrounding the exigent need.
    - (b) The Parks and Recreation Committee shall make a determination to approve or deny a holiday or weekend burial.
    - (c) Any approved weekend or holiday burial shall occur between the hours of 9:00 a.m. and 2:00 p.m. Any holiday or weekend burial shall be completed by 2:00 p.m.
  - (3) Weekend or holiday burials are subject to additional fees as periodically set by the Town Board by resolution.

- M. All Town cemeteries will be open from dawn to dusk.
- N. The following are strictly prohibited within cemetery grounds:
- (1) Dogs.
  - (2) The placing of watering cans, fertilizer, and decorative stones and/or rocks.
  - (3) Children under 12 years of age unless accompanied by parents or adult guardians.
  - (4) Conduct which would result in damage to cemetery property.
  - (5) Picking flowers or breaking or damaging trees, shrubs, or plants.
  - (6) Soliciting business of any kind, or soliciting contracts or orders for monuments, headstones or any other work.
  - (7) Signs, notices or advertisements of contractors, stonecutters, undertakers or others.
  - (8) Selling refreshments of any kind.
  - (9) The discarding of wastepaper, flowers, plants or any other waste articles except by depositing the same in receptacles situated within the cemetery for that purpose.
- O. Lot owners are prohibited from allowing internments to be made on their lots for compensation.
- P. No lot owner may transfer his or her lot without the permission of the Superintendent of Grounds. Said transfer request shall be made in writing to the Town Clerk. Commencing on January 1, 2019, any lot transfer approved by the Superintendent of Grounds shall be subject to a lot transfer fee, periodically set by resolution by the Town Board of the Town of Somerset.
- Q. All sales of graves and internments are final and cannot be reconveyed or sold back to the Town.



§ 82-1

§ 82-2

**§ 82-2. Fee schedule.**

The fees for cemetery services for the sale of graves and interments shall be established periodically by the Town Board by resolution, which fees shall be incorporated herein and made part of. A copy of the current fees may be obtained from the Town Clerk.





§ 82-2

§ 82-3

**§ 82-3. Collection of fees.**

The Town Clerk shall be responsible for collecting and turning over to the Town all internment fees and consideration received for the sale of graves.



§ 82-3

§ 82-4

**§ 82-4. Penalties for offenses.**

Any person or persons, association or corporation committing an offense against any provision of § 82-1 of this chapter or any subsection thereof shall be guilty of a violation of this chapter punishable by a fine not exceeding \$25 for each such violation.



**Chapter 86**

**DEVELOPMENT FEES**



§ 82-4

§ 86-1

**[HISTORY: Adopted by the Town Board of the Town of Somerset 12-12-1978; amended in its entirety 9-10-1996 by L.L. No. 2-1996. Subsequent amendments noted where applicable.]**

**§ 86-1. Fees.**

Development fees, including fees for building permits, shall be set forth from time to time by resolution of the Town Board.<sup>15</sup>

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15. Editor's Note: The current fee schedule is on file in the Town Clerk's office.





**Chapter 92**  
**(RESERVED)**



§ 86-1

[Former Ch. 92, Environmental Quality Review, adopted 5-10-1977, as amended, was repealed 5-14-2013 by L.L. No. 1-2013.]

§ 86-1

## Chapter 96

### EXCAVATIONS



§ 86-1

**[HISTORY: Adopted by the Town Board of the Town of Somerset 5-10-1988 by L.L. No. 1-1988. Amendments noted where applicable.]**

§ 86-1

**GENERAL REFERENCES**

**Zoning — See Ch. 205.**



**§ 96-1. Intent.**

- A. This chapter is adopted to protect the health, safety and welfare of residents of the Town of Somerset and is intended to mitigate adverse impacts which may be caused by excavation of material within the Town of Somerset.
- B. This chapter shall regulate the excavation of materials, as defined herein, within the territory of the Town of Somerset, outside of the Village of Barker, and is intended to control the location of such excavation, together with the operation of such excavation, where permitted herein.





**§ 96-2. Definitions.**

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

**APPLICANT** — That person making application for a permit and who is responsible for fulfilling the requirements for the restoration plan and all rules and regulations promulgated hereunder. If the "applicant" is other than the property owner, written proof must be presented showing authorization from the property owner to the "applicant."

**APPURTENANT ACTIVITIES** — All on-site operations involved in the treatment, processing or further fabrication of soil, sand, gravel or natural deposits, including washing, sedimentation ponds, grading, sorting, grinding, concrete batching plants, asphalt mixing plants and aggregate dryers.

**BUFFER** — Trees, hills, fences, berms or other natural or artificial features which are located so as to conceal or separate the excavation site and related activities from other land uses and to reduce the negative effects on these land uses of noise, glare, dust, visual ugliness and other factors associated with the excavation site and related activities.

**EXCAVATION** — A cavity, hole, mine, pit or quarry on land formed by digging, for the purpose of extracting clay, stone, gravel, sand, shale or other natural minerals or the topsoil therefrom.

**FARM** — An area of land of a minimum of 10 acres which is used for gain in the raising of agricultural products, including crops, livestock, poultry or dairy products, and such use properly zoned.

**MINE** — Any pit or underground workings from which any mineral is produced.

**MINERAL** — Aggregate, clay, gravel, sand, shale, stone or any other solid material of commercial value found in or on the earth.

**OPERATOR** — Any owner, lessee or other person who operates, controls or supervises the operation.

**OWNER** — That person having title to the tract of land.

**PERSON** — Any individual, public or private corporation, political subdivision, government agency, partnership, association, trust, estate or any other legal entity.

**PLANNING BOARD** — The Planning Board of the Town of Somerset.

**RESTORATION** — The reparation to an environmentally acceptable natural state of an area which has undergone physical change due to excavation and related activities as reviewed by the Town Engineer and approved by the Planning Board of the Town of Somerset.

**TOPSOIL** — Surface earth, including the organic layer in which most plants have their roots.



§ 96-2

§ 96-3

**§ 96-3. Applicability.**

This chapter shall apply to all territory within the Town of Somerset, outside of the Village of Barker, whether or not said excavation is governed by any other state or federal rule or regulation. Where more than one law applies, the more stringent shall control.



**§ 96-4. Exceptions.**

The following operations and uses are hereby excepted from the application of this chapter:

- A. Excavations or removal of stone, gravel, clay, sand, shale, subsoil or topsoil incident to highway, sidewalk or driveway construction to the extent that said materials are removed solely from the bed of said highway, sidewalk or driveway.
- B. The moving of stone, gravel, clay, sand, shale, subsoil or topsoil from one part of a premises to another part of the same premises incident to the construction of a building or other improvement of land or incident to landscaping.
- C. Removal of excess stone, gravel, clay, sand, shale, subsoil or topsoil from the area of a subdivision granted final approval by the Planning Board of the Town of Somerset, provided that any such removal is in accordance with plans and specifications approved by said Planning Board.
- D. Construction of sewage disposal systems.
- E. Any noncommercial excavation operation conducted by the Town of Somerset, including the cleaning of ditches by the Highway Department and/or official of the Highway Drainage District or their authorized agent.
- F. Construction of drainage facilities, ponds of less than one acre or farm lagoons of less than five acres on a farm as defined in § 96-2 which must be shown on a plan approved by the Soil Conservation Service of the County of Niagara. Such plan must be reviewed by the Planning Board to determine conformance with this section.



**§ 96-5. Permit requirements; restrictions.**

- A. No excavation shall be permitted within the Town of Somerset in any use district other than the Industrial (I) District or the General Industrial (GI) District under these or any other Town regulations.<sup>16</sup> **[Amended 3-11-1997 by L.L. No. 3-1997; 6-13-2000 by L.L. No. 2-2000]**
- B. Any other excavation permitted herein must be pursuant to a written permit or renewal thereof granted under authority of this chapter, subject to the following conditions:
- (1) Each application for a permit or renewal shall be filed with the Town Clerk of the Town of Somerset, which application shall be in substantially the form of application approved by the Town Board. The applicant must file 12 duplicate copies of such application.
  - (2) Proof by deed or otherwise of ownership of property must be submitted.
  - (3) Statement as to period of time required to complete the proposed excavation, including restoration, must be submitted.
  - (4) Statement as to the zoning classification of the land on which the excavation is to be conducted must be submitted.
  - (5) Survey of the land in question, together with a map showing the surrounding area sufficient to identify adjoining property, must be submitted.
  - (6) A map or survey at a scale of no smaller than one inch to 50 feet and prepared by a licensed professional engineer showing the following must be submitted:
    - (a) Existing topography at contour intervals of five feet or grid elevations to be tied into USGS benchmarks.
    - (b) Soil boring sufficient to demonstrate the type of material to be removed to the depth of the proposed excavation.
    - (c) Surface drainage patterns, including grades of all existing creeks.
    - (d) Location of all proposed and existing underground utilities and facilities.
    - (e) Profiles and cross-sections of premises before and after excavation.
  - (7) Prior to granting of a permit, the applicant must submit the following:
    - (a) Operations plan.
    - (b) Long-form environmental impact statement.
    - (c) Restoration plan.

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16. Editor's Note: See Ch. 205, Zoning.





§ 96-5

§ 96-6

**§ 96-6. Copies of application.**

The Town Clerk shall forward a copy of the application to the following:

- A. Each member of the Town Board.
- B. The Chairman of the Planning Board.
- C. The Town Engineer.
- D. The Town Attorney.
- E. The Town Code Enforcement Officer.



§ 96-6

§ 96-7

**§ 96-7. Public hearing; notice.**

The Planning Board shall hold a public hearing, shall publish a notice in the official newspaper of the Town at least 10 days prior to said public hearing and shall post the same on the official signboard of the Town Somerset.



§ 96-7

§ 96-8

**§ 96-8. Variances.**

After the public hearing, the Planning Board may require any additional conditions to be met in addition to those listed herein, and the Planning Board shall have the power to vary standards and conditions required herein which, in its discretion, would result in unnecessary hardship to the applicant.



**§ 96-9. Standards and conditions for permit.**

- A. In approving or denying an excavation permit, the standards and considerations to be taken into account shall include but not be limited to the following:
- (1) No excavation shall be permitted within 200 feet of any road right-of-way nor within 100 feet of any property line, nor shall any such excavation be permitted within 500 feet of any residential dwelling unit within the Town of Somerset.
  - (2) Whether such excavation and proposed installation plan are in accord with the intent of the Master Plan of the Town of Somerset.
  - (3) Whether such excavation will result in the creation of holes and pits which may be hazardous or dangerous.
  - (4) Whether such excavation will cause soil erosion or depletion of vegetation.
  - (5) Whether such excavation will render the land unproductive or unsuitable for agricultural or developmental purposes.
  - (6) Whether the excavation will impair the aesthetic or natural environment of the area of such excavation or the surrounding area.
  - (7) Whether such excavation will affect the character of surrounding land use.
  - (8) Whether such excavation will create excessive traffic or impair the quality of existing facilities or drainage or will materially injure existing highways or roadways. The Planning Board may require construction of haul roads to alleviate this problem and may require maintenance of said roads to prevent emission of dust.
  - (9) Whether the area excavation can be effectively restored and revegetated.
  - (10) Whether surrounding drainage areas will be adversely affected.
  - (11) Whether such excavation will be in the best interest of the Town of Somerset.
- B. The finding of the Planning Board that any one of the foregoing conditions will be injurious to the general welfare of the people of the Town of Somerset shall be grounds for denial of the special permit.
- C. After consideration of the foregoing conditions, the Planning Board may grant a permit for a period not to exceed two years, which may be extended on a yearly basis without the necessity of further public hearings upon a finding of the Planning Board that such extension will be in the best interest of the people of the Town of Somerset.





§ 96-9  
§ 96-10. (Reserved)<sup>17</sup>

§ 96-10

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17. Editor's Note: Former § 96-10, Performance bond, was repealed 3-11-1997 by L.L. No. 3-1997.



§ 96-10

§ 96-11

**§ 96-11. Certificates of insurance.**

- A. Upon approval of the application but before issuance of the permit, the applicant shall file with the Town Clerk certificates of insurance evidencing the issuance of liability coverage in the following amounts:
  - (1) Bodily injury: \$1,000,000.
  - (2) Property damage: \$1,000,000.
- B. Said insurance must be maintained throughout the term of the permit and until a certificate of compliance has been issued by the Town Board of the Town of Somerset. Said insurance must name the Town of Somerset and its agents as an additional insured.



## A. Permit fees.

- (1) Upon filing of the application, a nonrefundable filing fee of \$2,500 must be paid to the Town of Somerset. Prior to issuance of any permit pursuant to this chapter, the applicant must pay an additional fee based on the following:
  - (a) Up to 50 acres: \$2,500 plus \$200 per acre.
  - (b) Over 50 acres: \$7,500 plus \$100 per acre.
- (2) The total sum shall be deemed a reasonable sum to cover costs of review and administration, no part of which shall be returnable to the applicant. Acreage shall be based on total area for the overall site plan, including newly relocated off-site ditches. Acreage calculations are to be made by the Town Board.
- (3) The fee for renewal of the permit shall be \$2,500 plus \$100 per acre up to 50 acres and \$3,750 plus \$50 per acre over 50 acres.

## B. Excavation fee.

- (1) To assure the Town that the restoration takes place, Town streets are adequately maintained and rebuilt and the improvements required are satisfactorily completed, the Town shall require a fee payment of \$1 per cubic yard of all excavated material removed from the site. This sum shall be billed by the Town and paid by the permittee every six months. The first payment shall be made in advance upon issuance of the permit by payment based on the phasing schedule and computed by the Town Engineer. The Town shall split this excavation fee in two equal parts: 1/2 to be immediately paid over to the Town and used as the Town Board may determine; the other half of the excavation fee shall be placed in an interest-bearing escrow account.
- (2) The amount of the excavation fee, including the upfront payment, shall be determined by the Town. Calculations will be based on original baselines established by the approved surveyor and resurveyed at the semiannual inspection to determine the exact volume removed. The inspection and survey cost shall be paid out of the escrow account, as shall the emergency repairs of any Town roads, including restoration and/or reconstruction of said roads, as well as other reasonable costs incurred by the Town.
- (3) The excavation fee shall be paid within 30 days of receipt of the Town bill. Failure to pay within this time frame shall constitute cancellation of the permit and forfeit of performance bond and escrow fund. At the satisfactory conclusion of the excavation project, including the acceptance by the Town of all utilities and other requirements of this chapter having been met, all unused escrow funds and accumulated interest shall be returned to the developer along with a financial statement of all transactions.



**§ 96-13. Nonconforming preexisting excavation.**

- A. Any excavation which has been discontinued for a period of one or more years shall not thereafter be reestablished, and any additional excavation must be pursuant to the requirements of this chapter.
- B. Except as provided herein, a nonconforming use for excavation may be continued; provided, however, that such use must be terminated on or before the expiration of a period of time after the effective date of this chapter fixed for such termination. In the case of excavations, such period of time shall be a period of one year [12 months] from the date of the filing of this chapter with the Secretary of State.
- C. Any continuation of the excavation subsequent to that one-year period shall be subject to the terms and conditions and all of the requirements of this chapter.





**§ 96-14. SEQR; filing of state permits.**

Prior to the issuance of any permit, the applicant must apply to this Town for state environmental quality review (SEQR),<sup>18</sup> and it is hereby declared that any excavation of material shall be a Type I action, and it is the intention of the Town Board or its agent to act as lead agent in relation to any and all applications under this chapter. Further, prior to the issuance of any permit under this chapter, the applicant must file with the Town all necessary permits required by the State of New York for such excavation when required.

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18. Editor's Note: See Ch. 92, Environmental Quality Review.



§ 96-14

§ 96-15

**§ 96-15. Prohibited acts.**

In the Town of Somerset, no refuse, garbage or toxic waste of any kind shall be deposited in any area excavated pursuant to the requirements of this chapter.



§ 96-15

§ 96-16

**§ 96-16. Control of excavations.**

This chapter shall be deemed an exercise of power of the Town of Somerset to control excavation and to regulate the manner of construction and removal of material from draining and cleaning and operating and using lands in the Town for excavation purposes and to prohibit such excavations which do not comply with these regulations.



**§ 96-17. Penalties for offenses. [Amended 9-10-1996 by L.L. No. 2-1996]**

A violation of any provision of this chapter shall be punishable as a misdemeanor to the extent prescribed by law, and each violation shall result in a fine not exceeding \$500 for the first offense, a minimum of \$500 and a maximum of \$1,000 for a second offense within five years and a minimum of \$1,000 and a maximum of \$2,000 for a third or subsequent violation within five years or imprisonment for a period not less than 15 days and not more than one year, or both. Each week of a continued violation shall constitute a separate violation. Also, the Town Board, after five days' notice to the applicant, may modify, suspend or revoke the permit upon any violation of the conditions of that permit. Further, this chapter will authorize the Town Board to initiate a proceeding in the Supreme Court of the State of New York for injunctive relief in the event of a violation of any of the conditions or requirements contained herein.





§ 96-17

**§ 96-18. Conflicts with other provisions.**

§ 96-18

This chapter shall supersede any inconsistent law, rule or regulation of the Town of Somerset.



§ 96-18

§ 96-19

**§ 96-19. Enforcement.**

The Code Enforcement Officer or any other person designated by the Town Board shall be empowered to enforce this chapter and regulations set forth herein. The issuance of a permit and acceptance of the same by the applicant and landowners shall constitute permission for any authorized Town officer or agent to enter the property subject to the permit for inspection purposes.



**Chapter 98**

**FARMING**



§ 96-19

**[HISTORY: Adopted by the Town Board of the Town of Somerset 4-12-2005 by L.L. No. 2-2005. Amendments noted where applicable.]**

§ 96-19

**GENERAL REFERENCES**

**Flood damage prevention — See Ch. 104.**

**Zoning — See Ch. 205.**

**Subdivision of land — See Ch. 171.**





ARTICLE I  
**Right to Farm**

**§ 98-1. Legislative intent and purposes.**

- A. The Somerset Town Board finds, declares and determines that agriculture is vital to the Town of Somerset, New York, because it is a livelihood and provides employment for agriservice and provides locally produced fresh commodities; agricultural diversity; promotes economic stability; agriculture maintains open space and promotes environmental quality; and agricultural land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in the Town of Somerset, farmers must be afforded protection allowing them the right to farm. When nonagricultural land uses extend into agricultural areas, agricultural operations may become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operation or are discouraged from making investments in agricultural improvements.
- B. It is the purpose of this article to reduce the loss to the Town of Somerset of its agricultural resources by limiting the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

**§ 98-2. Definitions.**

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

**AGRICULTURAL PRACTICES** — All activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm and the on-farm production, processing, and marketing of agricultural products, including, but not limited to, the collection, transportation, distribution, storage, and land application of animal wastes; storage, transportation, and use of equipment for tillage, planting, harvesting, irrigation, fertilization, and pesticide application; storage and use of legally permitted fertilizers, limes, and pesticides, all in accordance with local, state, and federal law and regulations and in accordance with manufacturers' instructions and warnings; storage, use and application of animal feed and foodstuffs; construction and use of farm and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizer, agricultural products, and livestock, for the sale of agricultural products, and for the use of housing for farm labor, as permitted by local and state building codes and regulations, including the construction and maintenance of fences.

**AGRICULTURAL PRODUCTS** — Those products as defined in § 301(2) of Article 25-AA of the Agriculture and Markets Law.

**FARM** — The land, buildings, farm residential buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.

**FARMER** — Any person, organization, entity, association, partnership, or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, hydroponics, the raising of crops, or the raising of livestock, poultry, fur-bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

**GENERALLY ACCEPTED AGRICULTURAL PRACTICES** — Those practices which are feasible, lawful, inherent, customary, necessary, reasonable, normal, safe, and typical to the industry or unique to the commodity as they pertain to the practices listed in the definition of "agricultural practices."

**RESOLUTION COMMITTEE** — A standing committee as appointed by the Town Board made up of a minimum of three Town of Somerset residents, one from the farming community, one from the nonfarming community outside the residential district who does not engage in farming, and one resident that lives in the Residential District not engaged in farming.

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B. Unless specifically defined, the words or phrases used in this article shall be interpreted so as to give them § 98-6 meanings they have in common usage, and to give this article its most reasonable application.

**§ 98-3. Authority to engage in agricultural practices.**

- A. Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within the Town of Somerset at all such times and in all such locations as are reasonably necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, due weight and consideration shall be given to both the traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge and improved technologies.
- B. Agricultural practices conducted on farmland shall not be found to be a public or private nuisance if such agricultural practices are:
  - (1) Reasonable and necessary to the particular farm or farm operation;
  - (2) Conducted in a manner which is not negligent or reckless;
  - (3) Conducted in conformity with generally accepted agricultural practices;
  - (4) Conducted in conformity with all local, state and federal laws and regulations;
  - (5) Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person; and
  - (6) Conducted in a manner which does not unreasonably obstruct the free passage or use of navigable waters or public roadways.
- C. Nothing in this article shall be construed to prohibit an aggrieved party from recovering damages for bodily injury or wrongful death.

**§ 98-4. Duty of Town officers and boards to consider impact of farm operations on certain applications.**

- A. The legislative intent and purposes of this article shall be taken into consideration by each Town officer and/or board in processing any application requesting rezoning, site plan approval and/or special use permit approval.
- B. Such Town officer and/or board shall, as part of its review of such application, determine whether appropriate and reasonable conditions may be prescribed or required, such as deed restriction or notices which would further the purposes and intent of this article as part of an approval of the application.

**§ 98-5. Notice to prospective neighbors/notice of farm use.**

For the purpose of giving due notice of nearby farming uses to proposed new residential areas adjacent to unimproved land then being farmed or suitable therefor, the Planning Board shall require any applicant for an adjacent major or minor subdivision, as a condition of approval of such application, to include a provision in each and every deed conveying all or any portion of the lands thereby subdivided, as well as on filed final subdivision maps, the following record notice to and waiver by grantees of such present or future proximate farming uses, which provision shall be made to run with the land:

"The grantee hereby acknowledges notice that agricultural operations exist throughout the Town of Somerset and that there are presently or may in the future be farm uses adjacent or in close proximity to the within described premises. The grantee acknowledges that farmers have the right to undertake farm practices which may generate dust, odor, fumes, noise, and vibration associated with agricultural practices, and that these practices are permitted under the Town of Somerset Right to Farm Law."

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**§ 98-6. Informal resolution of disputes.**

- A. Should any controversy arise regarding any inconveniences or discomforts occasioned by agricultural operation, including, but not limited to, noise, odors, fumes, dust, the operation of machinery, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and/or pesticides, the parties may submit the controversy to the Resolution Committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.
- B. Any controversy between the parties may be submitted to the Resolution Committee in writing, whose decision shall be advisory only, within 30 days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.
- C. The effectiveness of the Resolution Committee as a forum for resolution of grievances is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
- D. The controversy shall be presented to the Committee by written request of one of the parties within the time limits prescribed above. Thereafter, the Committee may investigate the facts of the controversy but shall, within 30 days, hold a meeting to consider the merits of the matter and within 20 days of the meeting shall render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each party considers to be the pertinent facts.

**§ 98-7. Construction of provisions; effect on other laws.**

This article and the proscriptions and penalties set forth herein are in addition to, and not in lieu of, all other applicable laws, rules and regulations which are therefore continued in full force and effect and unaffected by this article. Conversely, this article is not intended to contradict or contravene any law, rule, regulation, restriction or proscription of the United States, State of New York, County of Niagara or Town of Somerset which may now or hereafter pertain. Accordingly, to the extent this article may be contrary to or inconsistent with such other legislation or regulations, such legislation and regulations shall be deemed continued in full force and effect and unaffected by this article.

**§ 98-8. Severability.**

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

**§ 98-9. Repealer.**

All local laws or parts of local laws inconsistent with this article are hereby repealed, except that such repeal shall not affect the validity of any criminal prosecution or civil action commenced or pending.



**Chapter 104**

**FLOOD DAMAGE PREVENTION**



§ 98-9

**[HISTORY: Adopted by the Town Board of the Town of Somerset 3-24-2021 by L.L. No. 1-2021.<sup>19</sup>  
Amendments noted where applicable.]**

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**19. Editor's Note: This local law also repealed former Ch. 104, Flood Damage Prevention, adopted 7-13-2010 by L.L. No. 2-2010.**





ARTICLE I  
**Statutory Authorization and Purpose**

**§ 104-1. Findings.**

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

**§ 104-2. Statement of purpose.**

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

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

**§ 104-3. 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, 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; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.



ARTICLE II  
Terminology

**§ 104-4. Definitions.**

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

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

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

**AREA OF SHALLOW FLOODING** — A designated AO, AH or VO Zone on a community's FIRM with a one-percent-or-greater annual chance of flooding to an average annual depth of one foot to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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

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

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

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

**BUILDING** — See "structure."

**CELLAR** — Has the same meaning as "basement."

**COASTAL A ZONE** — Area within a SFHA, landward of a V1-V30, VE, or V Zone or landward of an open coast without mapped coastal high hazard areas. In a Coastal A Zone, the principal source of flood must be astronomical tides, storm surges, seiches or tsunamis, not riverine flooding. During the base flood conditions, the potential for breaking wave height shall be greater than or equal to 1 1/2 feet (457 mm). The inland limit of Coastal A Zone is: a) the limit of moderate wave action if delineated on a FIRM; or b) designated by the authority having jurisdiction.

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

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

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

**ELEVATED BUILDING** — A nonbasement building: i) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30,

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

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

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

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

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

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

FLOOD INSURANCE STUDY — See "flood elevation study."

FLOOD or FLOODING —

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

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

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

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

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

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next

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to the proposed walls of a structure.

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**HISTORIC STRUCTURE** — Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior; or
  - (2) Directly by the Secretary of the Interior in states without approved programs.

**LIMIT OF MODERATE WAVE ACTION (LiMWA)** — Line shown on FIRMs to indicate the inland limit of the 1 1/2 foot (457 mm) breaking wave height during the base flood.

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

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

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

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

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

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

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

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

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

**PRINCIPALLY ABOVEGROUND** — At least 51% of the actual cash value of the structure, excluding land value, is aboveground.

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RECREATIONAL VEHICLE — A vehicle which is:

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

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 104-14B of this chapter.

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

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

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

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

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

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

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

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

ARTICLE III  
**General Provisions**

**§ 104-5. Lands to which this chapter applies.**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Somerset, CID No. 360512, Niagara County.

**§ 104-6. Basis for establishing areas of special flood hazard.**

- A. The areas of special flood hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency.
- (1) Flood Insurance Rate Map Panel Nos. 36063C0082F, 36063C0101F, 36063C0102F, 36063C0106F, 36063C0107F, 36063C0126F, 36063C0127F; the effective date of which is May 4, 2021, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.
  - (2) Flood Insurance Rate Map Panel Nos. 36063C0095E, 36063C0103E, 36063C0104E, 36063C0108E, 36063C0109E, 36063C0115E, 36063C0120E, 36063C0140E; the effective date of which is September 17, 2010, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.
  - (3) A scientific and engineering report entitled "Flood Insurance Study, New York, Niagara County," dated May 4, 2021.
- B. The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at the office of the Town Clerk, Town of Somerset, 8700 Haight Road, P.O. Box 368, Barker, New York 14012.

**§ 104-7. Interpretation and conflict with other laws.**

- A. This chapter includes all revisions to the National Flood Insurance Program through October 27, 1997, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- 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.

**§ 104-8. Severability.**

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

**§ 104-9. Penalties for offenses.**

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Somerset from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article VI of this chapter will be declared noncompliant and



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notification sent to the Federal Emergency Management Agency.

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**§ 104-10. Warning and disclaimer of liability.**

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

ARTICLE IV  
**Administration**

**§ 104-11. Designation of local administrator.**

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

**§ 104-12. Floodplain development permit; fees.**

- A. Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 104-6, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the local administrator and may include, but not be limited to, plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing.
- B. Fees. All applications for a floodplain development permit shall be accompanied by an application fee of \$50. In addition, the applicant shall be responsible for reimbursing the Town of Somerset for any additional costs necessary for review, inspection and approval of this project. The local administrator may require a deposit of no more than \$500 to cover these additional costs.

**§ 104-13. Application for permit.**

The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

- A. The proposed elevation, in relation to mean sea level, of the top of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in a special flood hazard area (SFHA). Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- B. The proposed elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of any new or substantially improved structure to be located in Zones V1-V30 or VE, or Zone V if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- C. The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the local administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
- D. A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 104-16C.
- E. A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 104-19.
- F. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The

- § 104-13 applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 104-6, when notified by the local administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained. § 104-14
- G. A technical analysis, by a licensed professional engineer, if required by the local administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
- H. In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or five acres.
- I. In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, designs and specifications, certified by a licensed professional engineer or architect, for any breakaway walls in a proposed structure with design strengths in excess of 20 pounds per square foot.
- J. In Zones V1-V30 and VE, and also Zone V if base flood elevation are available, for all new and substantial improvements to structures, floodplain development permit applications shall be accompanied by design plans and specifications, prepared in sufficient detail to enable independent review of the foundation support and connection components. Said plans and specifications shall be developed or reviewed by a licensed professional engineer or architect, and shall be accompanied by a statement, bearing the signature of the architect or engineer, certifying that the design and methods of construction to be used are in accordance with accepted standards of practice and with all applicable provisions of this chapter.

**§ 104-14. Duties and responsibilities of local administrator.**

Duties of the local administrator shall include, but not be limited to, the following.

- A. Permit application review. The local administrator shall conduct the following permit application review before issuing a floodplain development permit:
- (1) Review all applications for completeness, particularly with the requirements of § 104-13, and for compliance with the provisions and standards of this chapter.
  - (2) Review subdivision and other proposed new development, including manufactured home parks, to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Article V of this chapter and, in particular, § 104-15B.
  - (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The local administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the requirements of Article V of this chapter, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
  - (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.
- B. Use of other flood data.
- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the

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community's Flood Insurance Rate Map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 104-13H, as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this chapter.

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- (2) When base flood elevation data are not available, the local administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this chapter.

C. Alteration of watercourses.

- (1) Notify adjacent municipalities that may be affected and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.
- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

D. Construction stage.

- (1) In Zones A1-A30, AE, AH, and Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (2) In Zones V1-V30, VE, and V if base flood elevation data are available, upon placement of the lowest floor of a new or substantially improved structure, the permit holder shall submit to the local administrator a certificate of elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns). The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. An elevation certificate must also be submitted for a recreational vehicle if it remains on a site 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (3) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

E. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

F. Stop-work orders.

- (1) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 104-9 of this chapter.

§ 104-14 (2) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found non-compliant with the provisions of this chapter and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 104-9 of this chapter. § 104-14

G. Certificate of compliance.

- (1) In areas of special flood hazard, as determined by documents enumerated in § 104-6, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.
- (2) A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.
- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in § 104-14E, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

H. Information to be retained. The local administrator shall retain and make available for inspection, copies of the following:

- (1) Floodplain development permits and certificates of compliance;
- (2) Certifications of as-built lowest floor elevations of structures required pursuant to § 104-14D(1) and (2), and whether the structures contain a basement;
- (3) Floodproofing certificates required pursuant to § 104-14D(1), and whether the structures contain a basement;
- (4) Variances issued pursuant to Article VI of this chapter; and
- (5) Notices required under § 104-14C.
- (6) Base flood elevations developed pursuant to § 104-13H and supporting technical analysis.

ARTICLE V  
**Construction Standards**

**§ 104-15. General standards.**

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 104-6.

- A. Coastal high hazard areas and Coastal A Zones. The following requirements apply within Zones VI-V30, VE and V:
- (1) All new construction, including manufactured homes and recreational vehicles on site 180 days or longer and not fully licensed for highway use, shall be located landward of the reach of high tide.
  - (2) The use of fill for structural support of buildings, manufactured homes or recreational vehicles on site 180 days or longer is prohibited.
  - (3) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.
- B. Subdivision and development proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):
- (1) Proposals shall be consistent with the need to minimize flood damage;
  - (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed to minimize flood damage; and
  - (3) Adequate drainage shall be provided to reduce exposure to flood damage.
  - (4) Proposed development shall not result in physical damage to any other property (e.g., stream bank erosion or increased flood velocities). If requested by the local administrator, the applicant shall provide a technical analysis, by a licensed professional engineer, demonstrating that this condition has been met.
  - (5) Proposed development shall be designed, located, and constructed so as to offer the minimum resistance to the flow of water and shall be designed to have a minimum effect upon the height of floodwater.
  - (6) Any equipment or materials located in a special flood hazard area shall be elevated, anchored, and floodproofed as necessary to prevent flotation, flood damage, and the release of hazardous substances.
  - (7) No alteration or relocation of a watercourse shall be permitted unless:
    - (a) A technical evaluation by a licensed professional engineer demonstrates that the altered or relocated segment will provide conveyance equal to or greater than that of the original stream segment and will not result in physical damage to any other property;
    - (b) If warranted, a conditional revision of the Flood Insurance Rate Map is obtained from the Federal Emergency Management Agency, with the applicant providing the necessary data, analyses, and mapping and reimbursing the Town of Somerset for all fees and other costs in relation to the application; and
    - (c) The applicant provides assurance that maintenance will be provided so that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be diminished.
- C. Encroachments.
- (1) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:

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- (a) The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location; or
  - (b) The Town of Somerset agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Somerset for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Somerset for all costs related to the final map revision.
- (2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § 104-6, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
- (a) A technical evaluation by a licensed professional engineer demonstrates through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or
  - (b) The Town of Somerset agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Somerset for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Somerset for all costs related to the final map revisions.
- (3) In a special flood hazard area (SFHA), if any development is found to increase or decrease base flood elevations, the Town of Somerset shall as soon as practicable, but not later than six months after the date such information becomes available, notify FEMA and the New York State Department of Environmental Conservation of the changes by submitting technical or scientific data in accordance with standard engineering practice.

#### **§ 104-16. Standards for all structures.**

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 104-6.

- A. Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- B. Construction materials and methods.
  - (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
  - (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
  - (3) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE, AO or A, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of 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:

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- (a) A minimum of two openings of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
  - (b) The bottom of all such openings no higher than one foot above grade.
  - (c) Openings not less than three inches in any direction.
  - (d) Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.
- (4) Within Zones V1-V30 and VE, and also within Zone V if base flood elevation are available, new construction and substantial improvements shall have the space below the lowest floor either free from obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The enclosed space below the lowest floor shall be used only for parking vehicles, building access or storage. Use of this space for human habitation is expressly prohibited. The construction of stairs, stairwells and elevator shafts are subject to the design requirements for breakaway walls.

#### C. Utilities.

- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation, or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
- (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### D. Storage tanks.

- (1) Underground tanks shall be anchored to prevent flotation, collapse and lateral movement during conditions of the base flood.
- (2) Aboveground tanks shall be:
  - (a) Anchored to prevent flotation, collapse or lateral movement during conditions of the base flood; or
  - (b) Installed at or above the base flood elevation as shown on the Flood Insurance Rate Map enumerated in § 104-6 plus two feet.



**§ 104-17. Residential structures (except coastal high hazard areas).**

Elevation. The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in §§ 104-15B and C, and 104-16.

- A. Within special flood hazard areas (SFHAs) if base flood elevation data are available, new construction and substantial improvements shall have the top of the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
- B. Within Zone A, when no base flood elevation data are available, a base flood elevation shall be determined by either:
  - (1) Obtain and reasonably use data available from a federal, state, or other source plus two feet of freeboard; or
  - (2) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering practice, plus two feet of freeboard. Determinations shall be undertaken by a registered design professional who shall document that the technical methods used reflect currently accepted engineering practice. Studies, analyses, and computations shall be submitted in sufficient detail to allow thorough review and approval.
- C. Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 104-6 plus two feet of freeboard.
- D. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.

**§ 104-18. Residential structures (coastal high hazard areas and Coastal A Zones).**

The following standards, in addition to the standards in §§ 104-15A and B, and 104-16, apply to new and substantially improved residential structures located in areas of special flood hazard shown as Zones V1-V30, VE or V on the community's Flood Insurance Rate Map designated in § 104-6.

- A. Elevation. New construction and substantial improvements shall be elevated on pilings, columns or shear walls such that the bottom of the lowest horizontal structural member supporting the lowest elevated floor (excluding columns, piles, diagonal bracing attached to the piles or columns, grade beams, pile caps and other members designed to either withstand storm action or break away without imparting damaging loads to the structure) is elevated to or above two feet above base flood elevation so as not to impede the flow of water.
- B. Determination of loading forces. Structural design shall consider the effects of wind and water loads acting simultaneously during the base flood on all building components.
  - (1) The structural design shall be adequate to resist water forces that would occur during the base flood. Horizontal water loads considered shall include inertial and drag forces of waves, current drag forces, and impact forces from waterborne storm debris. Dynamic uplift loads shall also be considered if bulkheads, walls, or other natural or man-made flow obstructions could cause wave runoff beyond the elevation of the base flood.
  - (2) Buildings shall be designed and constructed to resist the forces due to wind pressure. Wind forces on the superstructure include windward and leeward forces on vertical walls, uplift on the roof, internal forces when openings allow wind to enter the house, and upward force on the underside of the house when it is exposed. In the design, the wind should be assumed to blow potentially from any lateral direction relative to the house.
  - (3) Wind loading values used shall be those required by the building code.

## C. Foundation standards.

- (1) The pilings or column foundation and structure attached thereto shall be adequately anchored to resist flotation, collapse or lateral movement due to the effects of wind and water pressures acting simultaneously on all building components. Foundations must be designed to transfer safely to the underlying soil all loads due to wind, water, dead load, live load and other loads (including uplift due to wind and water).
- (2) Spread footings and fill material shall not be used for structural support of a new building or substantial improvement of an existing structure.

## D. Pile foundation design.

- (1) The design ratio of pile spacing to pile diameter shall not be less than 8:1 for individual piles (this shall not apply to pile clusters located below the design grade). The maximum center-to-center spacing of wood piles shall not be more than 12 feet on center under load-bearing sills, beams, or girders.
- (2) Pilings shall have adequate soil penetration (bearing capacity) to resist the combined wave and wind loads (lateral and uplift) associated with the base flood acting simultaneously with typical structure (live and dead) loads, and shall include consideration of decreased resistance capacity caused by erosion of soil strata surrounding the piles. The minimum penetration for foundation piles is to an elevation of five feet below mean sea level (msl) datum if the BFE is +10 msl or less, or to be at least 10 feet below msl if the BFE is greater than +10 msl.
- (3) Pile foundation analysis shall also include consideration of piles in column action from the bottom of the structure to the stable soil elevation of the site. Pilings may be horizontally or diagonally braced to withstand wind and water forces.
- (4) The minimum acceptable sizes for timber piles are a tip diameter eight inches for round timber piles and eight by eight inches for square timber piles. All wood piles must be treated in accordance with requirements of EPEE-C3 to minimize decay and damage from fungus.
- (5) Reinforced concrete piles shall be cast of concrete having a twenty-eight-day ultimate compressive strength of not less than 5,000 pounds per square inch, and shall be reinforced with a minimum of four longitudinal steel bars having a combined area of not less than 1% nor more than 4% of the gross concrete area. Reinforcing for precast piles shall have a concrete cover of not less than 1 1/4 inches for No. 5 bars and smaller and not less than 1 1/2 inches for No. 6 through No. 11 bars. Reinforcement for piles cast in the field shall have a concrete cover of not less than two inches.
- (6) Piles shall be driven by means of a pile driver or drop hammer, jetted, or augered into place.
- (7) Additional support for piles in the form of bracing may include lateral or diagonal bracing between piles.
- (8) When necessary, piles shall be braced at the ground line in both directions by a wood timber-grade beam or a reinforced concrete-grade beam. These at-grade supports should be securely attached to the piles to provide support even if scoured from beneath.
- (9) Diagonal bracing between piles, consisting of two-inch-by-eight-inch (minimum) members bolted to the piles, shall be limited in location to below the lowest supporting structural member and above the stable soil elevation, and aligned in the vertical plane along pile rows perpendicular to the shoreline. Galvanized steel rods (minimum diameter one-half inch) or cable type bracing is permitted in any plane.
- (10) Knee braces, which stiffen both the upper portion of a pile and the beam-to-pile connection, may be used along pile rows perpendicular and parallel to the shoreline. Knee braces shall be two-by-eight lumber bolted to the sides of the pile/beam, or four-by-four or larger braces framed into the pile/beam. Bolting shall consist of two five-eighths-inch galvanized steel bolts (each end) for two-by-eight

- § 104-18 members, or one five-eighths-inch lag bolt (each end) for square members. Knee braces shall not extend more than three feet below the elevation of the base flood. § 104-18
- E. Column foundation design.
- (1) Masonry piers or poured-in-place concrete piers shall be internally reinforced to resist vertical and lateral loads, and be connected with a movement-resisting connection to a pile cap or pile shaft.
- F. Connectors and fasteners.
- (1) Galvanized metal connectors, wood connectors, or bolts of size and number adequate for the calculated loads must be used to connect adjoining components of a structure. Toe nailing as a principal method of connection is not permitted. All metal connectors and fasteners used in exposed locations shall be steel, hot-dipped galvanized after fabrication. Connectors in protected interior locations shall be fabricated from galvanized sheet.
- G. Beam to pile connections.
- (1) The primary floor beams or girders shall span the supports in the direction parallel to the flow of potential floodwater and wave action and shall be fastened to the columns or pilings by bolting, with or without cover plates. Concrete members shall be connected by reinforcement, if cast in place, or (if precast) shall be securely connected by bolting and welding. If sills, beams, or girders are attached to wood piling at a notch, a minimum of two five-eighths-inch galvanized steel bolts or two hot-dipped galvanized straps 3/16 inch by four inches by 18 inches each bolted with two one-half-inch lag bolts per beam member shall be used. Notching of pile tops shall be the minimum sufficient to provide ledge support for beam members without unduly weakening pile connections. Piling shall not be notched so that the cross section is reduced below 50%.
- H. Floor and deck connections.
- (1) Wood two-by-four-inch (minimum) connectors or metal joist anchors shall be used to tie floor joists to floor beams/girders. These should be installed on alternate floor joists, at a minimum. Cross bridging of all floor joists shall be provided. Such cross bridging may be one-by-three-inch members, placed eight feet on center maximum, or solid bridging of same depth as joist at same spacing.
- (2) Plywood should be used for subflooring and attic flooring to provide good torsional resistance in the horizontal plane of the structure. The plywood should not be less than three-fourths-inch total thickness, and should be exterior grade and fastened to beams or joists with 8d annular or spiral thread galvanized nails. Such fastening shall be supplemented by the application of waterproof industrial adhesive applied to all bearing surfaces.
- I. Exterior wall connections.
- (1) All bottom plates shall have any required breaks under a wall stud or an anchor bolt. Approved anchors will be used to secure rafters or joists and top and bottom plates to studs in exterior and bearing walls to form a continuous tie. Continuous 15/32-inch or thicker plywood sheathing — overlapping the top wall plate and continuing down to the sill, beam, or girder — may be used to provide the continuous tie. If the sheets of plywood are not vertically continuous, then two-by-four nailer blocking shall be provided at all horizontal joints. In lieu of the plywood, galvanized steel rods of one-half-inch diameter or galvanized steel straps not less than one inch wide by 1/16 inch thick may be used to connect from the top wall plate to the sill, beam, or girder. Washers with a minimum diameter of three inches shall be used at each end of the one-half-inch round rods. These anchors shall be installed no more than two feet from each corner rod, no more than four feet on center.
- J. Ceiling joist/rafter connections.

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- (1) All ceiling joists or rafters shall be installed in such a manner that the joists provide a continuous tie across the rafters. Ceiling joists and rafters shall be securely fastened at their intersections. A metal or wood connector shall be used at alternate ceiling joist/rafter connections to the wall top plate.
- (2) Gable roofs shall be additionally stabilized by installing two-by-four blocking on two-foot centers between the rafters at each gable end. Blocking shall be installed a minimum of eight feet toward the house interior from each gable end.

K. Projecting members.

- (1) All cantilevers and other projecting members must be adequately supported and braced to withstand wind and water uplift forces. Roof eave overhangs shall be limited to a maximum of two feet and joist overhangs to a maximum of one foot. Larger overhangs and porches will be permitted if designed or reviewed and certified by a registered professional engineer or architect.

L. Roof sheathing.

- (1) Plywood, or other wood material, when used as roof sheathing, shall not be less than 15/32 inch in thickness, and shall be of exterior sheathing grade or equivalent. All attaching devices for sheathing and roof coverings shall be galvanized or be of other suitable corrosion-resistant material.
- (2) All corners, gable ends, and roof overhangs exceeding six inches shall be reinforced by the application of waterproof industrial adhesive applied to all bearing surfaces of any plywood sheet used in the sheathing of such corner, gable end, or roof overhang.
- (3) In addition, roofs should be sloped as steeply as practicable to reduce uplift pressures, and special care should be used in securing ridges, hips, valleys, eaves, vents, chimneys, and other points of discontinuity in the roofing surface.

M. Protection of openings.

- (1) All exterior glass panels, windows, and doors shall be designed, detailed, and constructed to withstand loads due to the design wind speed of 75 mph. Connections for these elements must be designed to transfer safely the design loads to the supporting structure. Panel widths of multiple panel sliding glass doors shall not exceed three feet.

N. Breakaway wall design standards.

- (1) The breakaway wall shall have a design safe loading resistance of not less than 10 and not more than 20 pounds per square foot, with the criterion that the safety of the overall structure at the point of wall failure be confirmed using established procedures. Grade beams shall be installed in both directions for all piles considered to carry the breakaway wall load. Knee braces are required for front row piles that support breakaway walls.
- (2) Use of breakaway wall strengths in excess of 20 pounds per square foot shall not be permitted unless a registered professional engineer or architect has developed or reviewed the structural design and specifications for the building foundation and breakaway wall components, and certifies that: 1) the breakaway walls will fail under water loads less than those that would occur during the base flood; and 2) the elevated portion of the building and supporting foundation system will not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values shall be those required by the building code.

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**§ 104-19. Nonresidential structures (except coastal high hazard areas).**

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of special flood hazard, in addition to the requirements in §§ 104-15B and C, and 104-16.

- A. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure, together with attendant utility and sanitary facilities, shall either:
- (1) Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
  - (2) Be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood elevation must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- B. Within Zone AO, new construction and substantial improvements of nonresidential structures shall:
- (1) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus two feet (at least three feet if no depth number is specified); or
  - (2) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in § 104-19A(2).
  - (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing certificate or other certification shall be provided to the local administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of § 104-19A(2), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- C. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- D. Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

**§ 104-20. Nonresidential structures (coastal high hazard areas and Coastal A Zones).**

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

**§ 104-21. Manufactured homes and recreational vehicles.**

The following standards in addition to the standards in §§ 104-15 and 104-16 apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

- A. Recreational vehicles.
- (1) Recreational vehicles placed on sites within Zones A, A1-A30, AE, AH, AO, V1-V30, V, and VE shall either:

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- (a) Be on site fewer than 180 consecutive days;
  - (b) Be fully licensed and ready for highway use; or
  - (c) Meet the requirements for manufactured homes in § 104-21B, C and D.
- (2) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- B. A manufactured home that is placed or substantially improved in Zones A1-A30, AE, and AH shall be elevated on a permanent foundation such that the bottom of the frame of the manufactured home chassis is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited.
- C. Within Zone A, when no base flood elevation data are available, a base flood elevation shall be determined by either:
- (1) Obtain and reasonably use data available from a federal, state, or other source plus two feet of freeboard; or
  - (2) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering practice, plus two feet of freeboard. Determinations shall be undertaken by a registered design professional who shall document that the technical methods used reflect currently accepted engineering practice. Studies, analyses, and computations shall be submitted in sufficient detail to allow thorough review and approval.
  - (3) Elevation on piers consisting of dry stacked blocks is prohibited.
- D. Within Zone AO, the bottom of the frame of the manufactured home chassis shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § 104-6 plus two feet (at least three feet if no depth number is specified). Elevation on piers consisting of dry stacked blocks is prohibited.
- E. Within V or VE, manufactured homes must meet the requirements of § 104-18.
- F. The foundation and anchorage of manufactured homes to be located in identified floodways shall be designed and constructed in accordance with ASCE 24.

**§ 104-22. Accessory structures including detached garages.**

This section shall apply to new and substantially improved accessory structures, including detached garages, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 104-6.

- A. Within Zones A1-A30, AE, AO, AH, A, accessory structures must meet the standards of § 104-16A.
- B. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, areas below two feet above the base flood elevation shall be constructed using methods and practices that minimize flood damage.
- C. Within Zones AO and Zone A, if base flood elevation data are not available, areas below three feet above the highest adjacent grade shall be constructed using methods and practices that minimize flood damage.
- D. Structures must be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in accordance with § 104-16C.

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- E. Within Zones V1-V30, VE, and V, accessory structures (unless properly elevated to the base flood elevation plus two feet on piles or columns) must be limited to small, low-value structures that are disposable. If a community wishes to allow unelevated accessory buildings, it must define "small" and "low cost."
- F. Within Zones V1-V30, VE, and V, unelevated accessory buildings must be unfinished inside, constructed with flood-resistant materials, and used only for storage.
- G. Within Zones V1-V30, VE, and V, when an accessory building is placed, the design professional must determine the effect that debris from the accessory building will have on nearby buildings. If the accessory building is large enough that its failure could create damaging debris or divert flood flows, it must be elevated above the base flood elevation plus two feet.

ARTICLE VI  
**Variance Procedure**

**§ 104-23. Appeals Board.**

- A. The Zoning Board of Appeals as established by the Town of Somerset shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The necessity to the facility of a waterfront location, where applicable;
  - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - (7) The compatibility of the proposed use with existing and anticipated development;
  - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
  - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
  - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- E. Upon consideration of the factors of § 104-23D and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The local administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

**§ 104-24. Conditions for variances.**



§ 104-24

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- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items in § 104-23D(1) through (12) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
- (1) The proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure; and
  - (2) The variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
- (1) The criteria of Subsections A, D, E and F of this section are met; and
  - (2) 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.
- D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:
- (1) A showing of good and sufficient cause;
  - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- G. Notice.
- (1) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:
    - (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
    - (b) Such construction below the base flood level increases risks to life and property.
  - (2) Such notification shall be maintained with the record of all variance actions as required in § 104-14H of this chapter.

**Chapter 109**  
**(RESERVED)**



§ 104-24

[Former Ch. 109, Freshwater Wetlands, adopted 8-30-1976, as amended, was repealed 5-14-2013 by L.L. No. 1-2013.]

§ 104-24

## **Chapter 111**

### **GAMES OF CHANCE**



**[HISTORY: Adopted by the Town Board of the Town of Somerset 7-13-1993. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Bingo — See Ch. 71.**



**§ 111-1. Title.**

This chapter shall be entitled the "Games of Chance Ordinance of the Town of Somerset."





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

**AUTHORIZED ORGANIZATION** — An authorized organization as defined in Subdivision 4 of § 186 of the General Municipal Law as follows: "Authorized organization" shall mean and includes any bona fide religious or charitable organization or bona fide educational or service organization or bona fide organization of veterans or volunteer firemen, which by its charter, certificate of incorporation, constitution or act of the Legislature, shall have among its dominant purposes one or more of the lawful purposes as defined in this chapter, provided that each shall operate without profit to its members and provided that each such organization has engaged in serving one or more of the lawful purposes as defined in this chapter for a period of three years immediately prior to applying for a license under this chapter. No organization shall be deemed an "authorized organization" which is formed primarily for the purpose of conducting games of chance and the distribution of the proceeds thereof to itself or any other organization and which does not devote at least 75% of its activities to other purposes set forth in this definition. No political party shall be deemed an authorized organization.

**GAME OF CHANCE** — A game of chance as defined in Subdivisions 3 and 3-a of § 186 of the General Municipal Law.



§ 111-2

§ 111-3

**§ 111-3. Games of chance authorized.**

Authorized organizations may, upon obtaining a license from the Town Clerk, conduct games of chance within the Town of Somerset as provided in Article 9-A of the General Municipal Law and as provided further in this chapter. Such games of chance shall be conducted in accordance with the laws of the State of New York and within the rules and regulations adopted by New York State Racing and Wagering Board and pursuant to this chapter.



§ 111-3

§ 111-4

**§ 111-4. Restrictions.**

The conduct of games of chance shall be subject to the restrictions imposed by § 189 of the General Municipal Law.



§ 111-4

§ 111-5

**§ 111-5. Sunday games.**

Games of chance may be conducted on Sunday pursuant to this chapter. However, no games of chance shall be conducted on Easter Sunday, Christmas Day or New Year's Eve.





§ 111-5

§ 111-6

**§ 111-6. Enforcement.**

The Niagara County Sheriff shall exercise control over and supervision of all games of chance conducted under duly authorized license. The Sheriff shall have all those powers and duties set forth in and for the enforcement of Article 9-A of the General Municipal Law.



**HIGHWAY CONSTRUCTION STANDARDS**



§ 111-6

**[HISTORY: Adopted by the Town Board of the Town of Somerset 12-8-1998 by L.L. No. 4-1998. Amendments noted where applicable.]**

§ 111-6

**GENERAL REFERENCES**

Notification of defects — See Ch. 133.

Subdivision of land — See Ch. 171.

Streets and sidewalks — See Ch. 167.



**§ 114-1. Definitions.**

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

HIGHWAY — Includes streets, alleys, roads and roadways that are proposed for dedication to the Town.





**§ 114-2. Specifications for dedication of Town highways.**

- A. No highway as defined in this chapter shall be accepted by the Town until the following terms and conditions have been met, without cost or expense to the Town:
- (1) The highway right-of-way and construction plans shall be prepared by a professional engineer and shall include a survey of lands to be conveyed prepared by a professional land surveyor. Both professionals shall be licensed to practice in New York State.
  - (2) The highway right-of-way shall be approved by the Town Highway Superintendent and the Town Engineer. All highway rights-of-way shall be four rods in width.
  - (3) On all dead-end highways, a turnaround shall be provided as required by the Town highway construction standards set forth in § 114-3 et seq. Dedication of right-of-way or easement shall be provided as applicable.
  - (4) A drainage report containing calculations and proposed culverts, ditches and other drainage structures or facilities shall be submitted for review and approval of the Highway Superintendent and Town Engineer.
  - (5) All highway improvements, including but not limited to the road base, pavement and drainage facilities, shall be constructed in accordance with the Town highway construction standards set forth in § 114-3 et seq.
  - (6) All highways considered to be a part of a subdivision shall meet all requirements for subdivision of land<sup>20</sup> and the requirements of this chapter.
- B. All rights-of-way dedicated to the Town of Somerset shall be without cost to the Town. The Town, in its sole discretion and as a condition of acceptance of said dedication, may require the construction of the base and pavement to be done by the Town Highway Superintendent or by an approved independent contractor pursuant to the provisions of the Town Law, and the entire expense thereof shall be paid solely by the applicants.
- C. The Town Board reserves the right to accept or reject offers of dedication in its sole discretion.

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20. Editor's Note: See Ch. 171, Subdivision of Land.



**§ 114-3. Construction permit required; fee.**

- A. No construction work of any drainage facilities or pavement shall be started without a construction permit. Said permit will not be issued until a subdivision map or a road dedication map has been approved by the Town Board. No subdivision map or road dedication map shall be offered to the Town Board for its approval until plans and specification for the necessary improvements have been submitted to and reviewed by the Highway Superintendent and the Town Engineer.
- B. Application for the construction permit for drainage facilities and pavements with appurtenances shall be made to the Town of Somerset Highway Superintendent. For highways connecting to state and/or county highways, approval by the respective agency shall be indicated. Each construction permit application shall be accompanied by two complete sets of previously approved design plans and specifications. The applicant must also submit a time schedule for the work to be completed in accordance with the requirements of these standards.
- C. Permits will be issued upon payment of a fee to be established by the Town Board. All construction work which is done without the required permit and which is in conflict with the requirements of the Town Board or is not in conformance with approved plans and specifications shall be removed or changed to meet these requirements at the expense of the applicant.



**§ 114-4. Rights-of-way.**

- A. The rights-of-way for highway purposes shall have a minimum width of 66 feet for their entire length and shall intersect at an angle of not less than 75°. There shall be no dead-end roads with turnarounds unless a reserve of sixty-six-foot-wide right-of-way is provided for the future extension of a Town highway to an adjacent property.
- B. Culs-de-sac are discouraged, but if needed for approved site development, shall conform to the minimum standards contained herein. Offsets, irregularities and short curves in the right-of-way limits can be sufficient cause for the Town Board to refuse issuance of a construction permit.



§ 114-4

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**§ 114-5. Acceptance.**

The Town Board will accept only those rights-of-way which contain all the necessary roads, shoulders or gutters, storm sewers and appurtenant structures which have been constructed in accordance with the specifications. The rights-of-way located in areas served by a sanitary sewer system and/or water distribution system must contain the facilities constructed in accordance with all permitting authorities.





§ 114-5

§ 114-6

**§ 114-6. Responsibilities of applicant.**

The applicant shall be held responsible for all phases of the construction work shown on the application for the construction permits and shall be required to protect all adjoining property, existing highway facilities and utilities. The applicant shall be required to repair or replace any such properties or facilities damaged or destroyed by him or his employees through the construction operations.



§ 114-6

§ 114-7

**§ 114-7. Legal description and surveys.**

Legal deed conveyances to the Town of Somerset for rights-of-way shall include a fully dimensioned plot giving all center-line data and measurements in accordance with accepted surveying practices. The plot shall be drawn accurately to a scale of no less than one inch to 100 feet on a sheet, sizes of 8 1/2 inches by 11 inches or 11 inches by 17 inches or 22 inches by 34 inches or 24 inches by 36 inches. The legal deeds must be accompanied by three copies of the plot.



**§ 114-8. Observation of construction; certificate of completion.**

- A. Observation of construction to obtain compliance with these standards and any special conditions of the permit for construction shall be in accordance with the following procedure:
- (1) Any person receiving a permit for construction under these standards shall be required to pay for the services of an observer appointed by the Town during the installation of the improvements and shall, before commencing the work, furnish a bond or cash deposit in an amount to be determined by the Town Board to insure payment of such observer.
  - (2) The applicant shall be required to notify the Highway Superintendent in writing before commencing with the work. The Superintendent and the designated observer shall be notified by the applicant no less than 24 hours before the commencement of work and shall keep the observer advised as to the work installation schedule in order that the work may be properly and fully observed at all stages of the installation. Any construction work that is done without the required observation shall be subject to verification of compliance, and the expense for this shall be borne by the applicant.
- B. Upon satisfactory completion of the work, the applicant will be issued a certificate at completion by the appropriate Town Superintendent.



§ 114-8

§ 114-9

**§ 114-9. Clearing and excavation.**

- A. Clearing, except as otherwise specified, includes the removal or destruction of all fences, trees, roots, stumps, hushes, timbers and decayed or growing organic matter above and below the surface of the ground within the limits of the work in the right-of-way to the extent shown on the drawings or as determined by the Superintendent.
- B. The applicant shall use every precaution to prevent injury to buildings, roads, curbs, pipes or poles, trees and shrubs and utilities. He shall repair or replace any damage done due to negligence on his part. Materials removed, unless otherwise specified, shall become the property of the applicant and shall be removed from the job site.
- C. Excavation shall consist of the loosening, loading, depositing rough and fine grading and the compacting of all materials of every name and nature, wet or dry, necessary for the preparation of subgrades or roads, forming ditches, trenches and pits for structures, to grade the site to the elevation shown on the drawings or as required to make embankments and fills for obtaining material from borrow pits, other than borrowed topsoil or for any other operation necessary to complete the work of the contract.





§ 114-9

§ 114-10

**§ 114-10. Road grades.**

- A. All road grades shall be established in a manner to provide maximum safety. The minimum acceptable grade is six inches per 100 feet or 0.5%, and the maximum acceptable grade is 10 feet per 100 feet or 10%.
- B. All changes in grade shall be accomplished by vertical curves, and the maximum change in grade shall not exceed 10%. All vertical curves shall be separated by a minimum of 50 feet of tangent grade. The minimum length of vertical curve for the changes in grade is shown in the following table:

<b>Change In Grade</b>	<b>Minimum Vertical Curve (feet)</b>
1%	50
2%	100
3%	150
4%	200
5%	250
6%	300
7%	350
8%	400
9%	450
10%	500

- C. Where topography is such as to create severe hardships, the Highway Superintendent may grant variations to these requirements.



**§ 114-11. Drainage ditches; culvert pipes.**

- A. Proper drainage on new roadbeds shall be provided as shown on the typical section. Provisions shall be made to have all tiles and storm sewers drain to a natural drainage area. Where it becomes necessary to transfer drainage from one side of the road to the other, proper crossovers of N-12 high-density polyethylene (HDPE) smooth interior, corrugated galvanized iron or concrete pipe shall be used, subject to the approval of the Highway Superintendent.
- B. Minimum size of culvert pipe is to be 12 inches in diameter. All pipe shall be designed to support an H-20 loading. Corrugated galvanized iron pipe shall be coated inside and outside; arch pipe shall have a paved invert. Culvert pipe crossing the road pavement shall have 12 inches minimum cover from the road subbase. Culverts crossing driveways shall have 12 inches minimum cover.
- C. On crossovers, precaution should be used not to overload natural drainage ditches with an excessive amount of drainage. Headwalls and/or end sections shall be constructed to Town specifications on all drainage lines within the right-of-way to prevent erosion and washouts of fill around drainage pipes.
- D. Catch basins, gutters, underdrains and preformed end sections shall be as shown on drawings. When unsatisfactory conditions exist and extra drainage is required, it shall be provided by the applicant when directed by the Highway Superintendent.
- E. When roadside ditches are deemed acceptable, they shall have a minimum grade of 0.33%. Ditches shall be located within the right-of-way, unless otherwise approved to be located in an easement area. Storm sewers shall be provided in areas that proper shoulder width and ditch slopes cannot be maintained due to ditch depths.



**§ 114-12. Preparation of subgrade.**

- A. Subgrades for roadways shall be accurately shaped and crowned to the grades and levels shown on the drawings or as directed. In the process of preparing subgrades for roadways, all topsoil must be removed on both present grade levels and where fill is required to raise the present grade levels.
- B. If fill is required, it is to be applied in not more than eight-inch layers and rolled before additional fill is added. Fill for subgrades for pavement shall be compacted with an approved self-propelled roller weighing not less than 10 tons. Subgrades shall be rolled only during the time of optimum moisture content and to the satisfaction of the Highway Superintendent.
- C. In cases where soft clay, quicksand, muck, wet spots or other unsuitable material is encountered in the subgrade, it shall be removed to the limits designated by the Highway Superintendent and properly drained with six-inch perforated pipe weeps to the storm drainage system and then refined with dry material or granular materials as directed by the Highway Superintendent and then properly compacted to maximum density and bearing capacity. Granular material shall be ROC stone, as acceptable to the Highway Superintendent.
- D. The subgrade material shall be spread in such depths that the thickness of any layer, after compaction, shall have a maximum of eight inches. Water shall be added in such amounts as the Highway Superintendent may consider necessary to secure satisfactory compaction.
- E. When the moisture content of the layer is within the limits for proper compaction, the entire surface shall be rolled with a pneumatic-tired roller having an operating weight of between 1,000 and 2,500 pounds per tire or a smooth-wheel roller having a minimum weight of 10 tons. Each portion of the layer shall be covered by a minimum of eight passes of the roller.
- F. For heavier and more efficient types of rolling equipment, the minimum number of passes required on all portions of the layer shall be determined by the Highway Superintendent after appropriate field tests to evaluate the efficiency of the equipment. In limited areas where the use of a roller is impractical, approved mechanical tampers shall be used to compact the material.
- G. After compaction, the course shall be true to grade and cross section. Any depressions that develop during rolling shall be filled with additional granular material and further rolled until the entire surface of the subgrade is true to grade and cross section. Should subgrade become churned up into or mixed with the granular material through any cause whatsoever, the applicant shall, at his own expense, remove such mixture of soil and granular material and replace with additional granular material.



**§ 114-13. Drainage.**

- A. Minimum drainage requirements shall consist of four-inch perforated pipe in stone or approved equal for underdrains at each edge of pavement with underdrain relief, not more than 400 feet to the storm drainage system, as shown on the Highway Standard Detail. Where extraordinary conditions exist, additional drainage provisions, as directed by the Highway Superintendent, shall be provided.
- B. All waterlines, storm sewer and sanitary sewers shall be installed prior to the work or preparing the subbase and the pavement drainage. Where waterlines, storm sewers and sanitary sewers are to cross the roadway, such crossings shall be made before the placement of any pavement material.
- C. Trenches for these utility crossings in the pavement and gutter or shoulder areas shall be backfilled with No. 2 run-of-crusher stone or slag from the elevation of the initial bedding of the utility to the elevation of the subgrade. These crossings of the pavement areas shall be reviewed by the Highway Superintendent or his designated representative before the commencing of paving operations.
- D. All storm sewer pipe, catch basins, manholes, grating, etc., will be provided as shown on the construction standard detail drawings.





§ 114-13

§ 114-14

**§ 114-14. Filter fabric.**

After the subgrade has been prepared, the filter fabric shall be installed as shown on the highway cross-section detail and in accordance with New York State Department of Transportation (NYSDOT) standards.



§ 114-14

§ 114-15

**§ 114-15. Gutters.**

If gutters are required after the subgrade has been prepared, the filter fabric placed, and the proper drainage provided and the Highway Superintendent has reviewed the work for compliance with the plans, the first six-inch bottom course may be placed and compacted for the total width of the pavement, or not less than four feet in width centered over the drain tile. The contractor shall then place the forms and construct the standard gutters. After the forms are pulled, the outside voids shall be backfilled before the second course is spread and compacted.



**§ 114-16. Placing bottom courses.**

- A. After the subgrade has been prepared, the filter fabric placed and the proper drainage and gutters, if required, have been provided and the Highway Superintendent has reviewed the work for compliance with the plans, a course of approved run-of-crusher stone shall be evenly spread with spreader equipment to an even thickness so when rolled it will produce two courses with a compacted thickness of not less than six inches for each course.
- B. The roller shall be an approved self-propelled type weighing not less than 10 tons. Rolling of each course shall begin at the sides and continue toward the center of the road. Rolling shall be repeated until the stone particles are thoroughly keyed in place and until there is no movement or weaving of the course ahead of the roller.
- C. It is imperative that the second course conform accurately to the line and grade specified and shown on the plans. If the subgrade material shall become churned up into or mixed with the bottom course through any reason whatsoever, the applicant shall, at his own expense, remove such mixture of subgrade material and crushed stone or slag and replace with new crushed stone or slag placed in accordance with the procedure outlined above.
- D. After proper compaction has been attained for each course and inspected and approved by the Highway Superintendent, the surface of each course shall then be immediately filled (chinked) with Clean No. 1 broken stone, after which it shall be compacted with a self-propelled roller weighing not less than 10 tons.
- E. After compaction, the top surface of these courses shall not extend above the theoretical grade elevation for these courses.



§ 114-16

§ 114-17

**§ 114-17. Placing of top courses (bituminous plant mix).**

- A. After the bottom courses are properly prepared, the contractor shall install the bituminous plant mix surface pavement, as per Section 401 of the New York State Department of Transportation Specifications.
- B. The surface pavement shall consist of four inches followed with a top course of 403.16 with a compacted thickness of two inches. A ten-ton self-propelled, steel-wheeled roller or an approved equal shall be used to compact these surface courses.
- C. The surface shall be tested with a sixteen-foot straight edge or string line placed parallel to the center line of the highway or on any portion of the highway surface. Variations exceeding 1/4 inch shall be satisfactorily eliminated or the pavement relaid at the expense of the applicant.





§ 114-17

§ 114-18

**§ 114-18. Variance by Highway Superintendent.**

The Town Highway Superintendent may vary or modify any of the requirements herein which he determines to be in the best interest of the Town of Somerset.



**Chapter 118**

**INFRASTRUCTURE PRESERVATION LAW**



**[HISTORY: Adopted by the Town Board of the Town of Somerset 2-24-2016 by L.L. No. 2-2016.<sup>21</sup> § 114-18  
Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Development fees — See Ch. 86.**

**Highway construction standards — See Ch. 114.**

**Excavations — See Ch. 96.**

**Streets and sidewalks — See Ch. 167.**

**Flood damage prevention — See Ch. 104.**

**Subdivision of land — See Ch. 171.**

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**21. Editor's Note: This local law was adopted as Ch. 169, but was redesignated as Ch. 118 to maintain the organization of the Code.**



**§ 118-1. Purpose.**

- A. The purpose of this chapter is to maintain the safety and general welfare of the residents of the Town of Somerset by regulating activities that have the potential to adversely affect road rights-of-way and Town infrastructure.
- B. Well-maintained roads and infrastructure are important to the economic well-being of the Town. Commercial endeavors are also economically beneficial. This chapter is not intended to regulate such business; the intent is to protect the public rights-of-way, infrastructure, and Town residents from property damage. The Town Board of the Town of Somerset hereby enacts the following Infrastructure Preservation Law pursuant to the provisions of the Municipal Home Rule Law.





§ 118-1

**§ 118-2. Territorial application.**

§ 118-2

This chapter shall apply to all that portion of the Town of Somerset outside the Village of Barker.



**§ 118-3. Applicability.**

- A. The provisions of this chapter shall apply to all activity conducted within the Town of Somerset where Town highways, roadways, or rights-of-way will be traveled on or traversed by any truck, vehicle, trailer, or equipment with a combined weight in excess of 14,000 pounds, unless such activity is specifically exempt by this section, and for any work performed in the Town which potentially may cause damage to the Town infrastructure.
- B. The following are exempt from the provisions of this chapter: vehicles used for the purpose of home delivery of mail, packages, or retail products; school buses; buses and livery vehicles used to transport persons; law enforcement vehicles; ambulances and emergency response vehicles; fire trucks; vehicles owned and operated by a municipality; rubber-wheeled vehicles actively engaged in farming activity or delivery of farm products; vehicles used in the construction and/or remodeling of a single-family or two-family residential dwelling or ordinary repairs and maintenance of the same; moving trucks engaged in moving items into or out of a residential dwelling; vehicles operated for residential refuse pickup by companies contracting with the Town; vehicles used by a utility company for routine maintenance or repair of utilities; and customary recreational vehicles, boats, and travel trailers.
- C. The provisions of this chapter may be enforced by the Superintendent of Highways, the Code Enforcement Officer, law enforcement agencies, or an individual appointed by Town Board resolution.



**§ 118-4. Definitions.**

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

**BOND** — A commercial bond issued by a surety company licensed to do business in the State of New York and acceptable to the Town guaranteeing that Town infrastructure and residents' property will be returned to a condition as good or better than it was prior to the start of the covered activity.

**CONTRACTOR** — Every individual or entity that engages in a covered activity within the Town, and any entity which hires, or employs, or contracts with such contractor.

**COVERED ACTIVITY** — Any activity to which this chapter applies pursuant to § 169-3A and which is not exempted by § 169-3B.

**FINAL BOND RELEASE** — Final release of the bond by the Somerset Town Board.

**INFRASTRUCTURE** — The streets, rights-of-way, easements, waterlines, sewer lines, drainage systems, lighting and any other Town infrastructure under the control or maintenance of the Town, as well as the buildings and residences in the Town, including driveways, trees, and landscaping thereof, and private attachments to infrastructure.

**INFRASTRUCTURE PRESERVATION LAW WORKSHEET** — The worksheet created by the Town which must be completed by the owner or contractor, summarizing the job, site location, start and completion dates, expected max gross vehicle weight used for the covered activity, and any other items that the Town deems necessary.

**PRELIMINARY BOND RELEASE** — A recommended bond release given by the Town Code Enforcement Officer, Superintendent of Highways, or Supervisor based on satisfactory job site status at job completion.



**§ 118-5. General provisions.**

- A. No contractor, individual, or entity shall engage in a covered activity within the Town of Somerset without first having obtained a permit issued by the Code Enforcement Officer or Superintendent of Highways. Every contractor applying for a permit must complete an infrastructure preservation law worksheet and must also provide such additional information relating to the covered activity as shall be required by the Superintendent of Highways or Code Enforcement Officer.
- B. If the covered activity is to be performed by a general contractor with subcontractors, the general contractor may apply for the permit and provide the bond. Each subcontractor must be listed on the infrastructure protection law worksheet, and in any event the general contractor remains liable for compliance with the provisions of this chapter for itself and each subcontractor. This provision shall not exempt subcontractors from liability for violating the terms of this chapter.
- C. Upon receipt of the infrastructure preservation law worksheet and other information, the Superintendent of Highways or Code Enforcement Officer will review it and make a determination:
- (1) Whether a permit may be issued with conditions that adequately protect the infrastructure of the Town. If not, the application shall be denied.
  - (2) If a permit is to be issued, the amount of bond or deposit which shall be provided by the contractor in order to reasonably protect the Town infrastructure and residents' property.
    - (a) The amount of the bond or deposit will be determined by the Superintendent of Highways or Code Enforcement Officer based on the Town highways, roadways, and rights-of-way, and infrastructure affected, the size, weight and frequency of travel of the vehicles involved, and any other special circumstances present.
- D. Prior to the issuance of a permit and prior to commencement of the work, if the Superintendent of Highways or Code Enforcement Officer deems it necessary based on the nature of the work, the size, weight, and frequency of travel of contractor's equipment, the particular highways, roadways, and rights-of-way involved, and the age, condition, and nature of infrastructure, including buildings and residences, the contractor must arrange for:
- (1) Video or photographic documentation of the condition of the roads, shoulders, and all structures that will be traversed by the contractor's vehicles or equipment;
  - (2) Video or photographic documentation of the condition of the foundations of structures located adjacent to the roads to be traversed by the contractor's vehicles or equipment;
  - (3) Ongoing documentation and analysis to include a written report including video or photographic documentation to be conducted at stated intervals throughout the duration of the activity and at the conclusion of the covered activity; and
  - (4) The submission of all ongoing analysis reports and required documentation, with included video or photographic documentation, to the Code Enforcement Officer or Superintendent of Highways within one week of recording.
- E. Once the Superintendent of Highways or Code Enforcement Officer determines the amount of bond or deposit required, the contractor shall provide to the Town a deposit or commercial bond in acceptable form guaranteeing the return of Town infrastructure and residents' property to a condition equal to or better than when the covered activity commenced. No permit will be issued until such bond or deposit is provided.
- F. If any damage is caused to infrastructure in the course of covered activity, the contractor, individual, or entity which performed the work, whether or not it has obtained a permit, shall return the infrastructure to a condition as good or better than it was prior to the damage, or shall pay the cost of repair or replacement of



§ 118-5  
the same.

§ 118-5

- G. Upon completion of the covered activity, the contractor will apply to the Code Enforcement Officer or Superintendent of Highways for a preliminary bond release or for release of deposited funds. Upon inspection of the work site, as necessary, the Code Enforcement Officer or Superintendent of Highways may recommend the release of the bond. If the release is not recommended, the Code Enforcement Officer or Superintendent of Highways will specifically document the tasks that must be accomplished in order for the bond to be released. In this case, the contractor will remedy the specified problem item(s) and then reapply for a bond release. Upon recommendation of preliminary bond release, the contractor must apply to the Town Board for final bond release. Only the Town Board may grant final bond release or release of deposited funds.

**§ 118-6. Enforcement; penalties for offenses.**

- A. A violation of any part of this chapter shall constitute a violation and shall be punishable by fine of up to \$250, imprisonment of up to 15 days, or both said fine and imprisonment. Each successive day that a contractor or individual is in violation of this chapter shall constitute a separate offense.
- B. In addition to the penalties prescribed in § 118-6A, the Code Enforcement Officer or any police officer may issue a stop-work order on any contractor or individual that is in violation of this chapter. The Superintendent of Highways or Code Enforcement Officer may revoke any issued permit upon a finding of a violation of the terms of the permit or information obtained in the infrastructure preservation law worksheet.
- C. The Town may seek injunctive or civil relief in addition to the above remedies.



§ 118-6

**§ 118-7. Fees.**

§ 118-7

A nonrefundable processing fee in the amount of \$150, payable to the Town of Somerset must accompany each worksheet submitted to the Code Enforcement Officer or Superintendent of Highways.



§ 118-7

§ 118-8

**§ 118-8. Appeals.**

A contractor may appeal the determination of the Superintendent of Highways or Code Enforcement Officer concerning the amount of bond or deposit required, or a determination concerning preliminary bond release to the Town Board of the Town of Somerset.



**§ 118-9. Request for variance.**

- A. A request for a variance from the standards set forth in this chapter shall be made to the Town Board of the Town of Somerset in writing, and shall contain the grounds on which the applicant relies for requesting the variance, including allegations and any facts on which the applicant will rely.
- B. Where the Town of Somerset finds that due to special circumstances of the particular case, a waiver of certain requirements as stated in this chapter is justified, then a variance may be granted. No variance shall be granted, however, unless the Town Board finds and records in its minutes that: granting the variance would be in keeping with the intent and spirit of this chapter and is in the best interests of the community; there are special circumstances involved in the particular case; denying the variance would result in an undue hardship to the applicant, provided that such hardship has not been self-imposed; and that there is little to no risk of damage to Town infrastructure or residents' property posed by the proposed activity.





§ 118-9

§ 118-10

**§ 118-10. Severability.**

Should any section or provision of this chapter contained herein or as amended hereafter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the chapter as a whole or any part thereof, other than the part declared invalid.



**Chapter 125**

**MOBILE/MANUFACTURED HOMES**



§ 118-10

§ 118-10

**[HISTORY: Adopted by the Town Board of the Town of Somerset 5-9-1978 as Article XII of the Zoning Ordinance.<sup>22</sup> Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Campgrounds and vehicle parks — See Ch. 80.**

**Zoning — See Ch. 205.**

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**22. Editor's Note: This chapter was amended 1-13-1998 by L.L. No. 2-1998 to change all references from "mobile home" to "mobile/manufactured home" and from "mobile home court" to "mobile/manufactured home park."**



ARTICLE I  
General Provisions

**§ 125-1. Title.**

This chapter shall be known and cited as the "Mobile/Manufactured Home Ordinance of the Town of Somerset, Niagara County, New York."

**§ 125-2. Purpose.**

It is the purpose of this chapter to promote the health, safety, morals and general welfare of the people of Somerset by the regulations and restrictions incorporated herein.

**§ 125-3. Legislative history and findings. [Added 6-11-2002 by L.L. No. 5-2002]**

- A. The Town Board of the Town of Somerset adopted a Mobile Home Ordinance on May 9, 1978, as Article XII of the Town's Zoning Ordinance. The Town Board amended the ordinance on September 10, 1996, and January 13, 1998.
- B. Both amendments were preceded by numerous work sessions of the Town of Somerset Planning Board and by public hearings conducted by the Planning Board and the Town of Somerset Town Board. Input was received from the Town Attorney, Town Building Inspector, Town Assessor, Town Engineer and members of the public.
- C. At the time of the amendments, there was considerable discussion concerning the differentiation between a mobile/manufactured home, a factory manufactured home (commonly referred to as a "modular home"), and a "stick-built" home.
- D. The amendments ultimately defined a mobile/manufactured home as a home that meets the requirements set forth in the Code of Federal Regulations of Housing and Urban Development but does not bear the insignia of approval issued by the New York State Fire Prevention and Building Code Council. See § 125-4. A factory manufactured home was defined as a home that had the insignia of approval issued by the New York State Fire Prevention and Building Code Council, thereby certifying compliance with the requirements of the New York State Uniform Fire Prevention and Building Code. See § 205-8. The amendments did not change the Zoning Ordinance's original requirement that mobile homes, now defined as mobile/manufactured homes, were restricted to mobile home parks. See § 125-15.
- E. Depreciation of mobile/manufactured homes.
  - (1) Two recurring and interrelated themes at the work sessions and public hearings were the aesthetic and tax base problems with allowing mobile/manufactured homes to be located outside of mobile/manufactured home parks. It was the opinion of the Town Assessor that mobile/manufactured homes depreciated in value, whereas homes that met the New York State Uniform Fire Prevention and Building Code (hereinafter referred to as "Code homes") appreciated in value. There is a Mobile/Manufactured Home Bluebook Official Market Report published semiannually that lists the values of mobile homes. The report consistently indicates that mobile/manufactured homes depreciate in value.
  - (2) Additionally, the Town of Somerset is located approximately 25 miles from the Town of Lockport. Lockport is the site of the largest single mobile home park in New York State. Many of the participants at the work sessions and the public hearings had firsthand knowledge from acquaintances, relatives or friends that mobile homes in Lockport depreciated in value. The Assessor in the Town of Lockport has confirmed that he consistently reduces the value of mobile homes as they age but does not do the same for Code homes.
  - (3) Part of the reason for the depreciation is that mobile/manufactured homes are a distinct housing stock.



§ 125-3

Although mobile/manufactured homes are available in a wide range of sizes and prices, they usually differ from modular or stick-built homes in that they have limited height and width; they have a chassis; they only have one floor; they have fewer types of roofs, roof overhangs, roof pitches and siding and, in general, exhibit less overall variety and design.

- (4) Another reason for depreciation is that under New York State law, mobile/manufactured homes are titled with the New York State Department of Motor Vehicles and have a vehicle identification number (VIN). They are personalty, not realty. By their nature, and legally, mobile/manufactured homes are mobile and can be moved or removed by repossession, leaving behind an aesthetically unpleasing empty lot with either a hole in the ground, if there was a permanent foundation, or concrete piers.
- F. Based on the input at the work sessions and public hearings, the Town Board finds that mobile/manufactured housing is aberrant housing that is rationally disfavored; that mobile/manufactured housing would have an adverse impact on the Town's tax base unless it is restricted to mobile/manufactured home parks; and that mobile/manufactured housing would have an adverse impact on the aesthetics in the Town's neighborhoods unless it is restricted to mobile/manufactured home parks.

**§ 125-4. Conflicts with other provisions.**

- A. The provisions of this chapter shall supersede local laws, ordinances, codes or regulations to the extent that such laws, ordinances or regulations are inconsistent with the provisions of this chapter, provided that nothing herein contained shall be constructed to prevent the adoption and enforcement of a law, ordinance or regulation which is more restrictive or establishes a higher standard than those provided in this chapter, and such more restrictive requirement of higher standard shall govern during the period in which it is in effect.
- B. In a case where a provision of this chapter is found to be in conflict with a provision of a zoning, building, housing, electrical, plumbing, fire, safety, health, water supply or sewage disposal law or ordinance or regulation adopted pursuant thereto or other local county or state law, ordinance, code or regulation, the provision or requirement which is the more restrictive or which establishes the higher standard shall prevail.
- C. All mobile/manufactured homes shall be located in a mobile/manufactured home park established under and pursuant to this Chapter 125. **[Added 1-13-1998 by L.L. No. 2-1998]**

**§ 125-5. Definitions.**

The following definitions shall apply in the interpretation of this chapter:

**ACCESSORY STRUCTURE** — A structure, the use of which is incidental to that of the mobile/manufactured home, and which is attached thereto or located on the same mobile/manufactured home lot. Accessory structures include, but are not limited to, portable, demountable or permanent enclosures, shade structures and carports.

**APPROVED** — Approved by the administrative officer under the regulations of this chapter or approved by an authority designated by law or this chapter.

**COMMUNITY AREA** — An area or space within a mobile/manufactured home park, including fences, walls and other minor structures, which is designated for joint use of occupants or restricted to nonresidential use.

**COMMUNITY STRUCTURES** — A structure within a mobile/manufactured home park providing laundry, toilet, recreation, parking or other common facilities, including a management office and storage buildings.<sup>23</sup>

**GENERALLY ACCEPTED STANDARD** — A specification, code, rule, guide or procedure in the field of construction of mobile/manufactured home parks or related thereto, recognized or accepted as authorized.

**HABITABLE SPACE** — Space used for living, sleeping, eating or cooking purposes, excluding kitchenettes,

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23. Editor's Note: The definition of "construction standards," added 9-10-1996 by L.L. No. 2-1996, which immediately followed this definition, was repealed 8-8-2000 by L.L. No. 3-2000. In addition, the definition of "factory manufactured home," added 9-10-1996 by L.L. No. 2-1996, was repealed 1-13-1998 by L.L. No. 2-1998.

§ 125-5  
bathrooms, toilet rooms, storage spaces and enclosures for equipment installations.

§ 125-6

**MECHANICAL SYSTEMS AND EQUIPMENT** — A mobile/manufactured home's electrical, plumbing, heating, ventilating, air-conditioning systems and equipment used for living purposes, including cooking and refrigeration equipment.

**MOBILE/MANUFACTURED HOME** — A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The unit shall meet the requirements of manufactured home construction and safety standards as listed in the Code of Federal Regulations Housing and Urban Development, but not bear the insignia of approval issued by the New York State Fire Prevention and Building Code Council. **[Amended 9-10-1996 by L.L. No. 2-1996; 1-13-1998 by L.L. No. 2-1998]**

**MOBILE/MANUFACTURED HOME PARK** — Any site, lot, field, plot, parcel or tract of land on which two or more mobile homes are parked or located and for which use said premises are offered to the public or to any person for a fee of any type, including cost sharing. **[Amended 1-13-1998 by L.L. No. 2-1998]**

**MOBILE/MANUFACTURED HOME LOT** — A designated site within a mobile/manufactured home park for the exclusive use of the occupants of a single mobile/manufactured home.

**MOBILE/MANUFACTURED HOME STAND** — That part of an individual mobile/manufactured home lot which has been reserved for the placement of the mobile/manufactured home.

**NATURAL OR ARTIFICIAL BARRIER** — Any river, pond or canal of at least 200 feet in width or a railroad embankment or any other barrier which, in the opinion of the Planning Board, is comparable in effect to a two-hundred-foot space requirement.

**PATIO** — A paved outdoor living space designed to supplement the mobile/manufactured home living area.

**PERMITTEE** — Any person to whom a temporary permit is issued to maintain a mobile/manufactured home park under the provisions of this chapter.

**PERSON** — Any natural individual, firm, trust, partnership, association or corporation.

**STORAGE LOCKER** — An enclosed space designed to provide auxiliary general storage space for an individual mobile/manufactured home.

**STRUCTURE** — Any object constructed or installed by man.

**RECREATIONAL VEHICLE** — See the definition of "recreational vehicle" in Chapter 80, Campgrounds and Vehicle Parks.

### **§ 125-6. Parking restrictions.**

It shall be unlawful, within the limits of the Town of Somerset, for any person to park any mobile/manufactured home on any street, alley, highway or other public place. Emergency or temporary stopping or parking is permitted on any street or highway for not longer than one hour, subject, however, to any other and further prohibitions, regulations or limitations imposed by law, parking regulations or ordinances.



ARTICLE II  
**Mobile/Manufactured Home Parks**

**§ 125-7. Location and size.**

The size of all mobile/manufactured home parks shall be a minimum of 25 acres, provided that the location and construction of such court is approved by the Planning Board and the Town Board of the Town of Somerset.

**§ 125-8. Layout and design.**

- A. Double access. All mobile/manufactured home parks containing 20 or more mobile/manufactured home lots shall have access from two points along a single public street or highway or, if bordering on two streets access can be one for each street, such access points being separated by at least 100 feet.
- B. Buffer zone. There shall be provided a buffer area between the right-of-way line of adjacent public highways and any portion of a mobile/manufactured home lot of at least 100 feet. There shall also be provided a buffer area between any portion of a mobile/manufactured home and the boundary of the mobile/manufactured home park of at least 60 feet. Such buffer area shall be primarily clear of obstruction other than trees and other natural landscape material and shall not be used for any aboveground structures; except, however, that 25% of the frontage, as measured parallel to the public highway, may be used for the display and sale of mobile/manufactured homes, provided that a special permit has been issued for this activity by the Planning Board.  
**[Amended 6-10-1980]**
- C. Sales areas. Sales areas are subject to special permit. Commercial areas may be provided for the display and sales of mobile/manufactured homes within the confines of the mobile/manufactured home park and may occupy contiguously 25% of the frontage established in the buffer area. The setback for structures and stored vehicles shall conform to Chapter 205, Zoning, for structures in that zone, but in no case shall the sales area be less than 30 feet from the established right-of-way of a public highway or less than 30 feet from any other property line of the mobile/manufactured home park.
- D. Other principal structures. Private conventional residences and commercial establishments may be located within the mobile/manufactured home park. If located with frontage on the public highway, such structures shall be located in that portion of the buffer zone allocated for sale areas. If located in an area not considered a buffer zone, lot location and minimum distances shall be fixed by the Planning Board after due consideration of each case.
- E. Block lengths. The layout of interior roadways or driveways shall be such that no block is longer than 500 feet; provided, however, that this may be extended to 750 feet if an interior walkway is provided for pedestrian access across the center of the block.
- F. Street or driveway widths. All streets shall have a minimum width of 40 feet which is completely clear of obstructions to a height of 14 feet.
- G. Street grades. The maximum street grade shall be 7%. Entrance gradients shall be less than 3% for a distance of 75 feet from the edge of the right-of-way of the public highway.
- H. Minimum radius. The minimum radius of curvature for any street shall be 100 feet.
- I. Alignment. Streets shall be laid out so as to intersect as nearly as possible at right angles, and in no case shall any angle of intersection be less than 75°.
- J. Streets and parking areas. Street or driveway pavement shall be located in the center of the street clear zone. If parking provisions are made within the street, such parking areas may be off the pavement, and the clear zone (street width) shall be increased proportionately to provide therefor. If parking provisions are made in parking areas for three or more vehicles in nodes throughout the park, such areas shall be located off the

- § 125-8 pavement considered to be the street or driveway and in such manner as not to encroach upon the area considered to be the mobile/manufactured home lot. Provision shall be made for the parking of two vehicles for each mobile/manufactured home. § 125-9
- K. Auxiliary parking. Central auxiliary parking areas shall be provided at a ratio of 200 square feet per mobile/manufactured home lot in a location which is not contiguous with the lot serviced, such area being screened from lots and public highways by a coniferous hedge or other effective vegetation. Auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers and utility trailers.
  - L. Mobile/manufactured home lots. All lots shall be rectangular or trapezoidal unless otherwise approved by the Town Planning Board as meeting all other requirements of this chapter.
  - M. Mobile/manufactured home lot size. All lots shall be a minimum of 7,000 square feet if rectangular or trapezoidal and shall have a minimum width of 60 feet. In the case where unique and unusual lot designs are submitted for approval and all other minimum distance requirements are met, the minimum lot size may be reduced to 5,000 square feet, provided that the density of mobile/manufactured home units shall not exceed 6.2 dwelling units per net acre.
  - N. Corner lots. Corner lots shall be 1 1/2 times the width and area of regular lots. If a street makes a turn of 90°, the lot on the inside shall be considered a corner lot and the lots on the outside shall be considered radial lots, wherein the width shall be measured at the distance of 10 feet from the street line.
  - O. Double-frontage lots. Double-frontage lots shall not be permitted. If there is a situation where only one mobile/manufactured home can be located between streets, then a buffer strip of at least 10 feet shall be created and suitably planted.
  - P. Walkways. Walkways shall be laid out so as to connect all patios with the street and to connect service buildings, dry yards and storage lockers with streets. Walkways shall also provide access to recreation areas if such areas are not located adjacent to a street. Additional walkways may also be placed along the rear of each lot.
  - Q. Recreation space. Recreation space shall be provided in a central location and at a ratio of 300 square feet per lot. Such space shall be enclosed with the shrubs or evergreen hedges placed not farther than 10 feet apart nor higher than four feet.
  - R. Public telephone. If public telephones are provided within the court, they shall be located directly adjacent to service buildings.
  - S. Mailboxes. Mailboxes shall be located at a location suitable to the local post office but shall not be placed in any location where they constitute a safety hazard to pedestrians or to vehicles.
  - T. Trees. All existing trees shall be preserved insofar as possible in the design of the court.

**§ 125-9. Mobile/manufactured home sites.**

- A. Minimum lot line distances.
  - (1) The following minimum distances shall be maintained when providing specific locations of mobile/manufactured homes as related to lot lines with the park:
    - (a) Laterally: 15 feet from lot line.
    - (b) Longitudinally (end of mobile/manufactured home facing the end of another): 15 feet from rear lot line.
    - (c) Perpendicularly (end of one mobile/manufactured home facing the side of another): 20 feet from lot line.

§ 125-9 (2) In cases of nonrectangular or nontrapezoidal design, these minimum distances may be reduced if the final configuration of mobile/manufactured homes does not interfere with the provision of space for patios, walkways or storage, but in no case shall two mobile/manufactured homes be closer than 30 feet from the other. § 125-10

B. Minimum distances for specific locations.

- (1) The following minimum distances shall be maintained when providing specific locations of mobile/manufactured homes within the park and with respect to service or storage buildings:
  - (a) Laterally (side of mobile/manufactured home and building): 25 feet.
  - (b) Longitudinally (end of mobile/manufactured home and building): 15 feet.
- (2) The minimum setback from the street line (clear zone rather than pavement) shall be 10 feet.
- (3) No occupied travel or vacation trailer or other form of temporary-type living units shall be permitted in a mobile/manufactured home park.

**§ 125-10. Required improvements.**

A. Water supply systems.

- (1) All water supply systems shall be installed as per plans approved by the Town Superintendent of Water, Sewers and Grounds, the New York State Department of Health and/or Niagara County Health Department. Such systems shall be designed to provide a sufficient supply of potable water, under adequate pressure, to outlets servicing mobile/manufactured homes, community structures, drinking fountains, hose connections, hydrants and so on. **[Amended 9-10-1996 by L.L. No. 2-1996]**
- (2) Each mobile/manufactured home lot shall be supplied with potable water from the approved water supply system by a pipe of at least three-fourths-inch inside diameter to a cold-water tap with a minimum 30 pounds' pressure maintained at the outlet throughout the entire year. The water supply connection shall be located a safe distance from the sanitary drainage connection (and shall not be subject to surface drainage). Means shall be provided for a suitable watertight connection, without cross-connection and danger of freezing.
- (3) An adequate supply of hot and cold water shall be provided at all times in service buildings which provide washing and laundry facilities.

B. Sewage disposal systems.

- (1) All sewage disposal systems shall be installed in accordance with plans approved by a consulting engineer retained by the Town Board and/or the Niagara County Health Department. Such systems shall provide each mobile/manufactured home and community structure containing plumbing fixtures with an adequate and safe method of sewage disposal. Waste from all sanitation and washing facilities, including washing machines at any location within the mobile/manufactured home park, shall be discharged into a duly approved public sewage disposal system.
- (2) Each mobile/manufactured home lot shall, at a proper location relative to the mobile/manufactured home, be provided with a trapped sewer of at least four inches in diameter, and piping shall have a continuous grade to the point of disposal in an approved public or private sewage disposal system. Such sewer shall have an airtight connection with all outfall pipes of any mobile/manufactured home harbored on that lot. These connections shall be fitted with an airtight cover during periods of nonuse.

C. Electrical systems.

- (1) The electrical system shall be designed to provide adequate capacity to supply the connected load

- § 125-10 without exceeding the allowable current-carrying capacity of the conductors. Each mobile/manufactured home lot shall be provided with a conductor and terminal capable of carrying a minimum current of 60 amperes. § 125-10
- (2) An electrical-connection receptacle or terminal box of an approved weatherproof type shall be provided at each mobile/manufactured home lot. The receptacle shall be of the polarized type with grounding conductors and shall have a four-prong attachment for 115/220 volts.
  - (3) Prior to occupancy, a mobile/manufactured home must have the approval of the Electrical Underwriters.
- D. Lighting and wires. Artificial lighting shall be provided to illuminate walks, driveways and parking spaces for the safe movement of pedestrians and vehicles at night. Specifically, streetlighting standards shall be provided as follows:
- (1) Overhead streetlighting standards shall be placed no farther than 100 feet apart, have a minimum clearance above the pavement of 14 feet and shall have a capacity of 100 watts or, if mercury vapor, 250 feet apart at 175 watts or more.
  - (2) Alternate-side streetlighting (post lamps) shall be placed not farther than 60 feet apart, as measured along the center line of the street (120 feet on one side of the street), have a minimum height of four feet and a maximum height of seven feet and shall have a capacity of 60 watts.
  - (3) Service buildings shall have sufficient exterior lighting fixtures so as to properly illuminate entrances and drying yards connected therewith.
  - (4) Streets and service buildings shall be illuminated during all hours of darkness.
  - (5) Wires installed shall be located underground.
- E. Gas piping system.
- (1) All gas piping systems, if installed, shall be designed to provide a supply of gas sufficient to meet the maximum demand without undue loss of pressure at the connection to the mobile/manufactured home farthest from the source of supply.
  - (2) Gas connections shall provide a suitable gastight connection to the mobile/manufactured home.
- F. Refuse disposal. Each mobile/manufactured home lot shall be provided with at least one twenty-gallon metal garbage can with a tight-fitting cover. The cans shall be kept in a sanitary condition at all times. It shall be the responsibility of the park owner to ensure that garbage and rubbish shall be collected and properly disposed of outside of the mobile/manufactured home park as frequently as may be necessary to ensure that garbage cans do not overflow. Exterior property areas shall be maintained free from organic and inorganic material that might become a health, accident or fire hazard.
- G. Community fuel storage. A mobile/manufactured home park shall be provided with facilities for the safe and efficient storage of required fuels. Liquefied petroleum gas storage containers having a capacity exceeding 125 gallons shall be located not less than 25 feet from the nearest mobile/manufactured home, structure, building and lot line and shall not be subject to damage from moving vehicles. Fuel oil and other flammable materials shall be stored so as not to be a fire hazard.
- H. Street paving. All streets within the park shall be paved with concrete, blacktop or macadam for a minimum width of 20 feet in accordance with specifications effective for similar development in the balance of the Town if such specifications are drawn or, in absence of Town specifications, as per specifications approved by the Town Superintendent of Highways.
- I. Parking area paving. Areas for motor vehicle parking may be surfaced with uniform-sized crushed stone to a minimum depth of eight inches in the absence of fully hard or penetrated surface paving.

- § 125-10
- J. Walkways. All walkways shall be a minimum width of three feet and thickness of four inches and shall be provided with joints so designed as to minimize cracking. All walkways shall be made of concrete or blacktop or other similar material approved by the Town Highway Superintendent. § 125-11
- K. Mobile/manufactured home stand. Each mobile/manufactured home lot shall contain a mobile/manufactured home stand capable of containing a mobile/manufactured home in a fixed position. The mobile/manufactured home stand shall be graded with an impenetrable material at least six inches in thickness. The entire area of each mobile/manufactured home stand shall not exceed 1 1/2 times the size of the mobile/manufactured home. The elevation, distance and angle of the mobile/manufactured home stand in relation to the accessway shall be such as to facilitate the safe and efficient placement and removal of the mobile/manufactured home.
- L. Patios. All mobile/manufactured home lots shall be provided with patios constructed of concrete or blacktop or other similar material approved by the Town Highway Superintendent and shall be a minimum size of eight feet by 20 feet and four inches in depth. Patios shall be located so as to provide safe and easy access from the mobile/manufactured home.
- M. Stormwater drainage. Mobile/manufactured home parks shall have adequate facilities for drainage of surface and subsurface water. The entire mobile/manufactured home park shall be graded to facilitate the safe and efficient drainage of surface water and to permit no ponding areas where water will stand for lengths of time. Drainage ditches shall be provided where necessary to provide for the removal of surface drainage. Such ditches shall be provided in such a way as not to constitute a hazard to pedestrians. Gutters, culverts, catch basins, drain inlets, stormwater sewers, approved combined storm and sanitary sewers or other satisfactory drainage systems shall be utilized where deemed necessary and shall be of a size specified by the Highway Superintendent.
- N. Storage lockers. Storage lockers shall be provided at a minimum ratio of 100 cubic feet for the lot they service. They shall be of waterproof construction on all surfaces (including base). Such lockers may be provided in clusters or as individual structures on each mobile/manufactured home lot.
- O. Landscaping. Each mobile/manufactured home lot shall be provided with at least two shade trees with trunks not less than 1 1/2 inches in diameter as measured three feet from the ground. Poplars, silver or soft maples, box elders, catalpas and horse chestnuts shall not be planted. The planting of elms is not recommended. Shade trees shall also be planted at intervals of not less than 50 feet within the buffer areas to the sides and rear of the mobile/manufactured home park. Shade trees are recommended in the buffer area between the public highway and the adjacent mobile/manufactured home lots. Due regard shall be given to the obstructive qualities of limbs and branches along mobile/manufactured home movement and accessways.
- P. Monuments. Monuments shall be provided at all corners of the mobile/manufactured home park. The monuments shall be of material and size approved by the Code Enforcement Officer or other appropriate authority.

#### § 125-11. Service buildings.

- A. Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile/manufactured home lot. If such buildings contain laundry facilities, they shall be located no farther than 400 feet from any mobile/manufactured home lot which they serve.
- B. Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Fire Prevention and Building Code and the New York State Sanitary Code and/or all other applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems. [Amended 9-10-1996 by L.L. No. 2-1996]
- C. The service buildings shall be well lighted at all times from dawn to 11:00 p.m. and capable of being lighted between 11:00 p.m. and dawn, shall be well ventilated with screened openings, shall be constructed of such moistureproof material, including painted woodwork, as shall permit repeated cleaning and washing and shall



§ 125-11 be maintained at a temperature of at least 60° F. during the period of October 1 to June 1. The floors of such buildings shall be of water-impervious materials and supplied with drains. § 125-15

**§ 125-12. Laundry facilities.**

- A. Laundry facilities may be provided by the owner of the mobile/manufactured home park. If such facilities are provided, they shall be located in a separate service building and shall provide for one single laundry tray and one automatic- or semiautomatic-type operable washing machine for each 10 mobile/manufactured homes or fractional number thereof.
- B. An ample number of individually fused and grounded electrical outlets shall be provided, supplying current sufficient to operate each washing machine. Installation of such outlets shall be in accordance with all other Town regulations applying thereto.
- C. Indoor drying space shall be provided at a ratio of 50 square feet per mobile/manufactured home lot if automatic drying equipment is not supplied.
- D. A common outdoor drying yard shall be adjacent to the laundry facilities and be adequate for the number of mobile/manufactured homes served in the proportion of 250 square feet per 10 lots or fraction thereto. Drying yards shall have a uniform-size crushed stone surface not less than four inches thick. Such yards shall be enclosed by a six-and-one-half-foot high opaque fence or solid coniferous hedge.

**§ 125-13. Additional structures.**

- A. No nonintegral structural addition to or other accessory building or structure in excess of six feet by eight feet or a total of 48 square feet shall be permitted on any mobile/manufactured home lot.
- B. Awnings may be provided at any size, provided that they are not placed closer than three feet to an adjacent mobile/manufactured home lot.

**§ 125-14. Owner obligations.**

In general, mobile/manufactured home parks shall be properly maintained so as to ensure the desirable residential character of the property. Specifically, the following shall apply:

- A. Yard maintenance. Mobile/manufactured home parks shall be maintained reasonably free from holes and excavations, sharp protrusions and other objects or conditions which might be a potential cause of personal injury. Walks, steps and driveways that contain holes or tripping hazards shall be filled, repaired or replaced as the need indicates. Trees or limbs of trees that constitute a hazard shall be removed; and driveways shall be clear of snow at all times.
- B. Noxious weeds. Ragweed and other noxious weeds considered detrimental to health, such as poison ivy, poison oak and poison sumac, shall be completely eliminated from all areas of the mobile/manufactured home park. Open areas shall be maintained free of heavy undergrowth of any description.
- C. Accessory structures. All accessory buildings or structures shall be kept in good repair, free from health, fire and accident hazards. They shall be of durable construction and appropriate for intended use and location. Exterior wood surfaces of all structures that are not inherently resistant to deterioration shall be periodically treated with a protective coating of paint or other suitable preservative.
- D. Crushed stone. All areas surfaced with stone shall be kept clear of all forms of vegetation.
- E. Infestation. Grounds and structures shall be maintained free of insect, vermin and rodent harborage and infestation. Methods used for purposes of extermination shall conform to generally accepted practice.

**§ 125-15. Fire protection and control.**

- § 125-15
- § 125-17
- A. Every mobile/manufactured home park shall be equipped at all times with fire equipment in good working order in conformance with those standards duly adopted as applicable in the fire district within which the park is located. Fire-protection equipment shall be provided as approved by the Town Fire Department and shall include necessary hydrants within the mobile/manufactured home park as required by the Town Board.
- B. No open fires shall be permitted at any place within the park, except in such places designated for burning.

**§ 125-16. License application; issuance.**

- A. It shall be unlawful for any person to establish, maintain or operate or permit to be established, maintained or operated upon any property owned or controlled by him a mobile/manufactured home within the Town of Somerset without having first secured a license therefor in compliance with the terms of this chapter. Such license shall expire on January 1 following the date of issuance but may be renewed under the provisions of this chapter for additional periods of one year.
- B. The application for such license or the renewal thereof shall be filed with the Town Clerk and shall be accompanied by the appropriate fee as hereinafter provided.
- C. The application shall be verified by the applicant, who must be the legal owner of the property, and shall contain:
- (1) The name and address of the applicant.
  - (2) A description of the premises on which the mobile/manufactured home park is or will be located as will readily identify and definitely locate the same.
  - (3) The number of units to be contained in said proposed mobile/manufactured home park.
  - (4) Such other information as may be required.
- D. The application shall be accompanied by a sketch of the mobile/manufactured home park plan, showing the following:
- (1) The extent and area used for mobile/manufactured home park purposes.
  - (2) Roadways, driveways and sidewalks.
  - (3) Location of sites of units for mobile/manufactured homes.
  - (4) Method and plan of sewage disposal.
  - (5) Method and plan of garbage disposal or removal.
  - (6) Plan for water supply.
  - (7) Plan for electrical lighting of units.
- E. The Town Clerk shall immediately submit said application and accompanying plan or other papers to the Planning Board for review. The Planning Board shall make its review and submit its recommendations to the Town Board within 15 days, which Board shall consider the same at its next meeting and approve or disapprove thereof, endorsing such approval or disapproval thereon. If the application is granted, the license shall be issued by the Town Clerk, and if disapproved, no license shall be issued. Any person considering himself aggrieved by the action of the Planning Board or the action of the Town Board may, within 30 days thereafter, apply to the Town Board for a review of such action. The Town Board may thereupon affirm, reverse or modify its previous action.
- F. Fees, in an amount as set forth from time to time by resolution of the Town Board, are hereby established for new mobile/manufactured home parks. **[Amended 9-10-1996 by L.L. No. 2-1996]**

§ 125-17

§ 125-19

**§ 125-17. License renewal; transfer. [Amended 9-10-1996 by L.L. No. 2-1996]**

- A. Upon application in writing by a licensee for renewal of an annual license and upon payment of the annual license fee in an amount as set forth from time to time by resolution of the Town Board,<sup>24</sup> the Code Enforcement Officer, with the approval of the Town Board, shall issue a certificate authorizing the Town Clerk to renew such license for another year. If any changes have taken place in the mobile/manufactured home park, the applicant must produce a revised plan showing said changes before a renewal will be provided. The application must be supported with current evidence of approval by the New York State Department of Health if subject to provisions of the State Sanitary Code.
- B. Upon application in writing for transfer of an annual license and payment of a transfer fee in the amount as set forth from time to time by resolution of the Town Board, the authorized Town Clerk shall issue a transfer to the transferee.

**§ 125-18. Register of occupants.**

- A. It shall be the duty of each licensee and permittee to keep a register containing a record of all mobile/manufactured home owners and occupants located within the park. The register shall contain the following information:
  - (1) The name and legal address of all occupants.
  - (2) The name and address of the owner of each mobile/manufactured home.
  - (3) The make, type, model, year and license number of each mobile/manufactured home and motor vehicle as well as the registration number of each mobile/manufactured home and the state and year in which registered.
  - (4) The date of arrival and departure of each mobile/manufactured home.
  - (5) Forwarding address of each occupant.
- B. The park owner or his agent shall keep the register available for inspection at all times by law enforcement officers, public health officials and other officials whose duties necessitate acquisition of the information contained in the register. The register record for each occupant registered shall not be destroyed for a period of three years following the date of departure of the registrant from the park.

**§ 125-19. Inspection; permit revocation.**

- A. Before any permit shall be issued by the Town Clerk, the enforcing officer duly appointed by the Town Board of the Town of Somerset to enforce this chapter shall make an inspection of the lands and premises with respect to which a permit has been requested to determine that all of the requirements of this chapter have been complied with.
- B. The Code Enforcement Officer shall have the right at any reasonable time to enter any mobile/manufactured home park or other lots and parcels of land used for the parking, using or occupying of a mobile/manufactured home and shall have the right at all times to inspect all parts of said premises and to inspect the records required to be maintained in any mobile/manufactured home park.
- C. Upon inspection, if it is found that any person violated any provision of this chapter, the Town Board of the Town of Somerset shall have the right to revoke and suspend any permit issued pursuant to this chapter and order the removal of the mobile/manufactured home or the cessation of mobile/manufactured home park operations, as the case may be, after 10 days' written notice of such violation directed to the owner of the land and premises affected and the occupant of the mobile/manufactured home or the operator of the mobile/

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24. Editor's Note: The current fee schedule is on file in the office of the Town Clerk.

§ 125-19 manufactured home park, as the case may be, and after a public hearing before the Town Board, held not less than five days after public notice of such public hearing. § 125-21

**§ 125-20. Appeals; variances.**

- A. The Zoning Board of Appeals of the Town of Somerset shall hear and decide appeals from any order, decision or determination of the Code Enforcement Officer, and in passing upon such appeals, it shall have the power to vary or modify the application of any of the provisions of this chapter and setback requirements.
- B. Any person aggrieved by the granting or refusal of any permit or by any order, decision or determination of the Code Enforcement Officer may appeal to the Town Board of the Town of Somerset within 10 days from the date of determination appealed from. Notice of appeal shall be in writing and shall be filed with the Town Board and shall be served personally upon the Code Enforcement Officer. Such notice of appeal shall specify the order, ruling, decision or determination from which the appeal is taken, the date on which such order, ruling, decision or determination was made and if the appeal involves the granting of a variance or modification of any of the provisions of this chapter. Such notice of appeal shall specify that a variance or modification is requested and the nature of the same. Any such appeal shall be taken, heard and determined in accordance with the provisions of the Town Law and rules and regulations of the Town Board. Where the appeal is for a variance, the appellant shall file with the notice of appeal a copy of all papers submitted with the original application for a permit and shall, in any event, file with the appeal papers, all documents, plans, maps and information required by this chapter.
- C. When, in the judgment of the Zoning Board of Appeals of the Town of Somerset, the public convenience, welfare and safety will be substantially served, the Board may, in a specific case, after notice and public hearing and subject to appropriate conditions and safeguards, grant variances to the provisions of this chapter in harmony with the general purposes and intent of this chapter.

**§ 125-21. Penalties for offenses. [Amended 6-10-1980; 9-10-1996 by L.L. No. 2-1996]**

Any person violating any provisions of the chapter shall be punished by a fine of not more than \$250.



**Chapter 131**

**NOISE**



**[HISTORY: Adopted by the Town Board of the Town of Somerset 9-13-2011 by L.L. No. 3-2011. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Animals — See Ch. 65.**





**§ 131-1. Declaration of policy.**

- A. It is hereby declared to be the policy of the Town of Somerset, Niagara County, New York, to safeguard the right of its residents within the privacy of their homes to be free from unreasonably loud, intrusive, repetitive and/or otherwise annoying sounds. Problems concerning disturbance of peace and quiet by noise from various activities are best solved by thoughtful discussions and cooperative agreements between affected parties. However, to resolve remaining problems of noise which is disturbing to others, it is the policy of the Town of Somerset to establish standards, enforcement procedures and penalties.
- B. This chapter shall be liberally construed so as to effectuate the purposes described herein. Nothing herein shall be construed to abridge the emergency powers of the Town Board, or the right of any governmental entity to engage in any of its necessary or proper activities.



**§ 131-2. Definitions.**

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

DBA — Unit representing the sound level measured with the A-weighting network on a sound level meter.

PROPERTY BEING USED FOR RESIDENTIAL PURPOSES — Occupied property which contains one or more dwelling units, including but not limited to single-family dwellings, multiple dwellings with attached or detached dwelling units, senior citizen housing, adult residential care facilities, as well as hotels and motels.



**§ 131-3. Prohibited acts.**

No person shall cause or permit to be caused by any means:

- A. Sound which causes the sound level to exceed 80 dBA between the hours of 7:00 a.m. and 11:00 p.m., nor 50 dBA between the hours of 11:00 p.m. and 7:00 a.m. on any property being used for residential purposes (other than the premises from which the sound emanates), including both the residence and the real property outside of the residence and forming a part of the residential property.
- B. The use of any sound-emitting device inside or outside of a structure whereby the sound emitted from such device is audible on property being used for residential purposes at a point more than 100 feet from the real property boundary line of the property from which said sound emanates.
- C. The use or operation of any sound-producing device, or the production of sound by any other means, within 500 feet of any school, church, synagogue, mosque, temple or courthouse while the same is in session, or within 500 feet of any hospital, nursing home or medical facility at any time, when such sound would disturb a reasonable person of normal auditory sensitivities present in such structure or facility, provided that conspicuous signs are displayed indicating the location of such facility.
- D. The outdoor use or operation of any powered tool or equipment, including but not limited to saws, sanders, drills, grinders, lawn mowers or tractors, leaf blowers, or any other garden tools or equipment, audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day, so as to disturb the quiet, comfort or repose of a reasonable person of normal auditory sensitivities.
- E. The operation of any motor vehicle with a gross vehicle weight rating in excess of 10,000 pounds, or any auxiliary equipment attached to such motor vehicle, for a period longer than 15 minutes in any hour while the vehicle is stationary for reasons other than traffic congestion, so that the sound emanated therefrom is audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.
- F. The operation, repair, rebuilding, modifying or testing of any motor vehicle, motorcycle, motorboat, go-cart, ATV or minibike so as to disturb the quiet, comfort or repose of a reasonable person of normal auditory sensitivities on property being used for residential purposes.
- G. The use or operation of a refuse-collecting vehicle anywhere which, when collecting or compacting, projects sound which is audible on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.
- H. The owning, possessing or harboring of any animal or bird which shall make sounds which are audible on property being used for residential purposes for a continued duration in excess of 15 minutes or which shall disturb the quiet, comfort or repose of a reasonable person of normal sensitivities.
- I. The conduct of any construction activities, including but not limited to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private roadways, roads, parks, utility lines or other property, including related activities such as land clearing, grading, earthmoving, excavating, blasting, filling or landscaping, so as to project a noise therefrom so as to disturb the quiet comfort or repose of a reasonable person of normal auditory sensitivities on property being used for residential purposes between the hours of 11:00 p.m. and 7:00 a.m. of the following day.
- J. The making of any noise for advertising purposes in any street or public place to advertise any article, business, calling or profession by means of any horn, megaphone, siren, bell, radio or any other sound-producing or sound-amplifying mechanism, instrument or device.



**§ 131-4. Exceptions.**

Section 131-3 shall not apply to the following:

- A. Municipally caused sounds.
- B. Sounds caused by normal vehicular, railroad, boat or air traffic (excluding noise by horns, radios or other noise-emitting devices).
- C. Sounds caused by emergency vehicles, emergency activities, or public warning devices.
- D. Sounds produced by vehicles and/or implements, or combinations thereof, being used for farm purposes, or sound produced by farm animals.
- E. Sounds caused by a vehicular horn or warning device when used in an emergency or warning situation.
- F. Sounds caused by parades, free concerts, celebrations, or events in municipal parks or public places, sporting events or carnivals, fairs, exhibitions, or fireworks displays sponsored by municipalities or other civic organizations, provided that such event shall take place between the hours of 7:00 a.m. and 11:00 p.m.
- G. Sounds caused by construction activity between the hours of 7:00 a.m. and 11:00 p.m.
- H. Sounds caused by church, synagogue, mosque, temple, or other noncommercial reasons for assembly, by organs, bells, or chimes, musical instruments, choirs, or the like, having duration of not more than two hours.
- I. Sounds caused by lawnmowers, leaf blowers, chainsaws, and other maintenance equipment when muffled in accordance with manufacturers' specifications, and while being used for property maintenance purposes between the hours of 7:00 a.m. and 11:00 p.m. or snowblowers when used at anytime.





§ 131-4

§ 131-5

**§ 131-5. Enforcement; penalties for offenses.**

This article may be enforced by any police agency. This provision shall not prohibit the bringing of a private action suit or the filing of an information by an individual. A violation of this chapter shall constitute an offense punishable by a fine of not more than \$250 or imprisonment for not more than 15 days, or both such fine and imprisonment. In addition, the Town shall be entitled to injunctive relief from a court of competent jurisdiction. Each day that such violation occurs shall be deemed a separate offense and punishable as such.



§ 131-5

§ 131-6

**§ 131-6. Severability.**

If any word, phrase or part of this chapter shall be deemed unconstitutional or unenforceable, the remainder of this chapter shall remain in full force and effect.



**Chapter 133**

**NOTIFICATION OF DEFECTS**



§ 131-6

**[HISTORY: Adopted by the Town Board of the Town of Somerset 6-10-1975 by L.L. No. 1-1975.  
Amendments noted where applicable.]**

§ 131-6

**GENERAL REFERENCES**

**Highway construction standards — See Ch. 114.**





**§ 133-1. Prior written notice required for civil action.**

- A. No civil action shall be maintained against the Town of Somerset (hereinafter referred to as "the Town") or the Town Superintendent of Highways of the Town or against any improvement district in the Town for damages or injuries to person or property (including those arising from the operation of snowmobiles) sustained by reason of any highway, bridge, culvert, highway marking, sign or device or any other property owned, operated or maintained by the Town or any property owned, operated or maintained by any improvement district therein being defective, out of repair, unsafe, dangerous or obstructed, unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge, culvert, highway marking, sign or device or any other property owned, operated or maintained by the Town or any property owned, operated or maintained by any improvement district was actually given to the Town Clerk of the Town or the Town Superintendent of Highways of the Town and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of; and no such action shall be maintained for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, culvert or any other property owned by the Town or any property owned by any improvement district in the Town, unless written notice thereof, specifying the particular place, was actually given to the Town Clerk of the Town or the Town Superintendent of Highways of the Town and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice. **[Amended 9-10-1996 by L.L. No. 2-1996]**
- B. No civil action will be maintained against the Town and/or the Town Superintendent of Highways of the Town for damages or injuries to person or property sustained by reason of any defect in the sidewalks of the Town or in consequence of the existence of snow or ice upon any of its sidewalks, unless such sidewalks have been constructed or are maintained by the Town or the Superintendent of Highways of the Town pursuant to statute; nor shall any action be maintained for damages or injuries to person or property sustained by reason of such defect or in consequence of such existence of snow or ice, unless written notice thereof, specifying the particular place, was actually given to the Town Clerk of the Town or to the Town Superintendent of Highways of the Town and there was a failure or neglect to cause such defect to be remedied, such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.



§ 133-1

§ 133-2

**§ 133-2. Duties of Superintendent of Highways. [Amended 9-10-1996 by L.L. No. 2-1996]**

The Town Superintendent of Highways of the Town shall transmit, in writing, to the Town Clerk of the Town, within 10 days after receipt thereof, all written notices received by him pursuant to this chapter, and he shall take any and all corrective action with respect thereto as soon as practicable.



**§ 133-3. Record of written notices. [Amended 9-10-1996 by L.L. No. 2-1996]**

The Town Clerk of the Town shall keep an indexed record, in a separate book, of all written notices which he or she shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon or of an accumulation of ice and snow upon any Town highway, bridge, culvert or sidewalk, which record shall state the date of the receipt of the notice, the nature and location of the condition stated to exist and the name and address of the person from whom the notice is received. All such written notices shall be indexed according to the location of the alleged defective, unsafe, dangerous or obstructed condition or the location of accumulated snow or ice. The record of each notice shall be preserved for a period of five years after the date it is received.



§ 133-3

§ 133-4

**§ 133-4. Construal of provisions.**

Nothing contained in this chapter shall be held to repeal or modify or waive any existing requirement or statute of limitations which is applicable to these causes of action but, on the contrary, shall be held to be additional requirements to the rights to maintain such action, nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence nor to impose upon the Town, its officers and employees and/or any of its improvement districts any greater duty or obligations than that it shall keep its streets, sidewalks and public places in a reasonably safe condition for public use and travel.





**Chapter 136**

**OUTDOOR HEATING DEVICES**



§ 133-4

**[HISTORY: Adopted by the Town Board of the Town of Somerset 7-8-2008 by L.L. No. 1-2008. Amendments noted where applicable.]**

§ 133-4

**GENERAL REFERENCES**

**Zoning — See Ch. 205.**



**§ 136-1. Legislative intent and purposes.**

- A. The intent of this chapter, upon adoption by the Town Board of the Town of Somerset, New York, and filed with the Secretary of State, is to insure that outdoor heating devices are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town and adjacent municipalities.
- B. It is the purpose of this chapter to establish regulations pertaining to the operation of outdoor heating devices so as to protect the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions.



**§ 136-2. Definitions.**

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

CHIMNEY — Any flue or flues that carries off exhaust from an outdoor heating device, firebox or burn chamber.

EXISTING OUTDOOR HEATING DEVICE — An outdoor heating device that was purchased and installed prior to the effective date of this chapter, or any replacement thereof which is located in substantially the same location and uses the existing mechanical connections.

FIREWOOD — Trunks and branches of trees and bushes but does not include leaves, needles, and vines.

NATURAL WOOD — Clean wood, which has not been painted, varnished or coated with a similar material, has not been pressure-treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

NEW OUTDOOR HEATING DEVICE — An outdoor heating device that was purchased and installed after the effective date of this chapter.

OUTDOOR HEATING DEVICE — Any new or existing equipment, device, appliance or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space or water source. Any "outdoor heating device" may also be referred to as an "outdoor wood boiler," "outdoor wood furnace" or "outdoor wood hydronic heater."

UNTREATED LUMBER — Dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substances.

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





§ 136-2

§ 136-3

**§ 136-3. Permit required.**

Any person, firm or corporation who or which desires to install an outdoor heating device shall obtain a permit from the Code Enforcement Officer of the Town of Somerset, as well as a copy of the regulations for the Town of Somerset. The permit fees shall be established from time to time by resolution of the Town Board.



**§ 136-4. Regulations and requirements.**

- A. No person shall, from the effective date of this chapter, construct, install or establish an outdoor heating device without a permit.
- B. No person shall operate an outdoor heating device unless such operation conforms with the manufacturer's instructions regarding its installation and operation and the requirements of this chapter regarding fuels that may be burned in an outdoor heating device as set forth in §§ 136-2 and 136-5 and chimney height as set forth in § 136-5.
- C. All outdoor heating devices shall be constructed, established, installed, operated and maintained in conformance with the manufacturer's instructions and the requirements of this chapter. In the event of a conflict, the requirements of this chapter shall apply unless the manufacturer's instructions are stricter, in which case, the manufacturer's instructions shall apply.
- D. The owner of any new outdoor heating device shall produce the manufacturer's owner's manual or installation instruction to the Code Enforcement Officer to review prior to installation.
- E. All new outdoor heating devices shall be laboratory tested and listed to appropriate safety standards such as UL, CAN/CSA, ANSI or other applicable safety standards.
- F. Exception. If an outdoor heating device is, through the course of proper investigation by local authorities, creating a nuisance and is violating requirements of § 136-5, the following steps shall be taken by the owner and Code Enforcement Officer having jurisdiction:
  - (1) Modifications made to the unit to eliminate the nuisance such as extending the chimney or relocating the outdoor heating device, or both.
  - (2) Cease and desist operating the unit until reasonable steps can be taken to ensure that the outdoor heating device will not be a nuisance.



**§ 136-5. Operation requirements.**

Outdoor heating devices shall be constructed, established, installed, operated and maintained pursuant to the following conditions:

- A. Fuel burned in any outdoor heating device shall be only firewood, natural wood, untreated lumber, wood pellets, corn products or other listed fuels specifically permitted by the manufacturer's instructions such as fuel oil, natural gas or propane backup.
- B. The following fuels are strictly prohibited in any outdoor heating devices:
  - (1) Wood that has been painted, varnished or coated with similar material and/or has been pressure-treated with preservatives and contains resins or glues as in plywood or other composite wood products, or particle board.
  - (2) Rubbish or garbage, including but not limited to food wastes, food packaging, food wraps, animal carcass, paint or painted materials, furniture, construction or demolition debris or other household or business wastes.
  - (3) Any plastic materials, including but not limited to nylon, PVC, ABS polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
  - (4) Rubber, including tires or other synthetic rubberlike products.
  - (5) Any items not specifically allowed by the manufacturer or this section or any items prohibited by federal, state or county law, rule or regulation.
- C. Setbacks for any new outdoor heating device.
  - (1) The outdoor heating device shall be located behind the forward line of the principal residence.
  - (2) The outdoor heating device shall be located on property in compliance with manufacturer's recommendation and/or testing and listing requirements for clearance to combustible materials.
  - (3) The outdoor heating device shall have the minimum setbacks for accessory uses as required by Chapter 205, Zoning.
- D. Chimney heights for new outdoor heating devices:
  - (1) Furnace should be located no less than 100 feet from any residence not served by the furnace.
  - (2) If located within 100 feet to 300 feet to any residence not served by the furnace, it is recommended that the stack be at least two feet higher than the peak of that residence.
  - (3) If located more than 300 feet of any residence not served by the furnace, manufacturer's instructions and requirements must be met.
- E. All plumbing, electrical and mechanical terminations and penetrations to the residence must conform to the requirements of the New York State Uniform Fire Prevention and Building Codes.



§ 136-5

§ 136-6

**§ 136-6. Appeals.**

Appeals from any actions, decisions, or rulings of the Code Enforcement Officer or for a variance from the strict application of the specific requirements of this chapter shall be made to the Zoning Board of Appeals. Requests for all appeals shall be made in writing to the Zoning Board of Appeals not later than 30 days from the act, decision, or ruling from which relief is sought.





§ 136-6

§ 136-7

**§ 136-7. Penalties for offenses.**

Any violation of this chapter shall be considered a violation within the meaning of the Penal Law of the State of New York and shall subject the owner of the property on which the outdoor heating device is located to the penalties provided in Article XVII, § 205-61, of the Code of the Town of Somerset.



§ 136-7

§ 136-8

**§ 136-8. Inspection upon complaint.**

Any person, firm or corporation who or which has secured a permit to install an outdoor heating device in doing so shall have agreed to permit the Town Code Enforcement Officer or any other person designated by the Town to inspect the outdoor heating device if a complaint is filed, in writing, relative to a violation of this chapter.



**Chapter 137**

**PARKS**



§ 136-8

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

§ 136-8

**GENERAL REFERENCES**

**Campgrounds and vehicle parks — See Ch. 80.**





§ 137-1

§ 137-1

ARTICLE I  
**Haight Road Town Park**  
**[Adopted 4-8-1980]**

**§ 137-1. Hours. [Amended 4-8-1986]**

Hours for use of the Haight Road Town Park shall be 7:00 a.m. until 9:00 p.m.



**Chapter 139**

**PEDDLING AND SOLICITING**



§ 137-1

§ 139-1

**[HISTORY: Adopted by the Town Board of the Town of Somerset 7-9-2014 by L.L. No. 2-2014<sup>25</sup>.**

**Amendments noted where applicable.]**

**§ 139-1. Purpose and intent.**

The Town Board finds that high-pressured and misleading, fraudulent, and threatening activities have been associated with hawking, peddling and soliciting activities in the Town of Somerset, and that it is the purpose and intent of this chapter to protect the health, safety and general welfare of the residents of the Town by establishing regulations and licensing of hawkers, peddlers and solicitors within the Town.

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25. Editor's Note: This local law also repealed former Ch. 139, Peddling and Soliciting, adopted 8-10-1964, as amended.



**§ 139-2. Definitions.**

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

**ESTABLISHED PLACE OF BUSINESS** — A building or store in which the person transacts business and deals in the goods, wares and merchandise he hawks, peddles or solicits for during regular business hours.

**HAWKER and PEDDLER** — Except as hereinafter expressly provided, any person, either principal or agent, who, in any public street or public place or by going from house to house or place of business to place of business on foot or on or from any animal or vehicle standing in a street or highway, sells or barter, offers for sale or barter or carries or exposes for sale or barter any goods, wares, or merchandise, including magazines and other publications, except as hereinafter exempted.

**PERSON** — One or more persons, corporations, partnerships, associations, joint-stock companies, societies and all other entities.

**SOLICITOR** — Any person who goes from place to place or house to house or who stands in any street or public place taking or offering to take orders for goods, wares or merchandise, except as hereinafter exempted, or for service to be performed in the future, or for making, manufacturing or repairing any article or thing whatsoever for future delivery.





§ 139-2

§ 139-3

**§ 139-3. Applicability; exemptions.**

Nothing in this chapter shall apply to sales conducted pursuant to statutory requirement or by order of court, to any person selling personal property at wholesale to dealers in such articles, to merchants having an established permanent place of business within the Town or their employees selling or soliciting from that place of business, or to the peddling of meats, fish, fruit and similar produce by farmers and persons who produce such commodities, or to dealers in milk, baked goods, heating oil and daily newspapers, to any honorably discharged member of the armed forces of the United States who has produced a license as provided by the General Business Law of the State of New York, or to persons soliciting or collecting for any bona fide charitable organization or for persons soliciting, selling or collecting for service, school or youth groups. This chapter shall not apply so as unlawfully to interfere with interstate commerce.



§ 139-3

§ 139-4

**§ 139-4. License required.**

It shall be unlawful for any person, within the territorial limits of the Town of Somerset, to act as a hawker, peddler or solicitor as herein defined without first having obtained, and having in force and effect, a license to conduct the activity.



§ 139-4

§ 139-5

**§ 139-5. Application for license.**

Every applicant for a license as herein provided shall submit to the Town Clerk a written application, under affidavit, setting forth the following information, to wit: that he or she has never been convicted of a felony or misdemeanor (or if so, giving the details); a detailed statement of the particular business, trade or occupation or purpose for which the license is requested; the number and kind and license numbers of vehicles, if any, to be used by the applicant in carrying on the business for which the license is requested; the kinds of goods, wares and merchandise he desires to sell or the kind of service he desires to render; the name, address and age of the applicant; the name and address of the person, firm or corporation he represents; the name and addresses of all partners, of a partnership; the names and addresses of a person upon whom a legal notice may be served; two photographs of the applicant, two inches by two inches in size, taken within 30 days prior to the date of filing of the application, full face on a white background; two business references located in the County of Niagara, State of New York or, in lieu thereof, such other evidence of the character and business responsibility of the applicant; and such other information as may be required by the Town Clerk.



§ 139-5

§ 139-6

**§ 139-6. Issuance of license; regulations.**

Upon the filing of the application, as provided in the preceding section, the Town Clerk shall, upon her approval of such application, issue to the applicant a license as provided in § 139-4, signed by the Town Clerk. Except as hereinafter provided, no licenses shall be refused except for a specific reason and for the protection of public safety, health, morals, or general welfare. Conviction by the applicant of a crime involving fraud, misrepresentation, a false statement, theft, assault, any crime of violence or of moral turpitude, or a conviction of violating a peddling or soliciting ordinance or law, or an incomplete application shall be grounds for refusal. A license shall not be assignable. Any holder of such license who permits it to be used by any other person, and any person who uses such license granted to any other person, shall be guilty of a violation of this chapter. Such license shall automatically expire on January 1 following the date of issuance of such license, but such license may provide for an earlier expiration date corresponding to the termination of the activity. No applicant to whom a license has been refused or who has had a license which has been revoked shall make further application until a period of at least six months shall have elapsed since the last previous rejection or revocation, unless he or she can show that the reason for such rejection or revocation no longer exists. Every licensee, while exercising his license, shall carry the license with him and shall exhibit the same upon demand to any police officer or citizen.





§ 139-6

§ 139-7

**§ 139-7. License fees.**

The license fee to hawkers, peddlers or solicitors shall be as follows: \$150 or such other fee as shall be established by the Town Board by resolution from time to time.



§ 139-7

§ 139-8

**§ 139-8. Employees and agents of principals.**

A separate license shall be required for each:

- A. Each person or entity owing or sponsoring the hawking, peddling or soliciting activity.
- B. Each person engaging in the activity in the Town and each person operating a vehicle in support of such activity.



§ 139-8

§ 139-9

**§ 139-9. Vehicle requirements.**

Every vehicle used in support of hawking, peddling or soliciting shall have the name of the licensee and his address plainly, distinctly and legibly displayed in letters and figures at least two inches in height in a conspicuous place on the outside of the vehicle.



§ 139-9

§ 139-10

**§ 139-10. Refusal or revocation of license; notice.**

Upon the refusal of the Town Clerk to issue a license to any applicant or upon the determination of the Town Board that any license should be revoked, the procedure prescribed in § 137 of the Town Law shall be complied with. When a license shall be revoked, no refund of any unearned portion of the license fee shall be made. Notice of such revocation and the reason wherefore in writing shall be served by the Town Clerk upon the person named in the application, and a copy of such notice shall be filed with the Town Clerk. Violation of any provision of this chapter shall constitute grounds for revocation of a license.





**§ 139-11. Restrictions.**

A licensed hawker, peddler or solicitor shall:

- A. Not falsely or fraudulently misrepresent the quantity or quality of any article offered for sale; or offer for sale any unwholesome, tainted or diseased provisions or merchandise.
- B. Keep the vehicles and receptacles used by him in a clean and sanitary condition and the foodstuffs and edibles offered for sale well covered and protected from dirt, dust and insects.
- C. Not stand or permit the vehicle used by him to stand in one place in any public place or street for more than 10 minutes, or in front of any premises for any time if the owner or any lessee of the premises objects.
- D. Not sell any confectionery or ice cream within 250 feet of any school between the hours of 8:00 a.m. and 4:00 p.m. on school days.
- E. Not permit any vehicle used by him to stop or remain on any crosswalk.
- F. Not create or maintain any booth or stand or place any barrels, boxes, crates or other obstructions upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.
- G. Not blow a horn or use any other noisy device to attract public attention to his wares, or shout or cry out his wares.
- H. Not enter upon the property of any person or entity which displays a sign which states "No Trespassing," "No Soliciting," or "No Peddling" or any other message clearly indicating that solicitors, hawkers or peddlers are not welcome upon the premises.
- I. Solicit only Monday through Saturday, excluding Sundays and holidays, and only between the hours of 9:00 a.m. to 5:00 p.m.



§ 139-11

§ 139-12

**§ 139-12. Orders taken by licensed solicitors.**

All orders taken by a licensed solicitor who demands, accepts or receives payment or deposit of money in advance of final delivery shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser at the time the deposit of money is paid to the solicitor.



§ 139-12

§ 139-13

**§ 139-13. Records.**

It shall be the duty of the Town Clerk to keep a record of all applications and of all licenses granted under the provisions of this chapter, giving the number and date of each license, the name and residence of the person licensed, the amount of the license fee paid and also the date of revocation of all licenses revoked.



§ 139-13

§ 139-14

**§ 139-14. Background check.**

By signing the application, the hawker, peddler or solicitor shall consent to a background check by the Town Clerk, her designee or a law enforcement agency or a person on behalf of the Town. In addition to the application fee, the applicant shall pay with the application the actual cost of such background check as determined from time to time by the Town Board.





§ 139-14

§ 139-15

**§ 139-15. Penalties for offenses.**

Any person who shall violate any provision of this chapter shall be guilty of a violation and shall be punished by a fine not to exceed \$250 or by imprisonment of up to 15 days or by both such fine and imprisonment.



**Chapter 142**

**PROPERTY MAINTENANCE**



§ 139-15

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

§ 139-15

**GENERAL REFERENCES**

**Unsafe buildings — See Ch. 78.**

**Zoning — See Ch. 205.**

**Solid waste — See Ch. 161.**



ARTICLE I  
**Brush, Grass and Weeds**  
**[Adopted 8-8-2006 by L.L. No. 3-2006]**

**§ 142-1. Title.**

This article shall be known and may be cited as the "Grass and Weeds Law."

**§ 142-2. Legislative intent and purpose.**

The Town Board of the Town of Somerset recognizes and declares that the uncared for and neglectful attention to the growth of grass and other vegetation within the Town of Somerset can result in risks to public health and be a fire hazard. While it is recognized that certain areas may be maintained for natural habitats and other legitimate purposes, the failure of property owners to care for their property through neglect or lack of concern requires that measures be taken to ensure the maintenance of reasonable health and neighborhood standards.

**§ 142-3. Definitions.**

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

**PREMISES** — Being those lands within the Town of Somerset within a one-hundred-foot area adjacent to the residential structure on said land.

**WEEDS** — All grasses, annual plants and vegetation, other than trees or shrubs; provided, however, that this term shall not include cultivated flowers and gardens.

**§ 142-4. Duty of owner and/or occupant.**

It shall be the duty of the owner and/or occupant, tenant or person in control of every lot or parcel of land upon which an improvement has been made to maintain the premises so that all grasses and/or weeds shall not exceed 10 inches in height. All noxious weeds shall be prohibited.

**§ 142-5. Notice to comply.**

It shall be the duty of the Code Enforcement Officer to serve a notice upon the owner and/or tenant or agent in charge of said premises requiring said owner and/or tenant or agent in charge to mow premises within 10 days of the receipt of the notice either personally served upon said owner and/or tenant or agent in charge or served upon said owner and/or tenant or agent in charge by certified mail, return receipt requested, to said owner and/or tenant to the last known address or at the mailing address listed in the most recent assessment roll.

**§ 142-6. Action upon noncompliance; cost to be a lien.**

- A. Upon the failure, neglect or refusal of any owner, person or agent so notified to properly comply with this article within 20 days after the service of notice as provided herein, the Code Enforcement Officer is hereby authorized to cause the condition to be remedied and the grass, weeds or other uncultivated vegetation to be removed.
- B. Any duly authorized employee of the Town of Somerset or contractor hired by the Town of Somerset shall be authorized to enter upon the property in violation and cut and destroy the grass, weeds or other uncultivated vegetation growing on the premises and shall charge the cost of such removal to the owner of record of said property.
- C. The Code Enforcement Officer shall mail a statement to said owner of record requesting the payment of such cost, which shall become due and payable within 30 days from the mailing thereof.



§ 142-6

§ 142-6

D. If such cost is not paid within such time and interest not paid by November 1 of the year in which such cost is incurred, such cost and interest at the rates charged on unpaid taxes applicable to said property shall be collected in the same manner as any unpaid Town tax.

**Chapter 145**

**RECORDS**



§ 142-6

**[HISTORY: Adopted by the Town Board of the Town of Somerset 11-12-1974; amended in its entirety 9-10-1996 by L.L. No. 2-1996. Subsequent amendments noted where applicable.]**

§ 142-6



ARTICLE I  
**Records Management**

**§ 145-1. Intent.**

Records are essential to the administration of local government. They contain the information that keeps government programs functioning. It is the intent of this chapter that a records management program be established which will assist officials in making decisions, administering programs and providing administrative continuity with past operations. The program is intended to document the delivery of services, show the legal responsibilities of government and protect the legal rights of citizens. These records will document the historical development of government itself, the community and the people of the Town.

**§ 145-2. Definitions.**

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

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

RECORDS — Official files, minutes and documents, books, papers, photographs, sound recordings, microforms or any other materials, regardless of physical form or characteristics, made or received pursuant to law or in conjunction with the transaction of official Town business.

RECORDS CENTER — A central storage area maintained by the Records Management Officer for the storage, servicing, security and processing of records which must be preserved for varying periods of time.

RECORDS DISPOSITION — The removal by the Town of Somerset, in accordance with approved records control schedules, of the records no longer necessary for the conduct of business by such agency through removal methods which may include the disposition of temporary records by destruction or donation or transfer of records to a central storage facility for records with scheduled retention periods or permanent storage of records determined to have historical or other sufficient value warranting continued preservation or the transfer of records from one Town agency to another Town agency.

RECORDS MANAGEMENT — The planning, controlling, directing, organizing, training, promotion and other managerial activities involved in records creation, records maintenance and use and records disposition, including records preservation, records disposal and the records center or other storage facilities.

**§ 145-3. Designation of Records Management Officer; powers and duties.**

- A. The Town Clerk is designated as the Records Management Officer (RMO) and will be responsible for administering the current and arrival public records in storage areas in the Town in accordance with local, state and federal laws and guidelines.
- B. The RMO may appoint a designee to carry out specific duties.
- C. The RMO shall continually survey and examine public records to recommend their classification so as to determine the most suitable method to be used for maintaining, storing and servicing them under the following guidelines:
  - (1) Disposition. Records deemed obsolete and unnecessary according to the New York State Records Retention and Disposition Schedule are subject to disposition.
  - (2) Archival retention. Records containing information with administrative, legal, fiscal, research, historical or educational value which warrants their permanent retention are subject to archival retention.
  - (3) Active retention. Records not yet subject to disposition according to state law are subject to active retention.

**§ 145-4. Records Advisory Committee.**

There shall be a Records Advisory Committee designated to work closely with and provide advice to the Records Management Officer. The Board shall consist of the Supervisor, Town Clerk, Town Historian and the Town Attorney.

**§ 145-5. Custody and control of records.**

- A. Active records. The originating department has full custody (legal and physical) over records still in active use.
- B. Inactive records. The originating department is the legal custodian of its records and shall retain the power to retrieve and use records deposited in inactive storage in the records center. The RMO will have physical custody of inactive records and will determine the method and design of storage.
- C. Archival records. Records transferred to or acquired by the archives shall be under the full custody (legal and physical) of the archives, as directed by the RMO, rather than the department which created or held them immediately prior to being transferred to the archives.

**§ 145-6. Disposition of records.**

No records shall be destroyed or otherwise disposed of by a department of the Town until it has met the time limit on the New York State Records Retention and Disposition Schedule or unless approved of by the Records Management Officer. No records shall be destroyed or otherwise disposed of by the Records Management Officer without allowing the Town Historian to review and/or remove any single document or sampling of documents that are of historic value to the community.

**§ 145-7. Replevin.**

The legal department may take steps to recover local government records which have been alienated from proper custody and may, when necessary, institute actions of replevin. ("Replevin" is the recovery by a person of goods claimed to be his, on his promise to test the matter in court and give the goods up again if defeated.)

ARTICLE II  
**Public Access to Records**

**§ 145-8. Scope.**

- A. The people's right to know the process of government decisionmaking and the documents and statistics leading to determinations is basic to our society.
- B. These regulations provide information concerning the procedures by which records may be obtained in accordance with Article 6 of the Public Officers Law.

**§ 145-9. Records Access Officer.**

- A. The Town Clerk of the Town of Somerset will act as Records Access Officer and shall act as administrator of this chapter.
- B. The Records Access Officer shall ensure that personnel:
  - (1) Maintain an up-to-date subject matter list.
  - (2) Assist the requester in identifying requested records, if necessary.

**§ 145-10. Requests for access.**

- A. All requests for information shall be in writing, reasonably describing the record requested and made during regular business hours of the Town of Somerset offices.
- B. Such records shall be made available for inspection at the office of the Town Clerk of the Town of Somerset.
- C. Within five business days of the receipt of the written request, one of the following will occur:
  - (1) The record will be made available to the person requesting it.
  - (2) The request will be denied in writing.
  - (3) A written acknowledgment of the receipt of the request and a statement of the approximate date when such request shall be granted or denied will be forwarded.
- D. To prevent an unwarranted invasion of personal privacy, the Committee on Open Government may promulgate guidelines for the deletion of identifying details for specified records which are to be made available. In the absence of such guidelines, an agency or municipality may delete identifying details when it makes records available.

**§ 145-11. Denial of access; appeals.**

- A. The Town Board of the Town of Somerset is hereby designated to hear appeals regarding denial of access to records. **[Amended 7-10-2007 by L.L. No. 1-2007]**
- B. Any person denied access to a record may appeal within 30 days of denial, in writing, to the Supervisor.
- C. The time for deciding an appeal by the Supervisor shall commence upon receipt of written appeal identifying:
  - (1) The date and location of requests for records.
  - (2) The records that were denied.
  - (3) The name and return address of the applicant.



§ 145-11

D. The Supervisor shall transmit to the Committee on Open Government copies of all appeals upon receipt of an appeal.

E. The Supervisor shall inform the appellant and the Committee on Open Government of its determination in writing within 10 business days of the receipt of the appeal.

**§ 145-12. Fees.**

The Town officer charged with the custody and keeping of the records shall, upon request, make a copy or copies of any record subject to such inspection upon a payment of a fee of \$0.25 per page.

§ 145-12

**Chapter 152**

**SEWERS**



**[HISTORY: Adopted by the Town Board of the Town of Somerset as indicated in part histories. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Subdivision of land — See Ch. 171.**

**Wells — See Ch. 199.**

**Water — See Ch. 195.**

**Zoning — See Ch. 205.**



**Part 1**  
**Connection, Use, Discharge And Hauling**  
**[Adopted 3-12-1996 By L.L. No. 1-1996<sup>26</sup>]**

ARTICLE I  
**Terminology**

**§ 152-1. Purpose.**

The purpose of this article is to determine the meaning of the terminology used in this Part 1, whether or not such terminology appears elsewhere.

**§ 152-2. Definitions; word usage.**

A. As used in this Part 1, the following terms shall have the meanings indicated:

ASTM (AMERICAN SOCIETY FOR TESTING AND MATERIALS) — The latest published amendments or revisions of the specifications and standards promulgated by the Society.

BOD — Five-day, 20° C. biochemical oxygen demand, the accepted wastewater parameter indicating wastewater strength.

BUILDING SEWER — The extension from the building drain to the public sewer or other place of disposal, also called "house connection."

CONCENTRATION — The amount of a wastewater parameter related to the unit volume of water, usually expressed as milligrams per liter (mg/l).

CONNECTION POINT — The location on the boundary of private land with the public right-of-way, land or easement where a fixed private system discharges into the publicly owned treatment works.

CONTRACT — A written agreement between the Sewer District and certain users of the sewer system, as determined in the Rate Schedule.

CONTROL MANHOLE — Standard or special chamber constructed at any connection point or nearest to the connection point where wastewater quality cannot be altered, for the purpose of self-monitoring requirements by the user and for the quality-control monitoring by any authorities governing the use of the system.

COUNTY — Pertaining to Niagara County, regarding its laws and regulations as affecting this Part 1.

DAILY AVERAGE FLOW — The total number of gallons generated or measured in a reporting period, such as a month, quarter, billing period, year, etc., divided by the number of days in that reporting period expressed as gallons per day.

DEC — The New York State Department of Environmental Conservation, the primary state authority affecting this Part 1.

DOMESTIC USER — All users which are not industrial users.

DOMESTIC WASTE — Wastewater generated from typical household activities and fixtures in a household, such as toilets, washbasins, sinks, showers, baths, tubs, dishwashers, clothes washing machines and related fixtures.

EASEMENT — The acquired legal right of using land owned by other persons for selected purposes related to this Part 1 by the Sewer District.

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26. **Editor's Note: This Local Law Provides Rules And Regulations On Methods And Practices Employed In The Use Of Public And Private Treatment Works, Including All Collection, Transportation, Treatment And Disposal Appurtenances And Systems Associated With The Wastewater, And Providing Penalties For Violations Thereof In The Somerset-Barker Sewer District In The County Of Niagara, State Of New York. This Local Law Governs The Use Of These Facilities To Protect The Environment For The Mutual Benefit Of All.**

- § 152-2 EPA — The United States Environmental Protection Agency, the primary federal authority as affecting this Part 1. § 152-2
- FECAL COLIFORM — The accepted wastewater parameter which expresses the indication of biological hazard of water.
- FEDERAL — Pertaining to the United States of America, regarding its public laws and statutes, rules and regulations as affecting this Part 1, particularly as found under Title 40 of the Code of Federal Regulations.
- FLOATABLE OIL — Oil, fat or grease in a physical state, such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
- FLOW — The amount of wastewater related to an interval of time, most commonly expressed as gallons per day (gpd) or million gallons per day (mpd).
- FLOW MEASUREMENT — Determination of flow.
- FLOW RECORDING — Development of flow-data history by continually and intermittently performing flow measurements at specified intervals or by employing specialized equipment to continuously and uninterruptedly enter flow measurements.
- FORCE MAIN — The pressurized line used to convey sewage from a pumping unit to a gravity sewer system.
- GARBAGE — The animal and vegetable waste resulting from handling, preparation, cooking and serving foods.
- GRINDER PUMP UNIT (GPU) — The packaged unit needed to pump sewage from an individual household into the public sewer system.
- GROUNDWATER — Any water below the earth's surface or grade, including temporary and permanent subsurface waters.
- INDUSTRIAL USER — Any establishment that discharges industrial waste or is defined as such by the Standard Industrial Classification Manual (latest edition), prepared by the Statistical Documents Division, Office of Management and Budget, Executive Office of the President of the United States, in Division A, B, D, E and I of this manual, that discharges more than 25,000 gallons per day or any industrial or commercial establishment which may discharge toxic, prohibited or incompatible pollutants as described in the federal and state regulation or determined by the Sewer District or any user defined as industrial by the Sewer District or latest federal or state regulation or any establishment owning or operating pretreatment facilities as defined in Article VI.
- INDUSTRIAL WASTES — The wastewater from industrial process, trade or business as distinct from domestic or sanitary wastes.
- LOAD — The amount of a wastewater parameter related to unit time, usually expressed as pounds per day (ppd).
- LOCAL — Pertaining to the Sewer District.
- NCHD — The Niagara County Health Department, the primary regional authority affecting this Part 1.
- OWNER — Person in possession of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control or person exercising dominion and control over premises.
- PEAK FLOW — The highest or maximum instantaneously recorded or measured flow, commonly expressed as gallons per day or million gallons per day.
- PERSON — Any individual, firm, company, association, society, corporation or group.
- pH — The accepted wastewater parameter which expresses the nature of acid or alkaline conditions of water.

- § 152-2 PRETREATMENT — Facilities required through local, county, state or federal regulation to reduce wastewater parameters to levels acceptable for utilization of the publicly owned treatment works after the connection point. § 152-2
- PRIVATELY OWNED TREATMENT WORKS — The entire system owned and operated by persons other than the Sewer District, which system is to include collection, treatment and discharge, as found on lands owned by persons other than the Sewer District.
- PROPERLY SHREDDED GARBAGE — The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.
- PUBLIC DISCHARGE PERMIT — The single permit to discharge wastewater from the Sewer District, as issued to the Sewer District by the state in accordance with state and federal regulations, identified as State Pollution Discharge Elimination System Permit No. NY0030651. Sanitary discharge locations (see definition of "sanitary discharge locations" in this section) of the Sewer District are identified in this permit.
- PUBLIC SEWER — A common sewer controlled by the Somerset-Barker Sewer District as a governmental agency or public utility.
- PUBLICLY OWNED TREATMENT WORKS (POTW) — The entire system owned and operated by the Sewer District, including collection, treatment and discharge, as found on owned lands, leased lands or lands within public rights-of-way.
- QUALITY CONTROL MONITORING — Selected announced and unannounced sampling and analysis and flow measurement at the connection point by local, county, state and federal authorities to determine the precision and accuracy of self-monitoring by users and owners of private systems.
- SAMPLING AND ANALYSES — The determination of wastewater parameters in accordance with test procedures as found and described in federal regulations.
- SANITARY DISCHARGE LOCATION — The outfall point of treated wastewater to the receiving stream.
- SANITARY SEWER (COLLECTION) SYSTEM — All appurtenances, including sewers and fittings, such as manholes, tees, wyes, risers and facilities, such as pump stations, holding tanks and offline tunnels, used for the conveyance of wastewater.
- SANITARY SEWER — Sewer intended to convey wastewater as regulated in this Part 1.
- SANITARY WASTE — Domestic waste.
- SELF-MONITORING — Selected sampling and analysis and flow measurement at the connection point as required of a user or owner of a private system by local, county, state and federal regulation.
- SEWAGE — Wastewater.
- SEWAGE TREATMENT PLANT — Facility intended for the reduction of waste from wastewater.
- SEWER — Closed conduits which convey wastewater or stormwater.
- SOMERSET-BARKER SEWER DISTRICT (SEWER DISTRICT) — An area in the Town of Somerset, including the Village of Barker, designated by local authority as the Sewer District.
- SS — Suspended solids or nonfilterable residue, which is a laboratory determination to express a wastewater parameter, generally accepted as an important indicator of certain solid and other matter in water.
- STATE — Pertaining to the State of New York, regarding its laws and regulations as affecting this Part 1, particularly as found in the New York Code.
- STORM SEWER — Sewer intended to convey stormwater, groundwater, subsurface water or unpolluted water from any source.



**STORMWATER** — Naturally occurring water as a result of precipitation.

**STREAM** — Surface waters or naturally occurring bodies of water, including but not limited to lakes, ponds, rivers, brooks or creeks, or the constructed extensions to these bodies, including but not limited to ditches, impoundments, canals, reservoirs or storm sewers. (See definition of "storm sewer" in this section.)

**STREAM CLASSIFICATION** — The identification of streams, by basin, location and name, as found in the New York State Code of Rules and Regulations.

**TOWN** — The Town of Somerset.

**TOWN OF SOMERSET SEWER DEPARTMENT** — Department responsible for operation and maintenance of the facilities within the Sewer District.

**UNPOLLUTED WATER** — Water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving-water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater.

**USER** — A person who utilizes the publicly owned treatment works for disposal of wastewater generated on private land.

**VILLAGE** — The Village of Barker.

**WASTEWATER** — The spent water of the community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from the residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present.

**WASTEWATER HAULER** — A user who collects waste from private systems and transports this waste to designated points of waste acceptance in the public sewer system or sewage treatment plant.

**WASTEWATER PARAMETER** — Expressions of the amount and characteristic of the specific waste constituents in water as defined and described in federal regulations.

**WATER** — Includes origins from natural (private and public) sources, including drinking supplies, prior to the introduction of waste.

B. Word usage.

**MAY** — This word is used where conditions indicate flexibility or case-by-case review as requirements at the immediate direction and authority of the Sewer District.

**SHALL** — This word is used as an imperative, and provisions of this Part 1 employing this word are mandatory.

ARTICLE II  
**Use of Public Sewers Required**

**§ 152-3. Discharge restricted.**

Within the district where the public sanitary system is available, no person shall continue to discharge to any natural outlet within the Sewer District or in any area under the jurisdiction of said Sewer District any sanitary sewage, industrial wastes or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Part 1.

**§ 152-4. Connection to public sewer required.**

- A. The owner of all existing houses, buildings or properties used for human occupancy, employment, recreation or other purpose, situated within the Sewer District and abutting on any road, street, alley, easement or right-of-way in which there is located a public sanitary sewer of the Sewer District, is required, at his expense, to connect all sanitary facilities directly with public sanitary sewer in accordance with the provisions of this Part 1, after official written notice to the owner to do so by the Niagara County Health Department.
- B. The owner of all new houses, buildings or properties used for human occupancy, employment, recreation or other purpose, situated within the Sewer District and abutting on any road, street, alley, easement or right-of-way in which there is located a public sanitary sewer of the Sewer District, is required, at his expense, to connect all sanitary facilities directly with public sanitary sewer in accordance with the provisions of this Part 1.
- C. Sewer billing begins when the building is erected and connection to the sewer system is made, and ends only when the building is demolished and the sewer is capped off. **[Added 10-11-2011 by L.L. No. 6-2011]**

**§ 152-5. Connection regulations.**

- A. Where no public sanitary sewer exists or where a public sanitary sewer does exist, the building sewer shall be connected to an approved sewage disposal system.
- B. When the distance from the highway boundary, public sewage easement line or the public trap and vent at the sewer main to the nearest extremity of the building exceeds 300 feet, the building sewer may be connected to a grinder pump unit.
- C. When the distance from the highway boundary, the public sewer easement line or the public trap and vent at the sewer main to the nearest extremity of the building exceeds 200 feet but is less than 300 feet and the building main floor elevation is such that a gravity sewer connection is below the public sewer, a grinder pump installation will be used.
- D. For any building that is not connected to the public sewer under Article III or for any other reason, the owner shall pay all charges as may be applicable in full accordance with Article VIII, Sewer Rates, of this Part 1.
- E. Termination and conversion. At such time as a public sanitary sewer is installed and placed into service, the owners of said properties serviced by said sanitary sewer shall be so informed by public notice. The owners of such properties that require sanitary sewage service, as deemed necessary by the Niagara County Health Department, shall make application for a permit to connect to said public sanitary sewer in compliance with this Part 1.
- F. Where a public sanitary sewer and building are separated by a road or street (only one side of the street is sewer), the Town shall determine whether to connect said building directly to the sanitary sewer or use an alternate method of sewage collection/disposal.



ARTICLE III  
**Privately Owned Treatment Works**

**§ 152-6. Construction and use.**

- A. Owners of premises generating wastewater, including all houses, buildings or properties used for human occupancy, employment, recreation or another purpose, situated within the Sewer District but with no publicly owned treatment works available for use, shall construct, utilize and maintain privately owned systems, as required and regulated by the Niagara County Health Department.
- B. Where use of a private disposal system is allowed, the owner of such system shall pay all costs for the construction, operation and maintenance of the private disposal system.

**§ 152-7. Primary authorities.**

The New York State Department of Environmental Conservation and Niagara County Health Department are the primary authorities for the control of private discharges, and persons seeking a permit to discharge shall make appropriate application with the state and county to obtain a state pollution discharge elimination system permit to discharge. In addition, the type, capacities, location and layout of a private wastewater works shall comply with all recommendations of the Niagara County Health Department. No statement contained in this Part 1 shall be construed to interfere with any additional requirements that may be imposed by the Niagara County Health Department or New York State Department of Environmental Conservation.

**§ 152-8. Notice to owners; connection permit.**

At such time as a public sanitary sewer is installed and placed into service, the owners of such properties serviced by said sanitary sewer shall be so informed by public notice. The owners of such properties that require sanitary service, as deemed necessary by the Niagara County Health Department, shall make application for a permit to connect to said public sanitary sewer in compliance with this Part 1.



ARTICLE IV  
**Building Sewers and Connections**

**§ 152-9. Requirements.**

- A. There shall be two classes of building sewer permits:
- (1) For establishments producing domestic waste.
  - (2) For industrial users.
- B. Under the provisions of Article II of this Part 1, all persons designated to be sewer users shall have established connection points to the public system. Connection to the public system will be performed in accordance with the requirements for permit issuance as stated in the Rules and Regulations of the district.<sup>27</sup>
- C. A separate and independent building sewer shall be provided for every building, except that, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the front building sewer may be extended to the rear building and the whole considered as one building sewer, with each building being connected. The Sewer District does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.
- D. Old building sewers may be used for connection to the public system only when they are found, on examination and test by the Sewer District, to meet all requirements of this Part 1.
- E. No person(s) shall make connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the Sewer District for purposes of disposal of polluted surface or subsurface drainage or groundwater.
- F. Users designated for self-monitoring requirements may be required to construct a suitable standard or special chamber at or near the connection point. Where required, the owner shall install a suitable structure, together with such necessary meters and other appurtenances in the structure to facilitate observation, sampling and measurement of the wastes. Such structure, when required, shall be accessibly located and shall be constructed in accordance with the requirements for permit issuance. The structure shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.
- G. The installation of the service connection shall be inspected by the Town of Somerset Sewer Department prior to backfilling. Testing for leaks shall be done by the Town of Somerset Sewer Department on the completed installation with the trench completely backfilled except for the ends where the connections are made. The excavation shall be left open at both ends until the installation is successfully tested.
- H. All plumbing work performed and materials used shall conform to the Town of Somerset and New York State Building Codes.
- I. The user shall bear all costs for the connection, including materials and labor costs to extend the private portion from the service connection point at the public right-of-way or easement. Costs for the public portion of the service connection shall be borne by the user in accordance with Article VIII of this Part 1.

**§ 152-10. Grinder pump units.**

- A. When a grinder pump unit is allowed, the Somerset-Barker Sewer District shall maintain the grinder pump unit. Maintenance costs of the grinder pump unit shall be borne by the user as required in Article VIII of this Part 1. If a grinder pump unit is installed at a seasonal residence, it is the user's responsibility to notify the

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27. Editor's Note: Part 2 of this chapter.

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Town of Somerset Sewer Department of said user's departure and return date, so that the Town may perform seasonal maintenance on the pump.

- B. An outside grinder pump unit may be installed in any location approved by the Sewer District to allow for access and maintenance.
- C. The installation of the complete grinder pump unit must be inspected by the Town Sewer Department prior to backfilling. Backfilling must be done with earth that is free of stones, rocks, sharp objects, debris, etc. The backfill shall be carefully tamped as it is being placed to prevent settlement.
- D. The grinder pump unit shall be obtained from the Town of Somerset Sewer Department. The Somerset-Barker Sewer District maintains ownership of the grinder pump unit. All repairs must be done by the Town of Somerset Sewer Department.
- E. Electrical installation. Electrical installation of the grinder pump unit includes installation of electrical load centers, emergency generation enclosure, grinder pump control panel and inside alarm panel.
- F. When the grinder pump unit malfunctions or gives warning (e.g., high-water alarm or any other indicator light), the user shall follow the troubleshooting procedure as prescribed by the Town.

ARTICLE V  
Sewer Use**§ 152-11. Prohibited discharges; restrictions.**

- A. All users of the sewer systems, including domestic or industrial users and waste haulers, shall meet all local, county, state and federal use regulations, particularly federal pretreatment standards on prohibited discharges and all categorical and specific standards.
- B. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff or subsurface drainage to any public sanitary sewer, unless such discharge is accepted by the Sewer District for purposes of disposal of polluted surface or subsurface drainage or groundwater.
- C. No person shall place, deposit or permit to be deposited in an unhealthy manner, upon public or private property within the district or in any area under the jurisdiction of said district, any human excrement, garbage or other objectionable waste.
- D. No person shall discharge or cause to be discharged any waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed or are not treatable to such a degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- E. No person shall discharge or cause to be discharged any water or wastes which, by interaction with other water or wastes in the public sewer system, release noxious gases, form suspended solids which interfere with the collection system or create a hazard to structures or treatment processes.
- F. If any water or wastes are discharged or are proposed to be discharged to the public sewers which contain substances or possess the characteristics described in § 152-11B, D and E of this article and which in the judgment of the Sewer District may have a negative effect upon the wastewater facilities, possessions, equipment or receiving waters or which otherwise constitute a public nuisance, the Sewer District may:
- (1) Reject the wastes or require pretreatment to an acceptable condition for discharge to public sewers;
  - (2) Require control over the quantities and rates of discharge; or
  - (3) Require payment to cover added cost of handling and treating the wastes not covered by existing taxes or sewer charges.
- G. No person shall discharge or cause to be discharged any of the following-described liquids, waters or wastes to any public sanitary sewer:
- (1) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
  - (2) Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process, create a public nuisance or create any hazard in receiving waters of the wastewater treatment plant.
  - (3) Any waters or wastes having a pH lower than 6.0 or greater than 9.0 or having any other corrosive or chemical property capable of causing damage or hazard to structures, equipment or personnel of the wastewater works.
  - (4) Any solid or viscous material which could cause an obstruction to flow in the sewers or in any way could interfere with the treatment process, including examples of such materials, but not limited to, ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tars, plastics, wood and sawdust, paunch manure, hair and fleshings, entrails, lime slurries, beer and distillery slops, grain-processing wastes, grinding compounds, acetylene-generation sludge, chemical residues, acid



§ 152-11 residues, food-processing bulk solids, snow, ice and all other solid objects, material, refuse and debris not normally contained in sewage. § 152-14

- H. Substances, materials, waters or waste shall be limited in discharge to the public system to concentrations of quantities which will not harm either the sewers, wastewater treatment process or equipment will not have an adverse effect on the receiving stream, private property or constitute a nuisance. The Sewer District may set limitations more stringent than the limitations established in the regulations if in its judgment, such more severe limitations are necessary to meet above objectives.
- I. The limitations or restrictions on materials or characteristics of wastes or wastewaters discharged to the sanitary sewer which shall not be violated without the approval of the Sewer District are as follows:
  - (1) Wastewater having a temperature higher than 150° F. (65° C.) or a temperature lower than a limit that may be fixed by the Sewer District.
  - (2) Wastewater containing more than 25 milligrams per liter of petroleum oil, nonbiodegradable cutting oils or products of mineral oil origin.
  - (3) Wastewater from industrial plants containing floatable oils, fats or grease.
  - (4) Any garbage that has not been shredded.
  - (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater works exceeds the limits established.
  - (6) Any waters or wastes containing odor-producing substances exceeding limits deemed acceptable by the Sewer District.
- J. No person shall discharge or cause to be discharged any radioactive material or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with the applicable state and federal regulations.
- K. In general, only wastewater compatible to treatment of biodegradable domestic wastes shall be accepted by the wastewater works.

**§ 152-12. Monitoring; sampling and analysis.**

- A. All users, industrial or domestic and wastewater haulers may be required to perform self-monitoring sampling and analysis and make the appropriate report to the Sewer District.
- B. Any sampling and analysis conducted for the purposes of meeting monitoring requirements must be conducted in accordance with all appropriate local, county, state and federal rules and regulations.
- C. Flow measurement must be accurately and precisely performed. The person required to monitor flow shall bear all responsibility for the accuracy of flow measurements and records.
- D. In all cases of monitoring, sampling and analysis shall be conducted so as to be representative, that is, performed to indicate the most valid representation of all conditions encountered.
- E. Any person required to monitor shall maintain a complete and accurate file on data and correspondence.

**§ 152-13. Special use; agreement.**

The Sewer District shall identify a user subject to special regulation, such as limited use, pretreatment, industrial cost recovery, etc., and enter into agreement for use of the sewer system by contract. Such contract with a bond posted by the user shall be defined upon completed negotiations and made part of the Rate Schedule.

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**§ 152-14. Pretreatment of flow-equalizing facilities.**

- A. Any user may be required by the Sewer District, through local, county, state or federal regulation, to construct and operate units or processes which will reduce the flow rate or the amounts or concentrations of wastewater parameters in the wastewater to acceptable levels.
- B. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.
- C. The Sewer District has the right to enter and inspect pretreatment facilities as found under Article VI.

**§ 152-15. Misuse of publicly owned treatment works; user's rights.**

- A. Property damage. No person shall maliciously, willfully or negligently break, damage, destroy, uncover or deface any structure, appurtenance or equipment which is a part of the publicly owned treatment works.
- B. Tampering. No person shall maliciously, willfully or negligently tamper with any structure, appurtenance or equipment, particularly valves, weirs, flow splitters and such appurtenances, which is part of the publicly owned treatment works, so that such tampering may pose a health and safety hazard to the community.
- C. Limitation on user's rights. The right of the user of the publicly owned treatment works is limited exclusively to the rights to discharge, that is, to discharge wastewater from the owned premises of the user to the public system at the connection point. Public ownership in no way implies that persons in the Sewer District have free and open access to any components of any public treatment works, unless as regulated by this Part 1.
- D. Restricted entry. No person, except for duly appointed representatives and employees of the Sewer District, Town, county, state or federal government or persons specifically authorized by the Sewer District, shall enter or occupy any premises of publicly owned treatment works, except that announced and unannounced visits to the sewage plant by any person not a staff member or employee at the sewage treatment site may be made but only by entry through the main gate and by immediate report for acknowledgment by the employee in responsible charge of the treatment plant at such time of visit.
- E. Misuse and abuse. A person shall only discharge sewage and properly shredded garbage, as defined in Article I, into the public or private sewage system. Any person violating this provision shall be subject to appropriate civil, criminal and/or maintenance charges, as applicable. See Article VIII of this Part 1 for the appropriate maintenance charges. Some examples of such misuse and abuse may include but are not limited to disposal of diapers, rags, toys and excessive grease into the sewage system.

**§ 152-16. Power and authority of inspectors.**

- A. The Sewer District is the primary authority on sewer use, supplementing regulation by the county, state and federal governments.
- B. Authorized representatives of the Sewer District, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the public system in accordance with the provisions of this Part 1.
- C. The Sewer District is authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system.

**§ 152-17. Cost of public system.**

Costs for public portions associated with sewer use will be borne by the user in accordance with Article VIII.

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**§ 152-18. Authority of Sewer District.**

The Sewer District shall retain authority to control the publicly owned treatment works, as per this Part 1 and through future changes, amendments, addenda and editions of this Part 1 as needed to reflect changes in appropriate local, regional, county, state and federal regulations. This Part 1 remains valid independent of the composition of the works, including increases and decreases in the number of persons, users and public and private discharge locations.

ARTICLE VI  
**Pretreatment**

**§ 152-19. Pretreatment standards.**

- A. General standards.
- (1) If the Sewer District permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to review of the Sewer District.
  - (2) Grease, oil and sand traps shall be provided when, in the opinion of the Sewer District, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts or any flammable wastes, sand or other harmful ingredients. All such units shall be of a type and capacity acceptable to the Sewer District and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintenance of these units, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal, which are subject to the review of the Sewer District.
- B. The Sewer District is not obligated to inspect and review to make recommendations regarding the planning, design, construction, operation or maintenance of pretreatment facilities, and any review or recommendations made by any representatives of the Sewer District is for information purposes only. The Sewer District is indemnified against all loss or damage to the property of the owner of the pretreatment system caused by such review. In no case will recommendations made by the Sewer District relieve the owner in his responsibility to meet any rules or regulations.
- C. Limitations and pretreatment requirements under this Part 1 shall apply. It is always the responsibility of the user to alert the Sewer District of possible industrial usage or change in use status. The Sewer District may require a user of the sewer services to provide information needed to determine compliance with this Part 1. These requirements may include:
- (1) Wastewater discharge peak rate and volume over a specified time period and chemical analysis of wastewaters.
  - (2) Information on raw materials, processes and products affecting wastewater volume and quality.
  - (3) Quantity and disposition of specified liquid, sludge, oil, solvent or other materials important to sewer use control.
  - (4) A plot plan of sewers on the user's property showing sewer and pretreatment facility location.
  - (5) Details of wastewater pretreatment facilities and details of systems to prevent and control the losses of materials through spills to the municipal sewer.
- D. In general, self-monitoring by the publicly or privately owned treatment works or self-monitoring of users mentioned in the discharge permits of these systems is extensively regulated by the federal government, particularly by the United States Environmental Protection Agency regulations on test procedures, allowing only selected standard methods regarding both field sampling and laboratory analytical procedures.
- E. Sampling. It shall be the responsibility of the owner to ensure that the correct sample container is used, sufficient sample volume is drawn and that samples are composited, recorded and submitted properly to the analytical laboratory, whether private or public.
- F. Analysis. It shall be the responsibility of the owner to ensure that the laboratory is qualified and the tests are performed in accordance with rules and regulations mentioned in this Part 1 or as amended from time to time.
- G. Where flow recorders are used, particularly flow recorders that relate flow to only one dimension, such as

- § 152-19 depth, time or volume, the recorder shall be internally calibrated to ensure proper operation and § 152-19 externally calibrated to actual measurements of depth, time, volume and velocity. Where flow records are required, the recorded data line shall be continuous for the reporting period, clear and readable, with the correct chart size, scale and time duration used.
- H. Flow measurements and sampling shall be rotated and performed at various times of the day, days of the week and so forth and not simply repetitive so that certain conditions are omitted or only certain conditions selected for representation.
  - I. Samples for analysis and flow measurement will be taken only at control manholes, unless specifically directed otherwise by the Sewer District. The user submitting samples (or data relative to samples) which have been substituted for samples intended to be collected at the control manhole shall indicate and describe the substitution and why it was made.
  - J. The Sewer District may employ or require the user to employ an independent third analytical laboratory to serve as a control, if there are discrepancies between data of the Sewer District and data submitted by such user. The cost for this monitoring shall be borne by such user.

ARTICLE VII  
**Wastewater Hauling**

**§ 152-20. Hauling and disposal of wastewater.**

- A. Wastes will be accepted from 8:30 a.m. to 3:30 p.m., Monday through Friday. No wastes will be accepted on weekends (Saturday and Sunday). Legal holidays which are observed by the Sewer District will also be excluded as days when wastes are accepted.
- B. Method. Wastewater haulers shall collect wastewater at generation point or points and convey it to the specifically designated point of introduction into the public system at the sewage treatment plant. The hauler will be fully responsible for loss of or damage to the property of the Sewer District resulting from such use and, at all times, shall conduct the hauling operation in accordance with all appropriate local, county, state and federal regulations and standards for safety and health. No hauler shall introduce waste or wastewater into the collection or treatment system except at the designated point and except with the prior knowledge of the Sewer District for each such hauling event. Wastewater introduced shall meet all limitations and standards as found in this Part 1.
- C. The Sewer District may permit introduction of wastewater under this article into points on the collection system, for emergency or convenience, only if all provisions of this Part 1 and other regulations can be met, if such use is safe and if such use poses no problems in the treatment works, including flow obstruction, surcharge, backup in the sewers or any adverse effects at the treatment plant.
- D. The hauler must be aware of and may be required to describe the quantity and characteristics of wastewater intended for introduction into the system, including details of the source of such wastewater and is fully responsible and liable for introduction of such waste into the public system. In no way shall the Sewer District assume responsibility or liability for the primary or secondary safety, health or environmental effects of wastewater accepted through any formal or informal acceptance procedure. Where multiple collection points are served, the wastewater quantity and characteristics of each singly and of all combined shall be known.
- E. Those transporting wastewater with parameters typical of domestic sewage, such as evacuations of restaurant holding tanks, may be required to monitor the wastewater initially only to establish its characteristics, plus periodically to ensure these characteristics have not changed. Those transporting other wastes may be required to do complete sampling and analysis and accurate determination of volume.
- F. The Sewer District may, at any time, refuse to accept wastewater from a hauler. The Sewer District does not guarantee that the public system will be available for use on the intended day or days of introduction of hauled wastewater into the system. The hauler will maintain alternate and contingency methods of disposal, such as storage or hauling to authorities and systems other than the Sewer District, so that all requirements of this Part 1 are met. In such case, the Sewer District shall be held harmless and indemnified for all costs and against all loss and damage arising from the inconvenience.
- G. The Sewer District may impose limits on the amount, flow or concentration of wastewater introduced into the treatment works.
- H. The quantity of wastewater introduced into the public system shall be measured or accurately estimated by flow measurement devices or by measurement of transport tank volume or portion used.
- I. Costs. The wastewater hauler shall conduct all operations, including collection, transport and introduction of the wastewater into the public system, at no cost to the Sewer District. The cost of operating the public system to accept this waste shall be borne by the wastewater hauler, in accordance with a fair and equitable system of user charges, with a surcharge for special handling by the Sewer District under this article, developed under applicable local, state and federal regulations, as found in the Rate Schedule.
- J. No cash transactions will be allowed at the site. All transactions will be made by permit. Permits will be

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available in various denominations from the Sewer District.

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ARTICLE VIII  
**Sewer Rates**

**§ 152-21. Rate Schedule.**

Costs of construction, operation and maintenance of the publicly owned treatment works shall be borne by the users of those publicly owned works, in accordance with a fair and equitable system of user charges. Such charges shall collectively be known as the "Rate Schedule." The Rate Schedule shall be appropriately adopted and periodically updated by the Sewer District.<sup>28</sup>

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**28. Editor's Note: The Rate Schedule is located in § 152-30 of this chapter.**





ARTICLE IX  
**Administration and Enforcement**

**§ 152-22. Conflicts with other provisions.**

All local laws and parts of local laws, all local ordinances, local codes and regulations which are inconsistent with or in conflict with or are repugnant to any provisions of this Part 1 shall be deemed not to apply, provided that nothing herein contained shall be construed to prevent the adoption and enforcement of a law, ordinance, code or regulation which is more restrictive or establishes a higher standard than those provided in this Part 1.

**§ 152-23. Enforcement; penalties for offenses.**

- A. **Violation.** A person shall be found in violation of this Part 1 when failing to adhere to any of the regulations or provisions of this Part 1.
- B. **Notification.** The Sewer District shall notify the person that a violation has been determined by the Sewer District. Notification shall be in writing and shall explain details of the Sewer District's judgment of the violation.
- C. **Compliance.** Within 30 days after notification of violation, the responsible person shall correct the violation, pay appropriate fines and notify the Sewer District in writing that the violation has been remedied, with a detailed description of actions taken.
- D. **Penalties.** Any person violating any provision of this Part 1 is subject to a fine of up to the sum of \$5,000 for violation of any provision of this Part 1. Any industrial user, special user or wastewater hauler violating any provision of this Part 1 is subject to a fine of up to the sum of \$5,000. Each day a provision or regulation is violated is considered a separate violation. The district is further authorized to apply to the Supreme Court of the State of New York for injunctive relief where deemed necessary, in addition to the foregoing fines.

**§ 152-24. When effective.**

This Part 1 shall be effective on filing with the Secretary of the State and Department of Audit and Control.



**Part 2**  
**Sewer Rules And Regulations**  
**[Adopted 3-12-1996]**

ARTICLE X  
**Building Sewers and Connections**

**§ 152-25. Connection points.**

- A. Where such provisions for service connections have been originally constructed as part of the public sewer construction, the Sewer District shall locate the connection point and the user shall excavate and connect to such point, subject to inspection and acceptance of the Sewer District.
- B. For new connection points where provisions for service connections have not been originally constructed as part of the public sewer construction, the Sewer District shall establish the connection point location and the user shall ensure appropriate connection is made, subject to inspection and acceptance of the Sewer District.

**§ 152-26. Cleaning, filling and covering of wastewater facilities.**

- A. Any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with a suitable material or excavated and removed or demolished in accordance with accepted procedures to minimize health risk. Such works shall be covered by earth, concrete or suitable material to exclude rodents and flies and to prevent odors and prevent other nuisance conditions. The point on the privately owned collection system sewer where wastewater is to be intercepted and diverted to the public system shall be broken and separated from the private system and shall be permanently plugged.
- B. No sewer shall be covered until after it has been inspected, tested and accepted by the Town Sewer Department.

**§ 152-27. Special requirements.**

- A. In all buildings in which any building sewer is too low to permit gravity flow to the public sewer, sanitary sewage carried by such sewer shall be lifted by a grinder pump unit and discharged to the public sanitary sewer at the expense of the owner.
- B. When a control manhole is required, the manhole will be located such that no other direct or indirect connections shall exist between the control manhole and the connection point.
- C. All plumbing work performed and materials used shall conform to the Town of Somerset and New York State Building Codes.

**§ 152-28. Gravity sewers.**

- A. Gravity sewers shall be PVC nonpressure pipe, labeled SDR35, ASTM Specification D3034. All joints shall be compression-type joints with Neoprene or rubber, circular gaskets. The gasket shall be factory installed and locked in such that no displacement occurs during the joining of the pipe.
- B. Size, slope, alignment and depth.
  - (1) The size, slope and alignment of the gravity sewer shall be subject to approval of the Sewer District. Grade or slope for various pipe sizes shall not be less than the following:
    - (a) Four-inch pipe: 1/8 inch per foot.
    - (b) Six-inch pipe: 1/16 inch per foot.

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(c) Over six inches: plan required for engineering review and acceptance.

(2) The depth shall be sufficient to afford protection from freezing and against physical damage (normally four-foot minimum depth). The gravity sewer shall be laid at a uniform grade. The line shall be straight or laid with properly curved pipe and fittings. Changes in alignment direction greater than 45° shall be provided with cleanouts accessible for cleaning.

- C. The gravity sewer shall have sufficient horizontal and vertical separation from the water service or any potable waterline.
- D. All gravity sewers shall be bedded to six inches above the pipe barrel and six inches below. The bedding material shall be stone of a maximum dimension of one inch and shall be placed to eliminate voids between the pipe and the disturbed soil. If the soil conditions appear unstable, the Sewer District may require additional methods of support for the pipe.
- E. All gravity sewers shall be tested for leakage after installation. The test shall be conducted on all joints that would be exposed to infiltration of groundwater, surface water or other extraneous sources of nonpolluted waters. The test shall be conducted from the trap and vent to the building plumbing system. The test shall be conducted by the Town Sewer Department. If an air test is required, the sewers shall be charged with air to pressure of four pounds per square inch. The sewer shall show a loss of no greater than 0.5 pounds per square inch over a ten-minute period.
- F. In certain cases where a gravity sewer is being replaced, the Sewer District may allow the use of high-density polyethylene pipe, by placing the polyethylene pipe inside the existing sewer. In this situation, the pipe shall have a minimum SDR of 18 and shall conform to all applicable ASTM specifications for this material. The joints shall be thermal butt fused between lengths of polyethylene pipe with the inner bead removed. Joints between the polyethylene and other pipe materials or the trap and vent shall be by a coupling acceptable to the Sewer District. Express permission of the Sewer District shall be obtained prior to proceeding with this type of installation. Application for permission shall be accomplished by a plan and a list of materials, sizes and depths.

### § 152-29. Installation of grinder pumps.

- A. Installation of grinder pumps.
- (1) The dimensions of the grinder pump basin are two feet in diameter by six feet high. The excavation should be kept as small as possible while allowing enough room for installation.
  - (2) The grinder pump basin should be aligned so that the connections for the incoming sewer line as well as the discharge line (polyethylene tubing) are facing in proper directions.
  - (3) The top of the grinder pump basin should be kept two inches above the adjacent ground level with the ground graded up to it.
  - (4) The grinder pump must be set on a minimum of three inches of sand (for leveling the unit as well as for protection of the base).
  - (5) A minimum of 17 cubic feet of concrete must be poured around the base of the grinder pump basin prior to backfilling. This concrete is necessary to prevent the unit from floating when the groundwater level rises. Concrete shall be confined to the area directly adjacent to the basin and not allowed to spread out.
- B. Installation of polyethylene tubing.
- (1) Polyethylene tubing is used to transport the sewage from the grinder pump to the main sewer at the street. For outside grinder pump units, it is connected directly to the discharge pipe and the unit. For inside grinder pump units, it is connected to the PVC piping which is installed through the basement

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wall. At the street, it is connected to a redundant check valve.

- (2) When possible, the polyethylene tubing shall be installed in one continuous length. If necessary, splices are to be made with compression fittings manufactured by Mueller.
- (3) The polyethylene tubing shall be installed deep enough so that there is a minimum of four feet of earth cover over it for its entire length.
- (4) The polyethylene tubing is not to be bent in a radius smaller than 55 inches.
- (5) Detectable tape shall be installed eight inches directly above the polyethylene tubing for its entire length.
- (6) Backfilling must be done with earth that is free of stones, rocks, sharp objects, debris, etc. The backfill shall be carefully tamped as it is being placed to prevent settlement.

#### C. Materials.

- (1) Polyethylene discharge tubing shall be one-and-one-half-inch nominal copper pipe size water service tubing, Class 160, SDR-9, conforming to ASTM 2737 specifications. The connections to the grinder pump unit and redundant check valve shall be made utilizing Mueller compression fittings and bronze nipples. All other fittings utilized in the installation shall also be bronze.
- (2) Detectable tape shall be Terra-Tape D as manufactured by the Giffolyln Company of Houston, Texas, or equal; three inches wide; orange-colored and continuously imprinted with the warning "Caution - Sewer Line Buried Below" in black letters. (See Figure 2.)<sup>29</sup>
- (3) Curb stop valve and box shall be installed by the Town of Somerset Sewer Department and be located at the highway boundary.
- (4) Redundant check valve shall be obtained from the Town of Somerset Sewer Department and be located at the curb stop on the grinder pump unit side.
- (5) Grinder pump units shall be obtained from the Town of Somerset Sewer Department.

#### D. Electrical installation.

- (1) The electrical load center shall be NEMA No. 1 surface-mounted, two-hundred-fifty-volt, thirty-amp, single-phase, neutral-buss, galvanized steel with gray baked-enamel finish. Feeders from main panel shall be No. 12, including three insulated conductors and one equipment ground. The grinder pump shall be protected by a twenty-amp, double-pole circuit breaker using No. 12 three wire and equipment ground.
- (2) Emergency-generator enclosure. The emergency-generator enclosure NEMA 3R shall be mounted as described on the grinder-pump control-panel schematic.<sup>30</sup> It shall consist of 16-gauge, galvanized steel with gray baked-enamel finish. The minimum size shall be eight inches by six inches by four inches deep with provisions for a padlock. The plug and receptacle for the emergency-generator connection shall be twist-locked, twenty-amp, two-hundred-fifty-volt, three-pole and NEMA Configuration L10-20. The AC-DC transfer switch shall consist of a double-throw switch, two-hundred-forty-volt AC, three-pole, NEMA Type 3R.
- (3) The grinder pump control panel shall be mounted (see Figure 3) on the same side of building as the grinder pump is installed. Wiring from the emergency-generator enclosure to the grinder pump shall consist of four No. 12 THHN (power conductors) and 12 No. 14 THHN color-coded control wires into one-inch Schedule 40 PVC conduit.

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**29. Editor's Note: Figure 2 is included as an attachment to this chapter.**

**30. Editor's Note: See Figure 3, which is included as an attachment to this chapter.**

§ 152-29 (4) Inside alarm panel. The inside alarm annunciator shall be one-hundred-ten-volt connected to the No. 6 and natural terminals in the grinder pump control panel. This will operate in conjunction with the red light on the outside of the control panel. It shall be mounted on a four-inch round box cover at the best audible location inside the building. Feed wiring for the inside annunciator will come from the emergency-generator enclosure where it enters into the building. § 152-30

NOTE: Waterproofing material provided with the unit must be applied to conduit from inside of the pump unit reservoir. All electrical work performed and materials used shall be in accordance with the National Electrical Code. All installations require the Board of Fire Underwriters inspection.

**§ 152-30. Rate Schedule. [Amended 5-11-2010 by L.L. No. 1-2010; 10-11-2011 by L.L. No. 6-2011]**

- A. The rate schedule is established so that sufficient revenue is collected to meet the debts presently incurred or to be incurred by the Somerset-Barker Sewer District. The rate schedule, as amended from time to time by resolution of the Town Board, is on file with the Town Clerk.
- B. Billing:
  - (1) The indirect benefit charges, the direct benefit charges and unit charges shall be billed via the county and Town tax bill and shall be payable herewith.
  - (2) The user charges shall be billed quarterly via the Town of Somerset billing system and shall be payable within 30 days of the date of billing. Past-due amounts shall receive a surcharge of 10% added to the following quarterly bill and every past-due unpaid balance thereafter. Any unpaid user charges on or before October 1 shall be assessed against the user's property on the next current Town tax bill.
  - (3) All rates shall be reviewed annually. User charges shall provide sufficient funds for continued operation and maintenance of the publicly owned treatment works. Unexpended revenue shall be transferred to the budget established for the following year.
- C. An indirect benefit charge shall be levied on all parcels within the Sewer District which do not have sanitary sewers directly available for use.
- D. The direct benefit charge shall be levied on all parcels within the Sewer District which have sanitary sewers directly available for use, whether or not the owner has made connection to the sewer.
- E. The unit charge and user charge shall be levied against property owners that have made connection to the sewer.
- F. The first repair of a vent pipe in the Town-owned portion of a sewer service connection shall be free per homeowner per parcel. Subsequent repairs shall be \$50.

**Chapter 154**  
**SEX OFFENDERS**





§ 152-30

§ 152-30

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



ARTICLE I  
**Residency and Proximity Restrictions**  
**[Adopted 8-8-2006 by L.L. No. 4-2006]**

**§ 154-1. Legislative intent and purpose.**

- A. The highest priority of government is the safety and protection of its residents, especially its children. From time to time, a number of registered sex offenders have been, or may be, living within the Town of Somerset. A number of these sex offenders have been categorized as level two sex offenders who have been determined to pose a moderate risk of committing another sexual crime. A number of these sex offenders have been categorized level three sex offenders who have been determined to pose a high risk of committing another sexual crime.
- B. This Town Board finds and determines that it is essential to assure residents of the Town of Somerset that Town government continues to make every effort to protect children from sex offenders.
- C. This Town Board further finds and determines that it is in the best interests of the Town of Somerset citizens to establish residency and proximity restrictions for sex offenders who have committed criminal sexual offenses against minors.
- D. Accordingly, the purpose of this article is to prohibit sex offenders from residing within, or entering within, a radius of 1,500 feet measured from the main, or secondary, or tertiary entrances of a public or private school, nursery school, preschool, child-care facility, playground, or park.

**§ 154-2. Definitions.**

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

**CHILD-CARE FACILITY** — Licensed and/or registered child day-care centers, group family day-care homes and family day-care homes as defined by the New York State Social Services Law.

**RESIDENCE** — The place where a person sleeps, which may include more than one location, and may be mobile or transitory.

**SEX OFFENDER** — A person who has been convicted of a sexual offense against a minor and has received a level two or three designation as defined under Article 6-C of the New York State Correction Law.

**§ 154-3. Restrictions.**

- A. A sex offender as herein defined shall not reside within, or enter within, a radius of 1,500 feet measured from the main, or secondary, or tertiary entrances of a public or private school, nursery school, preschool, child-care facility, playground, or park; notwithstanding, however, a sex offender may enter within a fifteen-hundred-foot radius solely for the purpose of employment, shopping or attending appointments, but in no event shall the sex offender enter on to the premises of a public or private school, nursery school, preschool, registered day-care center, playground, or park while working, shopping or attending an appointment.
- B. This section shall not require sex offenders who reside in the Town as of this article's effective date to change their residence if their residence violates the restrictions in this section. Any subsequent changes in residence, however, shall comply with the restrictions in this section.

**§ 154-4. Permission required to rent to certain persons.**

No person may rent, lease or let residential space (including, but not limited to, a room, apartment, condominium, house, residential trailer) to a person listed on the New York State Sex Offender Registry as a level three sex offender without having received a letter from the Town of Somerset Clerk that such rental, lease or letting is not in violation of this article. A request for such a letter will be acted upon within 10 business days.

§ 154-5

§ 154-9

**§ 154-5. Clerk to be notified of residency.**

No person listed on the New York State Sex Offender Registry as a level three sex offender shall rent, lease or let residential space without first having notified the Clerk of the Town of Somerset of his or her current name and address. Any such person shall further notify the Clerk of the Town of Somerset in the event his or her name or address changes, together with the new name and/or address.

**§ 154-6. Notifications.**

Notification of passage of this article and of these prohibitions shall be delivered in writing, by the Niagara County Sheriff, to each and every level two and level three registered sex offender now residing, or in the future residing, within the County of Niagara. Notifications will also be delivered in writing by the Niagara County Sheriff, to Village of Barker Police Department, the New York State Police, the New York State Division of Parole, the Niagara County Parole Department, all school districts and private schools within the Town of Somerset, and all child-care facilities in the Town of Somerset, as defined in this article.

**§ 154-7. Penalties for offenses.**

Any violation of the provisions of this article shall be deemed to be an a misdemeanor punishable by a fine not exceeding \$1,000 or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

**§ 154-8. Severability.**

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

**§ 154-9. When effective.**

This shall take effect 60 days after it has been filed in the offices of the Secretary of State.

**Chapter 157**  
**SNOWMOBILES**



§ 154-9

§ 154-9

**[HISTORY: Adopted by the Town Board of the Town of Somerset 12-9-1975. Amendments noted where applicable.]**

**GENERAL REFERENCES**

All-terrain vehicles — See Ch. 188.





**§ 157-1. Statutory authority. [Amended 9-10-1996 by L.L. No. 2-1996]**

The Town Board of the Town of Somerset hereby designates the Town highways listed herein for use by snowmobiles, pursuant to §§ 25.05 and 25.09 of the Parks, Recreation and Historic Preservation Law of the State of New York.



§ 157-1

§ 157-2

**§ 157-2. Definitions. [Amended 9-10-1996 by L.L. No. 2-1996]**

The terms, words and phrases used in this chapter shall have the same meaning as such terms, words and phrases are defined in § 21.05 of the Parks, Recreation and Historic Preservation Law.



§ 157-2

§ 157-3

**§ 157-3. Posting of highways required.**

The highways listed herein shall not be open for use by snowmobiles until they are posted as prescribed by law and further such highways shall only be open for snowmobiles while they are posted.



§ 157-3

§ 157-4

**§ 157-4. Operation restricted.**

Operation on only that portion of the highway being the shoulder and inside bank of that highway is hereby authorized, and operation on any other part of the highway is not permitted.





§ 157-4

§ 157-5

**§ 157-5. Designation of highways.**

The following highways shall be designated for use by snowmobiles:

Haight Road, where posted

Johnson Creek Road, where posted

Lower Lake Road, where posted



**§ 157-6. General regulations.**

Snowmobiles shall be subject to the following rules, restrictions and conditions for the regulation and safe operation of the same:

- A. Prohibited hours of operation shall be 11:00 p.m. to 7:00 a.m. except on Friday, from 12:00 midnight to 7:00 a.m., and Saturday, from 12:00 midnight to 7:00 a.m.
- B. Snowmobiles on the designated highways, shoulders and inside banks must travel on the right-hand side in the same direction as highway traffic except at bridges, culverts and intersections.
- C. The operator of the snowmobile must be insured against public liability, and he must carry with him proof of financial liability.
- D. It shall be unlawful for any owner or operator to leave or allow a snowmobile to be left unattended on any portion of a Town highway or public place while the motor is running or with any key for starting the same left in the ignition or elsewhere in said snowmobile.
- E. Operators must obey all traffic laws.
- F. If the operator is less than 16 years of age, he shall meet the requirements of § 25.19 of the Parks, Recreation and Historical Preservation Law. **[Amended 9-10-1996 by L.L. No. 2-1996]**
- G. All snowmobiles operated on designated Town highways pursuant to provisions of this chapter shall be equipped with lights, both front and rear, and shall have a valid motor vehicle license.
- H. Each person operating a snowmobile on any Town highway shall observe strictly all vehicular traffic signs and signals and all other rules and regulations applicable to vehicular traffic and shall obey the orders and directions of any state or local police or other law enforcement officer authorized to direct or regulate traffic.



§ 157-6

§ 157-7

**§ 157-7. Penalties for offenses. [Amended 9-10-1996 by L.L. No. 2-1996]**

Failure to comply with any of the provisions of the chapter shall be deemed a violation, and the violator shall be liable to a fine of not more than \$250.



**Chapter 161**  
**SOLID WASTE**





§ 157-7

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

§ 157-7



ARTICLE I  
**Garbage and Refuse District**  
**[Adopted 8-14-1979]**

**§ 161-1. Establishment; method of collection; costs.**

The establishment of a refuse and garbage district in the Town of Somerset to be known as "Town of Somerset Refuse and Garbage District," to be bounded and described as hereinafter set forth, is hereby approved. The collection and disposal of refuse and garbage throughout the area of the entire district shall be provided by means of contracting with a refuse and garbage collector. The cost of said service shall be assessed on the property owners in the district in proportion, as nearly as may be, to the benefit which each lot or parcel will derive therefrom. The maximum amount to be expended for the services will be the annual cost of the contract, which contract will be entered into by the Town after public hearing. The annual cost may change based upon the amount of the annual contract price.

**§ 161-2. Boundaries.**

Said district shall be bounded and described as follows: all that tract or parcel of land being the entire Town of Somerset outside of the Village of Barker.



ARTICLE II  
**Dumping**  
[Adopted 3-12-1991 by L.L. No. 1-1991]

**§ 161-3. Legislative findings.**

The Town Board of the Town of Somerset determines that depositing garbage, refuse, debris and abandoned materials is detrimental to the public health, safety and welfare of the inhabitants of the Town of Somerset.

**§ 161-4. Definitions.**

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

**GARBAGE** — Includes waste food, papers, dead animals and vegetable matter capable of fermentation or decay but shall not include fertilizers.

**OWNER** — The person having possession of premises or the person or persons in legal title to said lands, including the person residing on said premises.

**PERSON** — Includes an individual, partnership, corporation or association.

**RUBBISH** — Includes waste material, metals, wood, tires, ashes, cinders, tin cans and all other discarded materials, excluding brush or wood piles placed on the premises by the owner thereof.

**§ 161-5. General regulations.**

- A. No person shall discard or cause to be discarded or deposited any garbage or rubbish in or upon any public highway or any public or private lands within the Town of Somerset outside the Village of Barker.
- B. The owner of lands in the Town of Somerset outside the Village of Barker shall, at all times, keep such lands free and clear of any accumulation of garbage or refuse or discarded materials of any type, unless such material is being properly composted according to generally accepted standards.
- C. Garbage and refuse must, at all times, be placed in properly sealed or closed or approved containers for pickup by Town of Somerset garbage contractors or properly disposed of by the person responsible. Refuse or garbage remaining on the owner's premises in the Town of Somerset outside the Village of Barker in violation of this article shall be prima facie evidence that the owner is responsible for the violation.

**§ 161-6. Penalties for offenses.**

Any person violating this article may be liable for a penalty not to exceed the sum of \$1,000 or one year in jail, or both such fine and imprisonment.



ARTICLE III  
**Recycling**  
**[Adopted 9-10-1991 by L.L. No. 2-1991]**

**§ 161-7. Legislative findings.**

The Town Board of the Town of Somerset finds that the reduction of the amount of solid waste and the conservation of recyclable materials are important public concerns. The separation and collection of newspaper, paper, cardboard, glass, cans, plastic containers and other materials for recycling from the residential, commercial, industrial and institutional establishments in the Town will protect and enhance the Town's physical and visual environment, as well as promote the health, safety and well-being of persons and property within the Town by minimizing the potential adverse effect of landfilling, facilitating the implementation and operation of other forms of solid waste management, conserving natural resources and assisting the Town in complying with the mandates of the New York State Solid Waste Management Act of 1988.<sup>31</sup> The promotion and use of recyclable materials, goods produced from recyclable materials and goods which facilitate recycling will further serve the same purposes by encouraging and facilitating recycling.

**§ 161-8. Definitions.**

For the purposes of this article, the following terms, phrases, words and derivatives shall have the following meanings:

**ADMINISTRATOR** — The person or persons designated by resolution of the Town Board to monitor and enforce this article. The Town Board shall act as Administrator unless a separate designation is made.

**HAZARDOUS WASTE** — Includes but is not limited to the following products and their empty containers: insecticides, herbicides, petroleum products, caustic chemicals, paint and batteries. "Hazardous wastes" generally display one or more of the qualities of ignitability, corrosivity, reactivity or toxicity.

**NONRECYCLABLES** —

- A. That portion of the waste stream not included under recyclables and not treated separately as hazardous waste under § 27-0903 of the New York State Environmental Conservation Law; source, special nuclear or by-product material as defined in the United States Atomic Energy Act of 1954; or low-level radioactive waste as defined in § 29-0101 of the New York State Environmental Conservation Law.
- B. "Nonrecyclables" include but are not limited to the following:
- (1) **GARBAGE** — Putrescible solid waste, including animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking or serving of foods. "Garbage" originates primarily in home kitchens, storage areas, markets, restaurants and other places where food is stored, prepared or served.
  - (2) **RUBBISH** — Rags, sweepings, rubber, leather, excelsior, crockery, shells, clothing, straw, dirt, filth, ashes, wastepaper and similar waste material.
  - (3) **LARGE HOUSEHOLD FURNISHINGS** — Large and/or bulky articles actually used in the home and which equip it for living (such as chairs, sofas, tables, beds, carpets and large appliances).
  - (4) **CONSTRUCTION AND DEMOLITION DEBRIS** — Waste resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. Such wastes include but are not limited to bricks, concrete and other masonry materials, soil, rock spoils, paving material and tree or brush stumps.

**PERSON** — Any individual, firm, partnership, company, corporation, association, joint venture, cooperative

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**31. Editor's Note: See Environmental Conservation Law § 27-0101 et seq.**



§ 161-8 enterprise, trust, municipality, other governmental agency or any other entity or any group of such person which is recognized by law as the subject of rights and duties. In any provisions of this article prescribing a fine, penalty or imprisonment, the term "person" shall include the officers, directors, partners, managers or persons in charge of a company, corporation or other legal entity having officers, directors, partners, managers or other persons in charge. § 161-10

RECYCLABLES — Any materials which can be collected, separated and/or processed, treated, reclaimed, used or reused to produce a raw material or product, which materials include, but are not limited to the following:

- A. Paper, clean and unsoiled, including newsprint, newspapers, news advertisements, supplements, comics and enclosures, corrugated boxes, cardboard, cardboard cartons and similar corrugated materials.
- B. Unbroken glass, glass bottles or types of containers, but not including dishes, crockery, ceramics, window glass, safety glass or Pyrex-type glass.
- C. Metals limited to bimetal cans, tin-plated steel cans, aluminum containers and aluminum household items.
- D. Plastic containers normally found in the household, including containers used primarily for laundry products, dishwashing detergents, milk, water and similar items including PET (polyethylene terephthalate) and HDPE (high-density polyethylene) and other common plastic resin types.
- E. Such other items and materials, including garden and yard waste as may later be included pursuant to agreement between the Town and its refuse collection contractor; provided, however, that nothing in this article shall be construed as preventing any person from utilizing vegetative yard waste for compost, mulch or other agricultural, horticultural, gardening or landscaping purposes.

WASTE MATERIAL — Includes all recyclables and nonrecyclables which make up the waste stream eligible for curbside pickup under this article. "Waste material" does not include dead animals, fecal matter or material treated separately as hazardous waste under § 27-0903 of the New York State Environmental Conservation Law; source, special nuclear or by-product material as defined in the United States Atomic Energy Act of 1954; or low-level radioactive waste as defined in § 29-0101 of the New York State Environmental Conservation Law.

**§ 161-9. Establishment of recycling program.**

- A. Upon the effective date of this article, there is hereby established a program for the separation, preparation for collection and collection of waste materials. The program shall be under the supervision of the Town of Somerset, its Administrator and its collection agent or contractor.
- B. The Town Board and its Administrator will determine recyclables and units required to recycle and notify Town residents by publishing said information in the official Town newspaper or newspapers at least 30 days before said declaration will be incorporated into the Town program.
- C. All waste material to be collected by the Town shall be separated, prepared for collection and collected in accordance with §§ 161-10 and 161-11 of this article.
- D. The Town of Somerset, its Administrator and its collection agent or contractor shall have no obligation to pick up and remove any waste material not prepared for collection in accordance with this article.
- E. The Town of Somerset, its Administrator and its collection agent or contractor shall have no obligation to pick up and remove any waste material which was not used in the residence or business or other establishment and subject to the Town's contracts for garbage and recycling.
- F. The Town of Somerset, its Administrator and its collection agent or contractor shall have no obligation to pick up or remove any waste material which is not provided for pursuant to the Town's contract for waste removal with a contractor or otherwise provided for by a Town-administered pickup and removal program. Certain businesses, industries and residences may not be provided for in Town of Somerset pickup and removal programs.

§ 161-10

§ 161-12

**§ 161-10. Preparation for collection.**

No person shall dispose of waste material for collection by the Town except as follows:

- A. Waste material shall be prepared for collection in accordance with Subsection A(1) through (4) of this section.
- (1) Each person shall provide separate, sealable, galvanized-iron cans or other suitable sanitary sealable containers or heavy-duty plastic bags for nonrecyclables unless stipulated otherwise in this article. Such cans or containers shall not exceed 30 gallons' capacity and, when filled, shall not exceed 60 pounds in weight. All cans or containers shall be placed at the curb or roadside for collection.
  - (2) Recyclable aluminum, cans and items, glass bottles and plastic items shall be separated from nonrecyclables and placed in the recyclable collection container.
  - (3) Recyclable metal cans, aluminum, cans, glass and plastic containers and other items so separated shall be rinsed of contents and placed in the recyclable collection container.
  - (4) Newsprint shall be separated from nonrecyclables and either placed in the recyclable container or properly secured into bundles not to exceed 25 pounds in weight and placed at the curb or in the recyclable container or roadside next to the recyclable container for collection. Effort is to be made to keep the newsprint clean and dry and contamination free.
  - (5) Other items to be included for recycling are to be prepared as set forth from time to time by resolution of the Town Board according to such expansions of the curbside collection program as may be established by the Town from time to time.
  - (6) One recyclable container shall be provided by the Town to each unit and shall conform in color, logo, shape and material and other specifications to the material established from time to time by the Town Board. Replacements may be purchased from the Town at an amount to be determined by the Town Board. Recycling containers shall be the property of the Town and must remain on the premises of the household.
- B. The municipality may change classification of nonrecyclables to recyclables, as defined herein, in the event it determines that reclassification is cost-effective or that economic markets exist for that product. The municipality shall notify all generators of the change in classification. **[Added 3-8-1994]**

**§ 161-11. Collection.**

Waste materials shall be collected in a manner consistent with the terms of the Town of Somerset collection contract.

**§ 161-12. General regulations.**

- A. When any person properly places any recyclable materials at or near any curb, sidewalk, street or road for the purposes of collection by the Town of Somerset or its contractor, those recyclable materials shall thereupon immediately become the property of the Town of Somerset or its authorized agent. No person not acting under authority of the Town of Somerset or its authorized agent shall collect, pick up, remove or cause to be collected, picked up or removed any recyclable materials so placed for collection; each such unauthorized collection, pickup or removal shall constitute a separate violation of this article.
- B. Notwithstanding the provisions of Subsection A, where the Town or its agent or contractor has refused to collect certain recyclables because they have not been placed or treated in accord with the provisions of this article, the person responsible for initially placing those materials for collection may and shall promptly remove those materials from any curb, sidewalk, streetside or roadside and assume possession, control and responsibility for the proper disposal of the same.

§ 161-12

§ 161-16

- C. Nothing herein shall prevent any person from making arrangements for the private collection of recyclables, provided that recyclables to be privately collected shall not be placed curbside on or immediately preceding the day for municipal collection of such recyclables.
- D. The Town of Somerset, its Administrator and its authorized agent shall not be required to collect any waste material which has not been separated and secured pursuant to the provisions of this article or the applicable regulations of the Town of Somerset.

**§ 161-13. Importation of waste or recycling materials.**

- A. No person shall cause to be imported into the Town of Somerset waste material for garbage collection.
- B. No persons shall cause to be imported into the Town of Somerset recycling material for collection.

**§ 161-14. Commercial, industrial and institutional waste generators. [Added 3-8-1994]**

The provisions of this article apply to commercial, industrial and institutional waste generators. In the event that they do not have materials collected pursuant to law or contract, they shall be responsible for components prior to being disposed of in any manner or solid waste left for collection or delivered to the generator at a solid waste management facility. This material must be source-separated.

**§ 161-15. Penalties for offenses.**

A violation of this article, other than § 161-12A or 161-13, shall constitute a violation punishable, upon conviction thereof, by a fine not exceeding \$250 for each offense. A violation of § 161-12A or 161-13 shall constitute a misdemeanor punishable, upon conviction thereof, by not more than six months' imprisonment or a fine not exceeding \$1,000, or both.

**§ 161-16. When effective.**

This article shall take effect upon filing with the Secretary of State; however, its provisions are suspended until such date that a contract is implemented by the Somerset Town Board for recycling in the Town of Somerset.

**Chapter 167**

**STREETS AND SIDEWALKS**



§ 161-16

**[The provisions regulating streets and sidewalks within the Town of Somerset are not currently codified. Consult municipal records for relevant regulations.]**

§ 161-16

**GENERAL REFERENCES**

**Highway construction standards — See Ch. 114.**

**Subdivision of land — See Ch. 171.**



**Chapter 171**

**SUBDIVISION OF LAND**





§ 161-16

**[HISTORY: Adopted by the Town Board of the Town of Somerset 7-13-2010 by L.L. No. 3-2010.<sup>32</sup> § 161-16  
Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Development fees — See Ch. 86.**

**Highway construction standards — See Ch. 114.**

**Environmental quality review — See Ch. 92.**

**Sewers — See Ch. 152.**

**Right to farm — See Ch. 98, Art. I.**

**Streets and sidewalks — See Ch. 167.**

**Flood damage prevention — See Ch. 104.**

**Zoning — See Ch. 205.**

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**32. Editor's Note: This local law also repealed former Ch. 171, Subdivision of Land, adopted 9-10-1996 by L.L. No. 2-1996, as amended.**



ARTICLE I  
**Authority, Title and Declaration of Policy**

**§ 171-1. Authority.**

- A. By the authority of the resolution of the Town Board of the Town of Somerset, pursuant to the provisions of Article 16 of the Town Law of the State of New York, the Planning Board of the Town of Somerset is authorized and empowered to review each proposed subdivision plat within the Town and to approve, approve with modification or disapprove such plats in accordance with the procedure and standards stated in this chapter. This authority shall extend to plats showing lots, blocks or sites, with or without streets or highways, undeveloped plats already filed in the office of the Clerk of the County and preliminary plat, within that part of the Town of Somerset outside the limits of any incorporated city or village.
- B. It is declared to be the policy of the Planning Board to consider the subdivision of land as part of a plan for the efficient and economic development of the Town. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace; that proper provision shall be made for drainage, water supply, sewage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall comprise a convenient system conforming to the Official Map and shall be properly related to the proposals in the Town's Comprehensive Plan and shall be of such width, grade and location as to accommodate prospective traffic, to facilitate fire protection and to provide access of firefighting equipment to buildings.
- C. The provisions of this chapter are the minimum requirements for what is required of subdivision review and approval. More stringent provisions may be imposed from time to time if it is demonstrated that different standards are necessary to promote the public health, safety and welfare. Similarly, where the conditions imposed by any provisions of this chapter are either more or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the more restrictive shall govern.



ARTICLE II  
**Terminology**

**§ 171-2. Word usage.**

Words in the singular include the plural, and words in the plural include the singular. The word "person" includes a corporation, unincorporated association, partnership and individual. The word "lot" includes "parcel" or "plot." The word "building" includes "structure" or part thereof. The word "street" includes "road," "highway" and "lane." The word "watercourse" includes "drain," "ditch" and "stream." The word "may" is permissive, but the word "shall" is directive.

**§ 171-3. Definitions.**

For purposes of this chapter, certain words and terms used herein are defined as follows:

**BLOCK** — An area bounded by streets.

**BOND, MAINTENANCE** — A bond similar in nature to a performance bond, which guarantees the satisfactory operation of installed improvements for a stated period.

**BOND, PERFORMANCE** — A performance bond duly issued by a bonding or surety company approved by the Town Board with security acceptable to the Town Board or, alternatively, a performance bond acceptable to the Town Board duly issued by the developer-obligor accompanied by security in the form of cash, certified check or U.S. government bearer bonds deposited with the Town Board to guarantee complete installation of required improvements.

**BUILDING DEPARTMENT** — The Town of Somerset Code Enforcement Officer and his or her staff.

**CONDITIONAL APPROVAL OF A FINAL PLAT** — The approval of the Planning Board of a final plat subject to conditions set forth in a resolution. Such "conditional approval" does not qualify a final plat for recording, nor does it provide authorization for the issuance of a building permit prior to the signing of a plat by a duly authorized officer of the Planning Board and recording of the plat in the office of the County Clerk in accordance with the provisions of this chapter.

**CROSSWALK** — A right-of-way, privately owned or owned by the municipality, which is at least 12 feet in width, which cuts across a block to furnish access for pedestrians to adjacent streets or properties.

**EASEMENT** — Authorization by a property owner for the use of any designated part of his property by another person, Town, municipality or public utility district for a specified or public purpose.

**ENGINEER OR LICENSED PROFESSIONAL ENGINEER** — A person licensed as a professional engineer by the State of New York.

**FINAL PLAT** — A plat prepared in accordance with Article IV of this chapter, showing definitively a proposed subdivision of a tract of land and related improvements.

**FLOOD LIMITS** — The land-water boundary of a natural drainage course, flowing at a frequency defined by the Federal Emergency Management Agency.

**FRESHWATER WETLANDS MAP** — A map on which are indicated the boundaries of any freshwater wetlands which have been filed with the Somerset Town Clerk pursuant to Article 24, Freshwater Wetlands Act, of the New York State Environmental Conservation Law.

**GRADING PLAN** — A plan showing all present and proposed grades for stormwater drainage.

**IMPROVEMENT** — Those physical additions and changes to the land that may be necessary to produce desirable lots, including but not limited to grading, paving, curbing, fire hydrants, water mains, sanitary sewers and drains, sidewalks, crosswalks and street shade trees.

**LOT** — A parcel or area of land, the dimensions and extent of which are determined by the latest official records or

§ 171-3 by the latest approved map of a subdivision of which the lot is a part, intended for transfer of ownership or building development, whether immediate or future. § 171-3

**MAJOR SUBDIVISION** — Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots, or any size subdivision requiring a new street or extension of municipal facilities.

**MASTER OR COMPREHENSIVE PLAN** — A Comprehensive Plan, prepared pursuant to § 272-a of the New York State Town Law.

**MINOR SUBDIVISION** — Any subdivision containing not more than four total lots so subdivided, fronting on an existing street, not involving any new street, road or the extension of municipal facilities and which does not alter a natural drainage course, not adversely affect the development of the remainder of the parcel or adjoining property, and not in conflict with any provision of the Master Plan, Official Map or Zoning Law.<sup>33</sup>

**NATURAL DRAINAGE COURSE** — Any naturally developed creek, ravine, or gully through which surface water continuously or periodically flows in its natural course.

**OFFICIAL MAP** — The map approved by the Town Board pursuant to § 270 of the Town Law which shows existing and proposed streets and highways.

**OWNER** — The owner of the land proposed to be subdivided.

**PARCEL** — Land identified by a legal description and Tax Map number, which is filed or proposed to be filed in the County Clerk's office.

**PLANNING BOARD** — The Planning Board of the Town of Somerset.

**PRELIMINARY PLAT** — A drawing or drawings clearly marked "preliminary plat" showing the layout of a proposed subdivision as specified in § 171-22 of this chapter, submitted to the Planning Board for approval prior to submission of the proposed final plat with respect to major subdivisions. Preliminary plats of minor subdivisions will not require final plat review but require a negative EIS prior to being approved. The preliminary plat must provide sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

**RIGHT-OF-WAY** — A strip of land between property lines opened for use as a street, crosswalk or another public purpose.

**ROAD or STREET** — A general term used to describe a right-of-way which, if privately owned or owned by the municipality, serves as a means for vehicular and pedestrian travel, furnishing space for sewers, public utilities and shade trees. The "streets" are classified by function as follows:

- A. **ARTERIAL STREETS** — Streets which are used or designed primarily for through or heavy traffic.
- B. **COLLECTOR STREETS** — Streets which carry traffic from minor streets to arterial streets, including the principal entrance streets of a residential development and streets for circulation within such a development.
- C. **MINOR OR LOCAL STREETS** — Streets which are used primarily for access to the abutting properties.
- D. **MARGINAL ACCESS STREETS** — Minor streets which are parallel to and adjacent to arterial streets, which provide access to abutting properties and protection from through traffic.
- E. **DEAD-END STREET** — A street or a portion of a street with only one vehicular outlet.

**SKETCH PLAN** — A sketch of a proposed subdivision showing the information specified in § 171-21 of this chapter.

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

**STREET WIDTH** — The width of a right-of-way, measured at right angles to the center line of the street.

**SUBDIVIDER** — Any person, firm, corporation, partnership or association, which shall lay out any subdivision or

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33. Editor's Note: See Ch. 205, Zoning.

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part thereof as defined herein, either as owner of the land or agent for the owner.

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**SUBDIVISION** — The division of any single lot, tract or parcel of land, or a part thereof, into two or more lots, sites, tracts or parcels of land, with or without streets or highways, for the purpose, whether immediate or future, of sale, transfers of ownership or building or development.

**SUBDIVISION, EXEMPT** — Parcels of land into six acres or more which are used for one or more agricultural purposes, as recognized by § 301(4)(a) to (k) of the New York State Agriculture and Markets Law and which does not involve a new street shall not be deemed a subdivision. The sale or exchange of parcels of land between adjacent or adjoining property owners which does not create additional lots shall not be considered a subdivision of land.

**SUBDIVISION PLAT or FINAL SUBDIVISION PLAT** — A drawing, in final form, showing a proposed subdivision containing all information or detail required by law and by this chapter to be presented to the Planning Board for approval and which, if approved, may be duly filed or recorded by the applicant in the Office of the County Clerk.

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

**TOWN BOARD** — The Town Board of the Town of Somerset.

**TOWN ENGINEER** — An engineer retained by the Town on a consulting or full-time basis.

**ZONING ORDINANCE** — Chapter 205, Zoning, of the Code of the Town of Somerset.





ARTICLE III  
**Application Procedure and Approval Process**

**§ 171-4. Procedure in filing subdivision applications; fee.**

- A. Prior to subdividing property, the subdivider shall obtain the applicable form(s) to apply for subdivision approval for any subdivision of land involving two or more parcels or when creation of any new roads or easements or alteration of natural drainage elements are proposed to be made, and before any contract for the sale of or any offer to sell any lots in such subdivision or any part thereof is made, and before any permit for erection of a structure in such proposed subdivision shall be granted. The subdivider or his duly authorized agent shall apply in writing for approval of such proposed subdivision in accordance with the following procedures.
- B. Official application forms, which are available from the Building Department, shall be submitted to the Chairman of the Planning Board by the Code Enforcement Officer. A form fee, as set by the Town Board, for the application, is payable at the time the application is obtained from the Town. The requirement of subdivision approval of any nature shall be waived for the sale or exchange of parcels of land between adjacent or adjoining property owners or where such sales do not create additional lots.

**§ 171-5. Sketch plan review.**

- A. Submission of sketch plan. Any owner of land shall, prior to subdividing or resubdividing land, submit to the Chairman of the Planning Board by the Code Enforcement Officer, as per Planning Board regulations and not later than the first Monday of the month prior to the regular meeting of the Board, an appropriately completed official application form along with 15 copies of a sketch plan of the proposed subdivision, which shall comply with the requirements of § 171-21, for the purposes of preliminary discussion. Such copies of the sketch plan are considered part of the subdivision application.
- B. Discussion of requirements and classification. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the requirements of this chapter for street improvements, drainage, sewerage, water supply, fire protection, and similar aspects, as well as the availability of existing services and other pertinent information.
- C. Study of sketch plan. The Planning Board shall determine whether the sketch plan meets the purposes of this chapter and shall, where it deems necessary, make specific recommendations in writing to be incorporated by the applicant in the next submission to the Planning Board.

**§ 171-6. Minor subdivision.**

For minor subdivisions, as defined in § 171-3, Definitions, this section shall apply. Any proposed alteration of a natural drainage course shall require application for major subdivision approval in accordance with this chapter. If property is not serviced by either public sewer or public water, approval of the Niagara County Health Department shall be required.

- A. The Building Department of the Town of Somerset is authorized to accept applications as hereinafter referenced for minor subdivision for consideration and approval by the Planning Board, in its sole discretion, which procedure is intended to simplify and expedite the requirements for review. Said application is to include the following information:
  - (1) A copy of such covenant or deed restrictions as is intended to cover all or part of the tract.
  - (2) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearing and distances, made and certified to by a licensed land surveyor. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 20 feet. The corners of the tract and lot corners, as deemed necessary by the Planning Board, shall also be located on the ground and marked by

§ 171-6 monuments as approved by the Planning Board, and shall be referenced and shown on the final plat. § 171-7

- (3) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the County Department of Health, and a note to this effect shall be stated on the plat signed by a licensed engineer.
  - (4) Proposed subdivision name, name of the municipality and county in which it is located.
  - (5) The date, North point, map scale, name and address of record owner and subdivider.
- B. The approval of any minor subdivision will not require final plat review. However, a minor subdivision plat application will not be complete until a negative declaration has been adopted and filed or a notice of completion of a draft environmental impact statement (DEIS) has been filed pursuant to the SEQRA regulations.
- (1) Time limitations for review and determination of minor subdivision plat applications by the Planning Board commence with the filing of a negative declaration or notice of completion of a DEIS.
  - (2) If the Planning Board determines that environmental review is not required, a public hearing must be held within 62 days of receipt of a complete plat, the hearing closed within 120 days and a decision rendered within 62 days thereafter.
  - (3) If, however, the Planning Board determines, pursuant to SEQRA, that review is required, a hearing on the plat and on the DEIS will be held within 62 days of the filing of the notice of completion. The hearing will be closed within 120 days after it is commenced.
  - (4) A final environmental impact statement (FEIS) must be filed within 45 days of the close of the public hearing.
  - (5) SEQRA findings and a decision of the minor subdivision application will be provided within 30 days thereafter.

**§ 171-7. Preliminary plat for major subdivisions.**

- A. Application and fee.
- (1) Prior to the filing for the final approval of a subdivision plat, the subdivider shall file an application for the approval of a preliminary plat of the proposed subdivision. Such preliminary plat shall be clearly marked "preliminary plat" and shall meet the following requirements:
    - (a) A copy of such covenant or deed restrictions as is intended to cover all or part of the tract.
    - (b) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearing and distances, made and certified by a licensed land surveyor. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 20 feet. The corners of the tract and lot corners, as deemed necessary by the Planning Board, shall also be located on the ground and marked by monuments, as approved by the Planning Board, and shall be referenced and shown on the final plat.
    - (c) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the County Department of Health, and a note to this effect shall be stated on the final plat signed by a licensed engineer.
    - (d) The plat shall show the proposed subdivision name, the name of the municipality and of the county in which it is located.
    - (e) The plat shall show the date, North point, map scale, name and address of the owner of record and

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of the subdivider.

- (f) The preliminary plat shall, in all respects, comply with the requirements of §§ 276 and 277 of the Town Law and § 171-22 of this chapter, except where a waiver may be specifically authorized by the Planning Board.
- (2) The application for approval of the preliminary plat of the subdivision shall be accompanied by a fee as established by the Town Board. An additional fee, as established by the Town Board, per lot for each lot in the proposed subdivision and an advertising fee shall be due upon submission of the final subdivision plat application.
- B. Number of copies. Fifteen copies of the preliminary plat shall be presented to the Planning Board at the time of submission of the preliminary plat.
- C. Subdivider to attend Planning Board meeting. The subdivider, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the preliminary plat.
- D. Study of preliminary plat. The Planning Board shall study the feasibility of the preliminary plat, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location, and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, easements, lot sizes and their arrangement, the future development of adjoining land as yet unsubdivided and the requirements of the Comprehensive Plan, the Official Map and the Zoning Regulations.<sup>34</sup>
- E. Approval of the preliminary plat.
  - (1) Public hearing on preliminary plats. The time within which the Planning Board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the Planning Board may schedule pursuant to the State Environmental Quality Review Act, as follows:
    - (a) If the Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within 62 days after the receipt of a complete preliminary plat by the Clerk of the Planning Board; or
    - (b) If the Planning Board determines that an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement. If no public hearing is held on the draft environmental impact statement, the public hearing on the preliminary plat shall be held within 62 days of filing the notice of completion.
  - (2) Public hearing; notice; length. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the Town at least five days before such hearing if no hearing is held on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.
  - (3) Decision. The Planning Board shall approve, with or without modification, or disapprove such preliminary plat as follows:
    - (a) If the Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing; or

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34. Editor's Note: See Ch. 205, Zoning.

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- (b) If the Planning Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the preliminary plat. Within 30 days of the filing of such final environmental impact statement, the Planning Board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.
- (4) Grounds for decision. The grounds for modification, if any, or the grounds for disapproval shall be stated upon the record of the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.
- F. Certification and filing of the preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the Clerk of the Planning Board as having been granted preliminary approval, and a copy of the plat and resolution shall be filed in such Clerk's office. A copy of the resolution shall be mailed to the owner.
- G. Filing of decision on preliminary plat. Within five business days from the date of the adoption of the resolution stating the decision of the Board on the preliminary plat, the Chairman or other duly authorized member of the Planning Board shall cause a copy of such resolution to be filed in the office of the Town Clerk.
- H. Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat, the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the Planning Board.
- I. When granting approval to a preliminary plat, the Planning Board shall state the terms of such approval, if any, with respect to: (1) the modifications to the preliminary plat; (2) the character and extent of the required improvements for which waivers may have been requested and which in its opinion may be waived without jeopardy to the public health, safety, morals, and general welfare; or (3) the amount of improvement or the amount of all bonds therefor which it will require as prerequisite to the approval of the final subdivision plat. In the case of a major subdivision, the preliminary plat shall not constitute approval of the final subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final subdivision plat, which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of this chapter. Prior to approval of the final subdivision plat, the Planning Board may require additional changes as a result of further study of the subdivision in its final form or as a result of new information obtained at the public hearing.
- J. Stormwater pollution prevention plan. A preliminary stormwater pollution prevention plan (SWPPP), consistent with the requirements of this chapter, will be required for preliminary subdivision plat approval.

#### **§ 171-8. Final plat for major subdivision.**

- A. Application for approval. The subdivider shall, within six months after the approval of the preliminary plat, file with the Planning Board an application for approval of the subdivision plat in its final form, using the approved application available from the Planning Board. The final plat shall conform in all important respects to the preliminary plat and incorporate any revisions or modifications specified by the Planning Board. The plans shall also conform to all requirements of the Town of Somerset's Public Improvement Permit (PIP) Program, if any, and to Town standards. A check for the appropriate review fee, as established by the Town Board, shall be submitted along with the plans. In addition to covering expenses for Town department review, this fee covers two reviews of the construction plans by the Town Engineer. If additional reviews are required of the developer by the Town Engineer, such expenses shall be approved by the Town Board. If the final plat is not submitted within six months after the approval of the preliminary plat, the Planning Board may refuse

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to approve the final plat and require resubmission of the preliminary plat.

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- B. Number of copies. A subdivider intending to submit a proposed final subdivision plat for the approval of the Planning Board shall provide the Planning Board with a copy of the application, two copies of the engineer's report and 15 copies of the plat. The original and one true copy of all covenants and agreements and 15 prints of all construction drawings.
- C. When officially submitted. The time of submission of the final subdivision plat shall be considered to be the date on which the complete application for approval of the final subdivision plat, as required by § 171-23 of this chapter, has been filed with the Planning Board.
- D. Endorsement of state and county agencies; grounds for decision.
- (1) Endorsement of state and county agencies. Water and sewer facility proposals contained in the final subdivision plat shall be properly endorsed and approved by the Niagara County Department of Health. Applications for approval of plans for sewer or water facilities will be filed by the subdivider with all necessary Town, county and state agencies. Endorsement and approval by the Niagara County Department of Health and appropriate Town water and sewer districts shall be secured by the subdivider before official submission of the final subdivision plat.
  - (2) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.
- E. Approval and certification of final plats.
- (1) Certification of plat. Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, such plat shall be certified by the Clerk of the Planning Board as having been granted conditional or final approval, and a copy of such resolution and plat shall be filed in such Clerk's office. A copy of the resolution shall be mailed to the owner. In the case of a conditionally approved plat, such resolution shall include a statement of the requirements which, when completed, will authorize the signing thereof. Upon completion of such requirements, the plat shall be signed by said duly authorized officer of the Planning Board, and a copy of such signed plat shall be filed in the office of the Clerk of the Planning Board or filed with the Town Clerk as determined by the Town Board.
  - (2) Approval of plat in sections. In granting conditional or final approval of a plat in final form, the Planning Board may permit the plat to be subdivided and developed in two or more sections and may, in its resolution granting conditional or final approval, state that such requirements as it deems necessary to insure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the Planning Board. Conditional or final approval of the sections of a final plat may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the Planning Board.
  - (3) Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within 180 days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The Planning Board may extend by not more than two additional periods of 90 days each the time in which a conditionally approved plat must be submitted for signature if, in the Planning Board's opinion, such extension is warranted by the particular circumstances.
- F. Filing of decision on final plat. Within five business days from the date of the adoption of the resolution stating the decision of the Board on the final plat, the Chairman or other duly authorized member of the Planning Board shall cause a copy of such resolution to be filed in the Office of the Town Clerk.

### § 171-9. Required improvements.

- A. Improvements and performance bond. All public improvements in the Town of Somerset shall be designed

§ 171-9 and constructed in compliance with the Town's Standard Specifications as adopted by the Town Board and the Highway Superintendent. Before the Planning Board grants final approval of the subdivision plat, the subdivider shall follow the procedure as set forth below: § 171-9

- (1) The subdivider shall either file with the Town Clerk a certified check or performance bond to cover the full cost of the required improvements as determined by the Town Board. Any such bond shall comply with the requirements of § 277 of the Town Law and, further, shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) shall be set forth in the bond within which required improvements must be completed.
  - (2) The subdivider shall complete all required improvements to the satisfaction of the Superintendent of the Water and Sewer Departments, the Highway Superintendent and the Town Engineer. The Superintendent of Water and Sewer, the Highway Superintendent and the Town Engineer shall file with the Planning Board a letter signifying the satisfactory completion of all improvements required by the Board and meeting Town specifications and guidelines.
  - (3) The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Town Engineer and a map satisfactory to the Town Engineer has been submitted indicating the location of monuments marking all underground utilities as actually installed. If the subdivider completes all required improvements, then said map shall be submitted prior to endorsement of the plat by the Town Engineer. However, if the subdivider elects to provide a bond or certified check for all required improvements as specified in Subsection A(1), such bond shall be released by the Town Board after such a map is submitted.
- B. Modification of design of improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Town Engineer, upon consulting with the Code Enforcement Officer, may authorize such modifications unless there are significant changes, at which time approval will be required by the Planning Board.
- C. Proper installation of improvements. If the Town Engineer shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he shall so report to the Town Board, the Building Inspector, and the Planning Board. The Town Board then shall notify the subdivider and, if necessary, the bonding company and take all necessary steps to preserve the Town's rights under the bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.
- D. Maintenance bond. The subdivider, on completion and acceptance of required improvements, shall furnish the Town with a maintenance bond in the amount of 25% of the cost of such improvements, guaranteeing the maintenance of such improvements against deterioration traceable to inadequate installation or materials during the first two years following acceptance.
- E. Modification of Town specifications and improvements. The Town specifications for improvements may be changed, modified or updated. Construction plan approval shall expire and be of no further effect 12 months from the date of approval by the Planning Board. Extension time may be applied for if acceptable to the Planning Board and if construction plans are updated to conform to current Town requirements. When the construction of any approved subdivision is phased, all phases not constructed within 12 months of the date of approval of the Planning Board are subject to the above requirements.
- F. Road and easement dedications.
- (1) The subdivider must provide, prior to acceptance of constructed public improvements, in a form approved by the Town Attorney, a dedication deed for all roadways and/or easements within the

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subdivision which are to be dedicated to the Town.

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- (2) The subdivider must also pay a fee, at a rate established by the Town Board, for the recording of each roadway and easement dedication. The fee shall be of sufficient amount to offset the costs of recordation and handling.

**§ 171-10. Filing of approved final subdivision plat.**

- A. Final approval and filing. Upon completion of the requirements in §§ 171-8 and 171-9 above and notation to that effect upon the final subdivision plat, the subdivision plat shall be deemed to have final approval and shall be properly signed by the duly designated officer of the Planning Board and filed in the office of the County Clerk. Any final subdivision plat not so filed or recorded within 60 days of the date upon which such plat is approved, or considered approved by reasons of the failure of the Planning Board to act, shall become null and void.
- B. Plat void if revised after approval. No changes, erasures, modifications, or revisions shall be made in any final subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless said plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such final subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

**§ 171-11. Public acceptance of streets.**

The approval by the Planning Board of a final subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the Town of any street, easement, or other open space shown on such final subdivision plat.

**§ 171-12. Cluster developments.**

For cluster development, see Chapter 205, Zoning, Article XXI.





ARTICLE IV  
**General Requirements and Design Standards**

**§ 171-13. General.**

In considering applications for subdivision of land, the Planning Board shall be guided by the standards set forth in this article. Said standards shall be considered to be minimum requirements and shall be waived by the Board only under circumstances set forth in Article VI herein.

- A. Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.
- B. Conformity to Official Map and Comprehensive Plan. Subdivisions shall conform to the Official Map of the Town and shall be in harmony with the Comprehensive Plan.
- C. Specifications for required improvements. All required improvements shall be considered or installed to conform to the Town's specifications, which may be obtained from the Building Department or relevant Town department. The developer of any subdivision shall:
  - (1) Pay all costs, including legal, engineering, highway, water lines and sewer lines.
  - (2) Provide the Town with a sixty-six-foot right-of-way.
  - (3) Dedicate highway (as per highway specifications) and water/sewer lines to the Town.
- D. Water and sewer lines will be installed by the Town in accordance with this chapter.
- E. The subdivision is subject to a project improvement permit (PIP), if any, on a case-by-case basis.

**§ 171-14. Street layout.**

- A. Width, location and construction. Streets shall be of sufficient width, suitably located, and adequately constructed to conform to the Comprehensive Plan and to accommodate the prospective street; shall afford access for firefighting, snow removal and other road maintenance equipment. The arrangement of streets shall be such as to cause no undue hardship to adjoining properties owners.
- B. Arrangement. The arrangement of streets in the subdivision shall provide for the continuation of principal streets of adjoining subdivisions, and for proper projection of proposed principal streets into adjoining properties which are not yet subdivided, in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services such as sewers, water and drainage facilities. Street extensions to adjoining properties shall be constructed and paved in accordance with Town specifications, and all Town-owned utilities must be extended to the property line as well these stub streets. Where, in the opinion of the Planning Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
- C. Minor streets. Minor streets shall be so laid out that their use by through traffic will be discouraged.
- D. Frontage on arterial streets.
  - (1) When a subdivision abuts or contains an existing or proposed arterial street, the Planning Board may require marginal access streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line, deep lots with rear service alleys, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic. Where property depth permits, residential street patterns such as U-shaped courts and loop streets are strongly suggested as alternatives to strip development.

- § 171-14 (2) To avoid landlocking developable areas, the contiguous development (both existing and planned) of frontages along arterial streets shall not exceed a distance of 2,000 feet before a sixty-six-foot-wide strip of land is provided for access to any developable land behind such frontages. § 171-15
- E. Provision for future resubdivision. Where a tract is subdivided into lots substantially larger than the minimum size required in the zoning district in which a subdivision is located, the Planning Board may require that streets and lots be laid out so as to permit future resubdivision in accordance with the requirements contained in this chapter.
  - F. Dead-end streets. The creation of dead-end or loop residential streets will be permitted wherever the Planning Board finds that such type of development will not interfere with normal traffic circulation in the area. In the case of dead-end streets, where necessary or desirable, the Planning Board may require the reservation of a twenty-foot-wide easement to provide for the continuation of pedestrian traffic and utilities to the next street. Subdivisions containing 20 lots or more shall have at least two street connections with existing public streets, or streets shown on the Official Map, if such exists, or streets on an approved subdivision plat for which a bond has been filed.
  - G. Block size. Blocks generally shall not be less than 400 feet nor more than 1,200 feet in length. In general, no block width shall be less than twice the normal lot depth. In blocks exceeding 800 feet in length, the Planning Board may require the reservation of a twenty-foot-wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four-foot-wide paved footpath be included.
  - H. Intersections with collector or major arterial roads. Minor or secondary street openings into such roads shall, in general, be a minimum of 500 feet apart.
  - I. Street jogs. Street jogs with center-line offsets of less than 125 feet shall be avoided.
  - J. Angle of intersection. In general, all streets shall join each other so that for a distance of a least 100 feet, the street is approximately at right angles to the street it joins.
  - K. Relation to topography. The street plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all streets shall be arranged so as to obtain as many of the buildings sites as possible at or above the grade of the streets. Grades of streets shall conform as closely as possible to the original topography. To preserve tree life, street grades in wooded areas shall be low enough so as not to require additional fill.
  - L. Other required streets. Where a subdivision borders on or contains a railroad right-of-way or limited-access highway right-of-way, the Planning Board may require a street approximately parallel to and on each side of such right-of-way at a distance suitable for the appropriate use of the intervening land (as for park purposes in residential districts or for commercial or industrial purposes in appropriate districts). Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

**§ 171-15. Street design.**

- A. Improvements. Streets shall be graded and improved with pavements, curbs and gutters, sidewalks, storm drainage facilities, water mains, sewers, streetlights and street signs, street shade trees, and fire hydrants, except where waivers may be requested. The Planning Board may waive, subject to appropriate conditions, such improvements as may be omitted without jeopardizing the public health, safety and general welfare. Pedestrian easements shall be improved as required by the Town Engineer. Grading and improvements shall be approved as to design and specifications by the Town Engineer.
  - (1) Fire hydrants. Installation of fire hydrants shall be in conformity with all Town requirements.
  - (2) Streetlighting facilities. Lighting facilities shall be in conformance with the lighting system of the Town.

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Such lighting standards and fixtures shall be installed after approval by the appropriate power company and authorized by the Town Board.

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- B. Location of utilities. The Planning Board shall, wherever possible, require that underground utilities to be dedicated to the Town be placed in street rights-of-way between the paved roadway and street line or in designated utility easements if impractical in the right-of-way, in order to simplify location and repair of lines when they require attention. The subdivider shall install underground service connections to the property line of each lot within the subdivision or one length past all underground utilities, whichever is longer, for such required utilities before streets are paved.
- C. Utility easements.
- (1) Where topography is such as to make impractical the inclusion of utilities within the street rights-of-way, perpetual unobstructed easements for utilities to be dedicated to the Town at least 15 feet in width shall be otherwise provided with satisfactory access to the street. Wherever possible, easements shall be continuous from block to block and shall present as few irregularities as possible. Such easements shall be cleared and graded where required.
  - (2) Locations and widths of easements for private utilities are to be reviewed by the Town at the time of final plat submittal.
- D. Watercourses.
- (1) Where a watercourse separates a proposed street from abutting property, provision shall be made for access to all lots by means of driveway culverts or other structures of design approved by the Town Engineer.
  - (2) Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way as required by the Town Engineer, which in no case is less than 20 feet in width. All development within a floodplain must be in accordance with Federal Emergency Management Agency (FEMA) regulations and Chapter 104, Flood Damage Prevention.

**§ 171-16. Street names.**

- A. Type of name. All street names shown on a preliminary plat or subdivision plat shall be approved by the Planning Board. In general, streets shall have names and not numbers or letters. After approval, street names shall not be changed without approval of the Town Board.
- B. Names to be substantially different. Proposed street names shall be substantially different so as not to be confused in sound or spelling with present names, except that streets that join or are in alignment with streets of an abutting or neighboring property shall bear the same name.

**§ 171-17. Lots.**

- A. Lots to be buildable. The lot arrangement shall be such that, in constructing a building in compliance with Chapter 205, Zoning, there will be no foreseeable difficulties for reasons of topography or other natural conditions.
- B. Side lines. All side lines of lots shall be at right angles to straight street lines and radial to curved street lines, unless a variance from this rule will give a better street or lot plan.
- C. Corner lots. In general, corner lots should be larger than interior lots to provide for proper building setback from each street and provide a desirable building site.
- D. Driveway access. Driveway access and grades shall conform to the Town specifications. Driveway grades

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between the street and the setback line shall not exceed 10%.

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- E. Monuments and lot corner markers. Permanent monuments, meeting specifications approved by the Planning Board as to size, type and installation, shall be set at such block corners, angle points, points of curves in streets and other points as the Town Engineer may require, and their location shall be shown on the final subdivision plat.
- F. Front lines. Unless the Planning Board decides otherwise, the front line of all houses should be located at a uniform distance, to be determined by the Planning Board, from the road.

**§ 171-18. Drainage improvements.**

- A. Removal of spring and surface water. The subdivider will be required by the Planning Board to carry away any spring or surface water that may exist either previous to, or as a result of, the subdivision. Such drainage facilities shall be located in the street's right-of-way, where feasible, or in perpetual, unobstructed easements of appropriate width. Under most circumstances, the drainage facilities must be open-ditched. The Town may allow closed or piped systems in certain instances, at the Town Planning Board's sole discretion upon recommendation of the Town Engineer, after consideration of factors such as technical feasibility, economic viability, public health and safety, aesthetics, and any other factors that the Planning Board deems reasonable and necessary. All natural creeks, streams, and tributaries must remain open except for road or driveway culverts. All drainage facilities must be designed to convey, at a minimum, the anticipated runoff from a ten-year storm event. Drainage system design must meet all local, state and federal regulations. The Planning Board may require the recommendation of the Town Drainage Committee and Town Engineer in such cases where proper drainage is in question.
- B. Drainage structure to accommodate potential development upstream. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The Town Engineer shall approve the design and the size of facility. Drainage system design must meet all local, state and federal regulations.
- C. Detention requirements. Detention of stormwater must be provided if deemed necessary by the Town Engineer. Detention facilities must be designed to meet the New York State Stormwater Management Design Standards. All necessary stormwater runoff permits shall be obtained from New York State Department of Environmental Conservation.
- D. Land subject to flooding. All development within a floodplain must be in accordance with Federal Emergency Management Agency (FEMA) regulations and Chapter 104, Flood Damage Prevention.

**§ 171-19. Parks, open spaces and natural features.**

- A. Areas reserved for parks, playgrounds of other recreational use.
  - (1) If the Planning Board finds, by analyzing the demand for parks and playgrounds, or recreational facilities generated by a proposed subdivision in relation to the Town's policies and resources, that the likely benefit to the subdivision's residents require the set-aside of parkland or if a suitable park or a park of adequate size cannot be located in that particular subdivision, the Planning Board may require that such area or areas be shown on the plat as dedicated or reserved for the park, playground or other recreational use or payment of a fee in lieu thereof.
  - (2) Where the Planning Board determines that land should be set aside for such a purpose, a park district may be established pursuant to petition, as outlined in Town Law Article 12, §§ 190 and 191. Alternatively, a park district may be established, pursuant to Town Law Article 12-A, § 209, with the Town Board's adoption of a resolution approving the establishment of this type of district and the service the district provides. Once adopted, the resolution is subject to a permissive referendum in the manner provided in Article 7 of the Town Law.

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(3) Notice of a hearing on the petition for park districts established under Town Law Article 12, § 190 and § 171-20 191, is governed by Town Law Article 12, § 193, whereas notice of a hearing on the Board's adoption of a resolution establishing a park district pursuant to Town Law Article 12-A, § 209, is governed by Town Law Article 12-A, § 209-D.

B. Reserve strips prohibited. Reserve strips of land, which might be used to control access from the proposed subdivision to any neighboring property, or to any land within the subdivision itself, shall be prohibited.

**§ 171-20. Topsoil.**

A. Removal of topsoil. If a subdivider wishes to remove excess topsoil from a subdivision, sufficient topsoil must remain on site such that, after development, each lot has a minimum of six inches of topsoil in all grassed areas. The subdivider shall include, with the construction drawings submitted with the final plat, calculations indicating the volume of topsoil that must remain on site. Required topsoil must be placed on each lot prior to issuance of a certificate of occupancy. A conditional certificate of occupancy may be granted if, at the discretion of the Code Enforcement Officer, the topsoil cannot be placed on the lot at the time that a certificate of occupancy is requested. At no time shall storage of topsoil infringe on any required drainage easements. Topsoil removed pursuant to above calculations may be permitted by the Planning Board and monitored by the Code Enforcement Officer.

B. Stripping of topsoil. During construction of roads, no stripping of topsoil outside of the right-of-way will be allowed unless approved by the Planning Board. In most cases, topsoil stripping will not be permitted wider than 100 feet.



ARTICLE V  
**Documents to Be Submitted**

**§ 171-21. Sketch plan.**

The sketch plan, 15 copies, initially submitted to the Planning Board shall be based on Tax Map information or some other similarly accurate base map at a scale (preferably not less than 200 feet to the inch) to enable the entire tract to be shown on one sheet. The sketch plan shall be submitted, showing the following information:

- A. The location of that portion which is to be subdivided in relation to the entire tract, and the distance to the nearest existing street intersection.
- B. All existing structures, wooded areas, streams and other significant physical features, within the portion to be subdivided and within 200 feet thereof. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 10 feet.
- C. The name of the owner and of all adjoining property owners as disclosed by the most recent municipal tax records.
- D. The Tax Map sheet, block and lot numbers, if available.
- E. All the utilities available and all streets that are either proposed, mapped or built.
- F. The proposed pattern of lots (including lot width and depth), street layout, recreation areas, systems of drainage, sewerage, and water supply within the subdivided area.
- G. All existing restrictions on the use of land, including easements, covenants, or zoning.

**§ 171-22. Subdivision preliminary plat and accompanying data.**

The following documents shall be submitted for approval:

- A. Fifteen copies of the preliminary plat prepared at a scale of not more than 100 but preferably not less than 50 feet to the inch, showing:
  - (1) Proposed subdivision name, name of Town and county in which it is located, date, true North point, scale, name and address of record owner, subdivider and engineer or surveyor, including license number and seal.
  - (2) The name of all subdivisions immediately adjacent and the name of the owners of record of all adjacent property.
  - (3) Zoning district, including exact boundary lines of district, if more than one district.
  - (4) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
  - (5) Location of existing property lines, as well as all survey monuments, easements, buildings, watercourses, marshes, rock outcrops, wooded areas, single trees with a diameter of eight inches or more as measured three feet above the base of the trunk, and other significant existing features for the proposed subdivision and adjacent property.
  - (6) Location of existing sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction of flow.
  - (7) Contours with intervals of 20 feet or less as required by the Board, including elevations on existing roads. Approximate grading plan if natural contours are to be changed more than two feet.
  - (8) The width and location of any streets or public ways or places shown on the Official Map or 111:607



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Comprehensive Plan within the area to be subdivided, and the width, location, grades and street profiles of all streets or public ways proposed by the developer.

- (9) The approximate location and size of all proposed water lines, valves, hydrants, sewer lines and fire alarm boxes; connection to existing lines or alternate means of water supply or sewage disposal and treatment as provided in the Public Health Law; and profiles of all proposed water and sewer lines.
  - (10) Storm drainage plan indicating the approximate location and size of proposed lines and their profiles, connection to existing lines or alternate means of disposal.
  - (11) Plans and cross-sections showing the proposed location and type of sidewalks, streetlighting, street shade trees, curbs, water mains, sanitary sewers and storm drains, and the sizes and types thereof; the character, width and depth of pavement and subbase; the location of manholes, basins and underground conduits.
  - (12) Preliminary designs of any bridges or culverts that may be required.
  - (13) The proposed lot lines, with approximate dimensions and area of each lot.
  - (14) Where the topography is such as to make difficult the inclusion of any of the required facilities within the public areas as laid out, the preliminary plat shall show the boundaries of proposed permanent easements over or under private property, which permanent easements shall not be less than 15 feet in width and which shall provide satisfactory access to an existing public highway or other public highway or public open space shown on the subdivision or the Official Map.
  - (15) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by substantial monuments of such size and type as approved by the Town Engineer and shall be referenced and shown on the final plat.
  - (16) Proposed street names.
  - (17) Location, including front lines of all homes.
- B. If the application covers only a part of the subdivider's entire holding, a map of the entire tract, drawn at a scale of not less than 400 feet to the inch, showing an outline of the platted area with its proposed streets and indication of the probable future street system with its grades and drainage in the remaining portion of the tract and the probable future drainage layout of the entire tract shall be submitted. The part of the subdivider's entire holding submitted shall be considered in the light of the entire holdings.
- C. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.

**§ 171-23. Subdivision final plat and accompanying data.**

The following documents shall be submitted for plat approval:

- A. The plat to be filed with the County Clerk shall be printed upon a Mylar sheet. The size of the sheets shall be 24 inches by 36 inches, or as specified by Niagara County, including a margin for binding of two inches, outside of the border, along the left side and a margin of 1/2 inch outside of the border along the remaining sides. The plat shall be drawn at a scale of no more than 100 feet to the inch and oriented with the North point at the top of the map. When more than one sheet is required, an additional index sheet of the same size shall be filed showing to scale the entire subdivision with lot and block numbers clearly legible. The plat shall show:
  - (1) Proposed subdivision name or identifying title and the name of the Town and county in which the subdivision is located; the name and address of record owner and subdivider; and the name, license

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number and seal of the licensed land surveyor.

- (2) Street lines, pedestrianways, lots, reservations, easements and areas to be dedicated to public use.
  - (3) Sufficient data acceptable to the Town Engineer to determine readily the location, bearing and length of every street line, lot line, boundary line, and to reproduce such lines upon the ground. Where applicable, these should be referenced to monuments included in the state system of plane coordinates and, in any event, should be tied to reference points previously established by a public authority.
  - (4) The length and bearing of all straight lines; radii; length of curves and central angles of all curves; and tangent bearings shall be given for each street. All dimensions and angles of the lines of each lot shall also be given. All dimensions shall be shown in feet and decimals of a foot. The plat shall show the boundaries of the property, location, graphic scale and true North point.
  - (5) The plat shall also show, by proper designation thereon, all public open spaces for which deeds are included and those spaces where title is reserved by the developer. For any of the latter, there shall be submitted with the subdivision plat copies of agreements or other documents showing the manner in which such areas are to be maintained and the provisions made thereof.
  - (6) Lots and blocks within a subdivision shall be numbered and lettered in alphabetical order in accordance with the prevailing Town practice.
  - (7) Permanent reference monuments shall be shown and shall be constructed in accordance with specifications of the Town Engineer. When referenced to the state system of plane coordinates, they shall also conform to the requirements of the State Department of Transportation. They shall be placed as required by the Town Engineer and their location noted and referenced upon the plat.
  - (8) All lot corner markers shall be permanently located satisfactorily to the Town Engineer, at least 3/4 inch (if metal) in diameter and at least 24 inches in length, and located in the ground to existing grade.
  - (9) Monuments of a type approved by the Town Engineer shall be set at all corners and angle points of the boundaries of the original tract to be subdivided, and at all street intersections, angle points in street lines, points of curve and such intermediate points as shall be required by the Town Engineer.
  - (10) Certification of Health Department approval.
  - (11) Street names.
  - (12) All existing trees with a diameter of eight inches or more as measured three feet above the base of the tree.
  - (13) Any other notations or legends as the Town Planning Board determines, including but not limited to the Right to Farm Law.<sup>35</sup>
- B. Construction drawings, including plans, profiles and typical cross-sections, as required, showing the proposed location, size and type of streets, sidewalks, streetlighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, pavements and subbase, manholes, catch basins and other facilities.
- (1) Also required is a detailed grading plan, which shall include elevation figures for each proposed building lot and elevation contours for surrounding properties for a distance satisfactory to the Town Engineer, with intervals of one foot or less.
  - (2) Final construction plans that are developed using a digital format (i.e., AutoCAD, MicroStation) must be submitted to the Town, prior to approval in acceptable electronic format.

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35. Editor's Note: See Ch. 98, Farming, Art. I, Right to Farm.

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C. Notification. All conveying deeds shall recite that the Town of Somerset is a right-to-farm-community.

ARTICLE VI  
**Waivers**

**§ 171-24. Special circumstances.**

Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not a requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements subject to appropriate conditions, provided that such waiver will not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan or the Zoning Ordinance.<sup>36</sup>

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**36. Editor's Note: See Ch. 205, Zoning.**



ARTICLE VII  
**Severability**

**§ 171-25. Validity.**

Should any section or provision of the regulations contained herein or as amended hereafter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the regulations as a whole or any part thereof other than the part so declared to be invalid.



ARTICLE VIII  
**Improvements to Be Installed by Town**

**§ 171-26. Water and sewer.**

The following shall apply with respect to water and sewer:

- A. Water. All water mains and lines as shown on the final plat shall be installed by the Town. Where no public water supply is available, it shall be furnished by the subdivider on a project or individual lot basis, all in accordance and approval of the Town of Somerset and Niagara County officials.
- B. Sewers. All necessary mains and laterals for connecting from the lots to the public sewage system, as shown on the final plat, shall be installed by the Town of Somerset. The septic system must meet the requirements of the Niagara County Health Department.
- C. All extensions for water and sewer construction shall at all time remain the property of and under the control of the Town Board of the Town of Somerset.
- D. The Town Board shall provide, through applicable ordinances, the method of financing such improvements.
- E. Water/sewer for proposed subdivisions. The developer of any subdivision shall:
  - (1) Pay all costs, including legal, engineering, highway, water and sewer lines.
  - (2) Provide the Town with a sixty-six-foot right-of-way.
  - (3) Dedicate highway (as per highway specifications) and water/sewer lines to the Town.
- F. Water and sewer lines will be installed by the Town in accordance with this chapter.
- G. The subdivision is subject to a project improvement permit (PIP) on a case-by-case basis.





**Chapter 174**  
**SWIMMING POOLS**



§ 171-26

**[HISTORY: Adopted by the Town Board of the Town of Somerset 5-9-1978 as Article XIV of the Zoning Ordinance. Amendments noted where applicable.]**

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**GENERAL REFERENCES**

**Zoning — See Ch. 205.**



**§ 174-1. Permit required; application.**

- A. All private swimming pools in the Town of Somerset over three-hundred-cubic-foot capacity which are moved, erected, constructed or excavated, either above, below or partly above and below grade level, shall require a building permit.
- B. Building permit application shall be made to the Building Department and shall be accompanied by two complete sets of plot plans, showing all lot lines, existing structures, and yard measurements, drawn accurately to scale.



**§ 174-2. Definitions.**

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

**PRIVATE POOL** — A pool located on the property to a single-family or a two-family dwelling and for the exclusive use of the occupants thereof and their families and guests. All other pools, for the purpose of this chapter, shall be classified as public pools.

**SWIMMING POOL** — Any pool having a water depth exceeding 18 inches.

**WADING POOL** — Any pool not having a water depth exceeding 18 inches.





**§ 174-3. Fence requirements.**

No swimming pool, as described in §§ 174-1 and 174-2, any part of which is below grade level, shall be installed unless:

- A. There shall be erected and maintained a fence having a minimum height of four feet and a maximum height of eight feet, unless the sidewall of the pool extends at least four feet in vertical height above the ground level upon which pool is constructed and so constructed as will not shut off light or air to any building. [**Amended 9-10-1996 by L.L. No. 2-1996**]
- B. Such fence shall completely surround the area of the swimming pool but shall not be less than three feet from any edge of the swimming pool or placed on the lot line, and any gate shall be self-closing and locked while the premises are not under the direct supervision of an adult.
- C. All latching and locking devices shall be at a minimum of four feet above the base of the fence.
- D. The wall of a dwelling and/or its accessory buildings may act as an integral part of the fence, but any openings or doors, etc., shall also be kept locked while premises are unsupervised by an adult.



**§ 174-4. Access to pool.**

No swimming pool, as described in §§ 174-1 and 174-2, all of which is above grade level, shall be installed or maintained unless either:

- A. The ladder, stair or other access to the pool is capable of being removed and is removed when the pool is not being supervised by the owner thereof. The word "removed," as used in this subsection, in addition to its usual and customary meaning, shall mean raising and locking the ladder, stair or other access in a position where the bottom thereof is at least as high as the top of the pool.
- B. The ladder, stair or other access is completely enclosed by a fence, the minimum height of which shall be equal to the height of the pool, except that in no event shall the fence be higher than eight feet. Any gate in the fence shall be self-closing and locked when the pool is not being supervised by the owner thereof.  
**[Amended 9-10-1996 by L.L. No. 2-1996]**



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**§ 174-5. General regulations.**

- A. Private swimming pools may be erected or installed only as an accessory to a dwelling and for the private use of the owner or occupant and their families and guests.
- B. Any swimming pool on any property having more than two-family dwelling units shall comply with the provisions of this chapter in addition to any state and county regulations pertaining to public swimming pools.
- C. No swimming pool shall be erected nearer than three feet from the rear or side property line of the premises or occupy more than 10% of the total area of the premises.
- D. No swimming pool will be permitted in a required front yard or side yard.



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**§ 174-6. "No trespassing" signs.**

Owners of property upon which ponds, excavations, quarries and gravel pits, excavated or formed by natural causes, shall be responsible for the posting of "no trespassing" signs.





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§ 174-7

**§ 174-7. Penalties for offenses. [Amended 6-10-1980; 9-10-1996 by L.L. No. 2-1996]**

Any person who shall violate this chapter shall be guilty of an offense and, upon conviction, shall be subject to a fine of not more than \$250. Each week's violation shall constitute a separate and additional violation. Notwithstanding the penalty hereinbefore provided, the Town of Somerset may enforce obedience of this chapter or any part thereof by injunction to restrain such violation.



**Chapter 177**

**TAXATION**



§ 174-7

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

§ 174-7

**GENERAL REFERENCES**

**Assessments — See Ch. 5.**



ARTICLE I  
**Senior Citizens Tax Exemption**  
**[Adopted 3-13-1973; amended in its entirety 8-10-1993]**

**§ 177-1. Exemption granted. [Amended 9-10-1996 by L.L. No. 2-1996]**

- A. Real property owned by one or more persons, each of whom is 65 years of age or over; or real property owned by a husband and wife or by siblings, one of whom is 65 years of age or over, shall be exempt from taxation for Town purposes to the extent as provided in the following schedule: **[Amended 3-12-2002 by L.L. No. 1-2002; 4-13-2004 by L.L. No. 2-2004; 7-9-2013 by L.L. No. 4-2013]**

Annual Income	Exemption
Less than \$18,025	50%
\$18,025 to \$19,024.99	45%
\$19,025 to \$20,024.99	40%
\$20,025 to \$21,024.99	35%
\$21,025 to \$21,924.99	30%
\$21,925 to \$22,824.99	25%
\$22,825 to \$23,724.99	20%
\$23,725 to \$24,624.99	15%
\$24,625 to \$25,524.99	10%

- B. For the purposes of this section, "sibling" shall mean a brother or sister, whether related through half blood or whole blood or adoption.
- C. Any exemption provided by this article shall be computed after all other partial exemptions allowed by law have been subtracted by the total amount assessed.
- D. The real property tax exemption on the real property owned by a husband and wife, one of whom is 65 years of age or over, once granted shall not be rescinded solely because of the death of the older spouse so long as the surviving spouse is at least 62 years of age.

**§ 177-2. Exceptions.**

No exemption shall be granted:

- A. If the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds the sum of \$25,524.99. "Income tax year" shall mean the twelve-month period for which the owner or owners filed a federal personal income tax return or, if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum, except where the husband or wife or ex-husband or ex-wife is absent from the property as provided in Subsection D of this section, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings and net income from self-employment, but shall not include a return of capital, gifts or inheritances. In computing net rental income and net income from self-employment, no depreciation deduction shall be allowed for the exhaustion and wear and tear of real or personal property held for the production of income. **[Amended 7-9-2013 by L.L. No. 4-2013]**



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- B. Unless the title of the property shall have been vested in the owner or one of the owners of the property for at least 12 consecutive months prior to the date of making application for exemption; provided, however, that, in the event of the death of either a husband or wife in whose name the title of the property shall have been vested at the time of death and then becomes vested solely in the survivor by virtue of devise by or descent from the deceased husband or wife, the time of ownership of the property by the deceased husband or wife shall be deemed also a time of ownership by the survivor and such ownership shall be deemed continuous for the purposes of computing such period of 12 consecutive months. In the event of a transfer by either a husband or wife to the other spouse of all or part of the title to the property, the time of ownership of the property by the transferor spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purposes of computing such period of 12 consecutive months. Where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners taken by eminent domain or other involuntary proceeding, except a tax sale, the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption and such periods of ownership shall be deemed to be consecutive for purposes of this section. Where a residence is sold and replaced with another within one year and both residences are within the state, the period of ownership of both the properties shall be deemed for the purposes of the exemption from taxation by a municipality within the state granting such exemption. Where the owner or owners title to property which, as of the date of transfer, was exempt from taxation under the provisions of this article, the reacquisition of the title by such owner or owners within nine months of the date of transfer shall be deemed to satisfy the requirement of this subsection that the title of the property shall have been vested in the owner or one of the owners for such period of 12 consecutive months. Where, upon or subsequent to the death of an owner or owners, title to property which, as of the date of such death of an owner or owners, was exempt from taxation under such provisions becomes vested by virtue of devise or descent from the deceased owner or owners or by transfer by any other means within months after such death solely in a person or persons who, at the time of such death, maintained such property as a primary residence, the requirement of this subsection that the title of the property shall have been vested in the owner or one of the owners for such period of 12 consecutive months shall be deemed satisfied. **[Amended 7-9-2013 by L.L. No. 4-2013]**
- C. Unless the property is used exclusively for residential purposes; provided, however, that, in the event that any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this article.
- D. Unless the real property is the legal residence of and is occupied, in whole or in part, by the owner or by all of the owners of the property, except where the owner is absent from the residence while receiving health-related care as an inpatient of a residential health-care facility, as defined in § 2801 of the Public Health Law, provided that any income accruing to that person shall be income only to the extent that it exceeds the amount paid by such owner, spouse or co-owner for care in the facility; and provided, further, that during such confinement such property is not occupied by other than the spouse or co-owner of such owner; or the real property is owned by a husband and or wife or an ex-husband and or an ex-wife and either is absent from the residence due to divorce, legal separation or abandonment and all other provisions of this article are met, provided that where an exemption was previously granted when both resided on the property, then the person remaining on the real property shall be 62 years of age or over. **[Amended 9-10-1996 by L.L. No. 2-1996]**

### § 177-3. Notification of property owners.

The Town of Somerset shall notify or cause to be notified each person owning residential real property in Town of Somerset of the provisions of this article. The provisions of this section may be met by a notice or legend sent on or with each tax bill to such person, reading: "You may be eligible for senior citizen tax exemption. Senior citizens have until (month, day, year) to apply for such exemptions. For more information, please call or write the Town Assessor (followed by the name, telephone number and/or address of a person or department selected by a municipal corporation to explain the provisions of this article)." Failure to notify or cause to be notified any person who is eligible to receive the exemption provided by this article or the failure of such person to receive the same

§ 177-3 shall not prevent the levy, collection and enforcement of the payment of taxes on property owned by such person. § 177-5

**§ 177-4. Application for exemption.**

- A. Application for such exemption must be made by the owner or all of the owners of the property on forms prescribed by the State Board, to be furnished by the appropriate assessing authority, and shall furnish the information and be executed in the manner required or prescribed in such forms and shall be filed in such Assessor's office on or before the appropriate taxable status date. Notwithstanding any other provision of law, any person otherwise qualifying under this article shall not be denied the exemption under this article if he becomes 65 years of age after the appropriate taxable status date and on or before December 31 of the same year.
- B. At least 60 days prior to the appropriate taxable status date, the assessing authority shall mail to each person who was granted an exemption pursuant to this article on the latest completed assessment roll an application form and a notice that such application must be filed on or before taxable status date and be approved in order for the exemption to be granted. The assessing authority shall, within three days of the completion and filing of the tentative assessment roll, notify, by mail, any applicant who has included with his application at least one self-addressed prepaid envelope of the approval or denial of the application; provided, however, that the assessing authority shall, upon the receipt and filing of the application, send, by mail, notification of receipt to any applicant who has included two of such envelopes with the application. Where an applicant is entitled to a notice of denial pursuant to this subsection, such notice shall be on a form prescribed by the State Board and shall state the reason for such denial and shall further state that the applicant may have such determination reviewed in the manner provided by law. Failure to mail any such application form or notices or the failure of such person to receive any of the same shall not prevent the levy, collection and enforcement of the payment of the tax on property owned by such person.

**§ 177-5. Penalties for offenses.**

Any conviction of having made any willful false statement in the application for such exemption shall be punishable by a fine of not more than \$100 and shall disqualify the applicant or applicants from further exemption for a period of five years.



ARTICLE II  
**Church Exemption**  
**[Adopted 3-29-1977]**

**§ 177-6. Exemption granted.**

- A. A church structure owned by a religious corporation incorporated pursuant to the Religious Corporations Law of the State of New York shall be exempt from special district assessments for water, under Article VIIIe(b), to the extent of \$6 per thousand of assessed valuation.
- B. The tax rate per thousand of such church structure will be \$3.50 of assessed valuation.
- C. Said church structure shall be defined as a place of assemblage for periodic holding of religious services.



ARTICLE III  
**Business Investment Exemption**  
**[Adopted 5-10-1977 by L.L No. 1-1977]**

**§ 177-7. Exemption repealed.**

Pursuant to the authority of Subdivision 7 of § 485-b of the Real Property Tax Law, the partial exemption from taxation, special ad valorem levies and service charges provided by such § 485-b is hereby repealed insofar as such exemption would have been applicable to eligible real property assessed for Town purposes by the Town of Somerset.



ARTICLE IV  
**Veterans Tax Exemption**  
[Adopted 5-15-1985 by L.L. No. 1-1985]

**§ 177-8. Exemption increased; assessment.**

- A. The purpose of this article is to increase the exemption from real property taxes for veterans in the same proportion as total assessed value has been increased by virtue of full-value assessment in the Town of Somerset.
- B. Pursuant to the provisions of § 458 of the Real Property Tax Law of the State of New York, veterans tax exemption shall be increased in the Town of Somerset in proportion to the increase in full-value assessment in said tax district.
- C. Such assessment shall be made by the assessors in the manner provided in Subdivision 1(3) of § 458, and no application therefor need be filed by or on behalf of any owner of any eligible property.

**§ 177-9. Sale of property. [Amended 9-10-1996 by L.L. No. 2-1996]**

Where property which is owned by a veteran and receiving an exemption pursuant to § 458 is sold and other real property is acquired to replace the formerly owned property, the exempt amount granted on the formerly owned property pursuant to § 458 and as expressed in a percentage shall be granted on the property acquired to replace the formerly owned property, provided that the newly acquired property is in the same assessing unit; and provided, further, that the exemption granted on the newly acquired property shall not exceed the exemption on the formerly owned property as expressed in a dollar amount.





ARTICLE V  
**Alternative Veterans Tax Exemption**  
**[Adopted 1-13-1998 by L.L. No. 1-1998]**

**§ 177-10. Maximum exemption increased.**

The Town shall increase the maximum exemption allowable in Real Property Tax Law § 458-a, Subdivision 2(a), (b) and (c) to \$18,000, \$12,000 and \$60,000, respectively.



ARTICLE VI  
**Energy System Tax Exemptions**  
**[Adopted 6-8-2016 by L.L. No. 4-2016]**

**§ 177-11. No exemption.**

Pursuant to New York State Real Property Tax Law § 487, Subdivision 8(a), the Town of Somerset, New York, does hereby provide that no exemption from taxation shall be applicable with respect to any solar or wind energy system or farm waste energy system.



**Chapter 184**  
**VANDALISM**



§ 177-11

§ 184-1

**[HISTORY: Adopted by the Town Board of the Town of Somerset 7-15-1986. Amendments noted where applicable.]**

**§ 184-1. Reward for information.**

The Town Board hereby resolves to offer and pay a reward of \$500 for information which will lead to the detection, arrest and conviction of person or persons found guilty of vandalizing or damaging Town road signs or Town property of the Town of Somerset.





**Chapter 188**

**VEHICLES, ALL-TERRAIN**



§ 184-1

**[HISTORY: Adopted by the Town Board of the Town of Somerset 11-6-1985 by L.L. No. 2-1985. Amendments noted where applicable.]**

§ 184-1

**GENERAL REFERENCES**

**Snowmobiles — See Ch. 157.**



**§ 188-1. Purpose.**

The purpose of this chapter is to protect the public health, welfare and safety by prohibiting and/or regulating the operation of all-terrain vehicles.



**§ 188-2. Definitions.**

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

**ALL-TERRAIN VEHICLE or ATV — [Amended 9-10-1996 by L.L. No. 2-1996]**

- A. Any self-propelled vehicle which is manufactured for sale, for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways, provided that such vehicle does not exceed 60 inches in width or 800 pounds dry weight; provided, however, that this definition shall not include a snowmobile or other self-propelled vehicles manufactured for off-highway use which utilize an endless-belt tread.
- B. Notwithstanding the provisions of Subsection A, the term "all-terrain vehicle or ATV" shall not include any vehicle used for agricultural purposes or for snowplowing other than for hire; provided, however, that any such vehicle shall register as an "all-terrain vehicle or ATV" pursuant to the provisions Article 48-B of the Vehicle and Traffic Law if such vehicle is used or is intended to be used for any purpose other than agricultural purposes or for snowplowing and shall be regulated in accordance with provisions governing the operation of "all-terrain vehicles or ATV" while in such use.





§ 188-2

§ 188-3

**§ 188-3. Operation on Town lands.**

No person shall operate or drive an all-terrain vehicle on Town lands, at any time, without the written prior consent of the Town.



§ 188-3

§ 188-4

**§ 188-4. Operation on highways prohibited.**

No person shall operate or drive an all-terrain vehicle on any portion of highways within the Town of Somerset. The word "highways" shall include state highways, county highways, Town highways by dedication or by use.



**§ 188-5. Restrictions.**

- A. It shall be unlawful for any person to drive or operate any all-terrain vehicle on private lands of another person within the Town of Somerset without written permission of the owners or occupants of said property. The written permission must be in the possession of the person operating the all-terrain vehicle and must be presented upon demand to any peace officer or police officer so demanding.
- B. The following are prohibited within the Town of Somerset at all times:
  - (1) The operation of any all-terrain vehicle in such a manner as to disturb or interfere with the peace and tranquility of persons by creating loud, unnecessary or unusual noise.
  - (2) The operation of any all-terrain vehicle in a careless, reckless or negligent manner so as to endanger or be likely to endanger the safety or property of any persons, including the operator of the vehicle.
  - (3) The operation of any all-terrain vehicle at a rate of speed greater than reasonable or proper under the surrounding circumstances.
  - (4) The operation of any all-terrain vehicle, with or without written permission, within 500 feet of any dwelling other than the dwelling house of the operator.
  - (5) The operation of any all-terrain vehicle on any lands leased, owned or controlled by the Town of Somerset, except as provided by local law. This shall not be construed to prohibit lawful operation of vehicles on public streets or thoroughfares.



§ 188-5

§ 188-6

**§ 188-6. Exceptions.**

- A. Section 188-5 shall not apply in those instances where a duly licensed operator of a duly licensed all-terrain vehicle is entering the public highway from a private driveway.
- B. This chapter shall not apply to police and emergency vehicles.





§ 188-6

§ 188-7

**§ 188-7. Penalties for offenses. [Amended 9-10-1996 by L.L. No. 2-1996]**

A failure to comply with the provisions of this chapter shall be deemed a violation, and the violator shall be subject to a fine not exceeding \$250.



§ 188-7

§ 188-8

**§ 188-8. Impoundment; confiscation; fee.**

- A. Notwithstanding § 188-7, any enforcement officer of the Town of Somerset, Niagara County Sheriff's Department or New York State Police who shall encounter any person operating an all-terrain vehicle in violation of this chapter may impound said vehicle and shall place said vehicle in a location designated by the Town of Somerset, and such vehicle may be reclaimed by the owner of such vehicle upon payment of expenses and charges necessary and actually incurred by the removal of said vehicle. If the owner of said vehicle is a minor under the age of 18 years, then the parent or guardian of said infant shall accompany the infant on the date the vehicle is picked up and expenses and charges are paid. The minimum fee is \$100.
- B. In the case of a second or subsequent violation, the court may order confiscation of said vehicles in lieu of any fine and/or imprisonment. Any vehicle which is confiscated pursuant to this section will be sold at public auction according to the appropriate procedures and law affecting public auctions by municipalities. The minimum bid should reflect cost and penalties to date.



§ 188-8

§ 188-9

**§ 188-9. Enforcement.**

The Town of Somerset, Niagara County Sheriff's Department and the New York State Police shall enforce the provisions of this chapter.



**Chapter 191**

**VEHICLES AND TRAFFIC**





§ 188-9

**[HISTORY: Adopted by the Town Board of the Town of Somerset 9-10-1996 by L.L. No. 2-1996.  
Amendments noted where applicable.]**

§ 188-9



ARTICLE I  
**General Provisions**

**§ 191-1. Definitions.**

- A. The words and phrases used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them by Article 1 of the Vehicle and Traffic Law of the State of New York.
- B. The following words and phrases, which are not defined by Article 1 of the Vehicle and Traffic Law of the State of New York, shall have the meanings respectively ascribed to them in this section for the purposes of this chapter:

**CURBLINE** — The prolongation of the lateral line of a curb or, in the absence of a curb, the lateral boundary line of the roadway.

**HOLIDAYS** — New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

**OFFICIAL TIME STANDARD** — Whenever certain hours are named herein or on traffic control devices, the time standard which is in current use in this state.

**§ 191-2. Authority to install traffic control devices.**

The Superintendent of Highways shall install and maintain traffic control devices when and as required under the provisions of this chapter, to make effective the provisions of this chapter, and may install and maintain such additional traffic control devices as he may deem necessary to regulate, warn or guide traffic under the Vehicle and Traffic Law of the State of New York, subject to the provisions of §§ 1682 and 1684 of that law.

**§ 191-3. Schedules; adoption of regulations.**

- A. For the purpose of maintaining an accurate record of all regulations adopted under the provisions of this chapter, there is hereby established a system of schedules, appearing as Article VI of this chapter, in which shall be entered all regulations after adoption. Such schedules shall be deemed a part of the section to which they refer. All regulations shall be adopted with reference to the appropriate schedule as indicated in the various sections of this chapter.
- B. Regulations shall be adopted by the Town Board in accordance with provisions of the Town Law and the Vehicle and Traffic Law or by an officer or agency authorized by the Town Board to adopt regulations pursuant to § 1603 of the Vehicle and Traffic Law.



ARTICLE II  
**Traffic Regulations**

**§ 191-4. Speed limits.**

The speed limit for both directions of traffic along the streets or parts thereof described in Schedule I (§ 191-23), attached to and made a part of this chapter, is hereby established at the rate of speed indicated.

**§ 191-5. School speed limits.**

No person shall drive a vehicle at a speed in excess of that indicated in Schedule II (§ 191-24), attached to and made a part of this chapter, in the areas described in said schedule, during school days between the hours of 7:00 a.m. and 6:00 p.m.

**§ 191-6. Prohibited turns at intersections.**

No person shall make a turn of the kind designated (left, right, all) at any of the locations described in Schedule III (§ 191-25), attached to and made a part of this chapter.

**§ 191-7. Prohibited right turns on red signal.**

No person shall make a right turn when facing a steady red signal (stop indication) at any of the locations described in Schedule IV (§ 191-26), attached to and made a part of this chapter.

**§ 191-8. Stop intersections.**

The intersections described in Schedule V (§ 191-27), attached to and made a part of this chapter, are hereby designated as stop intersections. Stop signs shall be installed as provided therein.

**§ 191-9. Yield intersections.**

The intersections described in Schedule VI (§ 191-28), attached to and made a part of this chapter, are hereby designated as yield intersections. Yield signs shall be installed as provided therein.

**§ 191-10. Trucks over certain weights excluded.**

Trucks in excess of the weights indicated are hereby excluded from the streets or parts of streets described in Schedule VII (§ 191-29), attached to and made a part of this chapter, except for the pickup and delivery of materials on such streets.



ARTICLE III  
**Parking, Standing and Stopping**

**§ 191-11. Application of article.**

The provisions of this article shall apply except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

**§ 191-12. Parking prohibited at all times.**

No person shall park a vehicle at any time upon any of the streets or parts thereof described in Schedule VIII (§ 191-30), attached to and made a part of this chapter.

**§ 191-13. No stopping.**

No person shall stop a vehicle upon any of the streets or parts of streets described in Schedule IX (§ 191-31), attached to and made a part of this chapter.

**§ 191-14. No standing.**

No person shall stand a vehicle upon any of the streets or parts of streets described in Schedule X (§ 191-32), attached to and made a part of this chapter.

**§ 191-15. Parking prohibited certain hours.**

No person shall park a vehicle between the hours specified in Schedule XI (§ 191-33) of any day, unless otherwise indicated, upon any of the streets or parts of streets described in said schedule, attached to and made a part of this chapter.

**§ 191-16. No stopping certain hours.**

No person shall stop a vehicle during the times specified in Schedule XII (§ 191-34) of any day, unless otherwise indicated, upon any of the streets or parts of streets described in said schedule, attached to and made a part of this chapter.

**§ 191-17. No standing certain hours.**

No person shall stand a vehicle during the times specified in Schedule XIII (§ 191-35) of any day, unless otherwise indicated, upon any of the streets or parts of streets described in said schedule, attached to and made a part of this chapter.

**§ 191-18. Time limit parking.**

No person shall park a vehicle for longer than the time limit shown in Schedule XIV (§ 191-36) at any time between the hours listed in said schedule of any day, unless otherwise indicated, upon any of the streets or parts of streets described in said schedule, attached to and made a part of this chapter.





ARTICLE IV  
**Removal and Storage of Vehicles**

**§ 191-19. Authority to impound vehicles.**

- A. When any vehicle is parked or abandoned on any highway or public parking lot within this Town during a snowstorm, flood, fire or other public emergency which affects that portion of the public highway or parking lot upon which said vehicle is parked or abandoned, said vehicle may be removed by or under the direction of the Superintendent of Highways or a police officer.
- B. When any vehicle is found unattended on any highway or public parking lot within the Town where said vehicle constitutes an obstruction to traffic, said vehicle may be removed by or under the direction of the Superintendent of Highways or a police officer.

**§ 191-20. Storage and charges.**

After removal of any vehicle as provided in this article, the Town of Somerset may store or cause such vehicle to be stored in a place at the expense of the owner. Such owner or person in charge of the vehicle may redeem the same upon payment to the person with whom stored of the amount of all expenses actually and necessarily incurred in effecting such removal and storage.

**§ 191-21. Notice of removal.**

It shall be the duty of the Superintendent of Highways to ascertain to the extent possible the owner of the vehicle or the person having the same in charge and to notify him of the removal and disposition of such vehicle and of the amount which will be required to redeem the same. Said Superintendent of Highways shall also, without delay, report to the Town Clerk the removal and disposition of any vehicle removed as provided in this article.



ARTICLE V  
**Miscellaneous Provisions**

**§ 191-22. Penalties for offenses. [amended 4-9-2002 by L.L. No. 2-2002]**

Every person convicted of a traffic infraction for a violation of any provision of this chapter which is not a violation of any provision of the Vehicle and Traffic Law of the State of New York shall, for a first conviction thereof, be punished by a fine of not more than \$500 or by imprisonment for not more than 15 days, or both such fine and imprisonment; for a second such conviction, such person shall be punished by a fine of not more than \$600 or by imprisonment for not more than 45 days, or by both such fine or imprisonment; upon a third or subsequent conviction, such person shall be punished by a fine of not more than \$700 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.



**ARTICLE VI  
Schedules**

**§ 191-23. Schedule I: Speed Limits.**

In accordance with the provisions of § 191-4, speed limits are hereby established upon the following described streets or parts thereof:

Name of Street	Speed Limit (mph)	Location
Arlington Road	35	From Quaker Road to Lake Road (Route 18)
Coleman Road	30	From east line of Village of Barker east to Fels Road
Haight Road	35	From the Somerset Town Hall to the pine trees on the school property
Lake Road (Route 18)	35	From a point 1,320 feet east of the Quaker Road to a point 1,320 feet west thereof
Lakeview Drive	35	Entire length
Quaker Road	35	From a point 3,696 feet south of Route 18 to a point 1,056 feet north of Route 18
Town Hall Property	5	All roadways at the Town Hall, 8700 Haight Road

**§ 191-24. Schedule II: School Speed Limits.**

In accordance with the provisions of § 191-5, no person shall drive a vehicle in excess of the speeds indicated below, in the areas designated below, during school days between the hours of 7:00 a.m. and 6:00 p.m.:

Name of Street	Speed Limit (mph)	Location
	(Reserved)	

**§ 191-25. Schedule III: Prohibited Turns at Intersections.**

In accordance with the provisions of § 191-6, no person shall make a turn of the kind designated below at any of the following intersections:

Name of Street	Direction of Travel	Prohibited Turn	Hours	At Intersection of

(Reserved)

**§ 191-26. Schedule IV: Prohibited Right Turns on Red Signal.**

In accordance with the provisions of § 191-7, no person shall make a right turn when facing a steady red signal (stop indication) at any of the following locations:

Name of Street	Direction of Travel	Prohibited Right Turn on Red Signal Onto

(Reserved)

**§ 191-27. Schedule V: Stop Intersections.**

In accordance with the provisions of § 191-8, the following described intersections are hereby designated as stop intersections, and stop signs shall be installed as follows:

<b>Stop Sign on</b>	<b>At Intersection of</b>
Hass Road	Somerset Drive

**§ 191-28. Schedule VI: Yield Intersections.**

In accordance with the provisions of § 191-9, the following described intersections are hereby designated as yield intersections, and yield signs shall be installed as follows:

<b>Yield Sign on</b>	<b>Direction of Travel</b>	<b>At Intersection of</b>
	(Reserved)	

**§ 191-29. Schedule VII: Trucks Over Certain Weights Excluded.**

In accordance with the provisions of § 191-10, trucks in excess of the weights indicated are hereby excluded from the following streets or parts thereof, except for the pickup and delivery of materials on such streets:

<b>Name of Street</b>	<b>Weight Limit (tons)</b>	<b>Location</b>
All Town highways	10	The Town of Somerset, excluding the Village of Barker

**§ 191-30. Schedule VIII: Parking Prohibited at All Times.**

In accordance with the provisions of § 191-12, no person shall park a vehicle at any time upon any of the following described streets or parts thereof:

<b>Name of Street</b>	<b>Side</b>	<b>Location</b>
Haight Road	North	From Quaker Road to a point 1,490 feet west thereof

**§ 191-31. Schedule IX: No Stopping.**

In accordance with the provisions of § 191-13, no person shall stop a vehicle upon any of the following described streets or parts thereof:

<b>Name of Street</b>	<b>Side</b>	<b>Location</b>
		(Reserved)

**§ 191-32. Schedule X: No Standing.**

In accordance with the provisions of § 191-14, no person shall stand a vehicle upon any of the following described streets or parts thereof:

<b>Name of Street</b>	<b>Side</b>	<b>Location</b>
		(Reserved)

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§ 191-33

§ 191-36

**§ 191-33. Schedule XI: Parking Prohibited Certain Hours.**

In accordance with the provisions of § 191-15, no person shall park a vehicle between the times specified upon any of the following described streets or parts thereof:

<b>Name of Street</b>	<b>Side</b>	<b>Hours/Days</b>	<b>Location</b>
Any highway within the Town of Somerset	Both	2:00 a.m. to 6:00 a.m./From November 1 to April 1	Town of Somerset

**§ 191-34. Schedule XII: No Stopping Certain Hours.**

In accordance with the provisions of § 191-16, no person shall stop a vehicle between the times specified upon any of the following described streets or parts thereof:

<b>Name of Street</b>	<b>Side</b>	<b>Hours/Days</b>	<b>Location</b>
		(Reserved)	

**§ 191-35. Schedule XIII: No Standing Certain Hours.**

In accordance with the provisions of § 191-17, no person shall stand a vehicle between the times specified upon any of the following described streets or parts thereof:

<b>Name of Street</b>	<b>Side</b>	<b>Hours/Days</b>	<b>Location</b>
		(Reserved)	

**§ 191-36. Schedule XIV: Time Limit Parking.**

In accordance with the provisions of § 191-18, no person shall park a vehicle for longer than the time limit specified upon any of the following described streets or parts thereof:

<b>Name of Street</b>	<b>Side</b>	<b>Time Limit; Hours/Days</b>	<b>Location</b>
		(Reserved)	





**Chapter 195**

**WATER**



**[HISTORY: Adopted by the Town Board of the Town of Somerset 10-16-1984. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Sewers — See Ch. 152.**

**Subdivision of land — See Ch. 171.**



**§ 195-1. Powers of Town. [Amended 9-10-1996 by L.L. No. 2-1996]**

The Town Board shall have such powers with respect to improvement districts as authorized by § 198 of the Town Law.



§ 195-1

§ 195-2

**§ 195-2. General conditions of service.**

- A. It is the intention of the Town Board to notify consumers when the water in the mains is to be shut off, but it is here noted that it is many times impractical and sometimes impossible to do so.
- B. If the required check valve has been installed and the plumbing is in the proper condition, no damage can occur from turning the water in the mains off or on without notice; and the Town Board is not liable for any damage caused thereby.
- C. Whenever the water is shut off for any reason, the consumer is hereby advised that all hot-water boilers should be immediately banked and water content checked often and thoroughly.
- D. Service pipes from the street to buildings should maintain four-foot minimum trench depth to avoid danger of freezing. Particular care should be exercised to maintain this minimum when crossing gutters, drainage ditches or other like depressions.
- E. When property is conveyed, written notice should be given to the Town Board of said conveyance so that the transfer of ownership may be noted on the water books and the new owner notified of his accounts.





§ 195-2

§ 195-3

**§ 195-3. Applicable territory.**

Territory to which regulations apply shall consist of all lands within the boundary of the Town of Somerset, excepting only those lands within the municipal limits of the Village of Barker which are not served by this water system, and also, all lands outside the Town of Somerset which are served by this system.



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

**AIR GAP** — The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood-level rim of the receptacle. The "air gap" shall be at least double the diameter of the supply pipe or faucet measured vertically above the flood-level rim of the receptacle but not less than one inch.

**APPROVED** — Accepted by the New York State Department of Health.

**AUXILIARY WATER SUPPLY** — Any water source or system other than the public water supply that may be available in the building or premises.

**BACKFLOW** — The flow of water or other liquids, mixtures or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of "backflow."

**BACKFLOW PREVENTER** — A device or means to prevent backflow.

**BACKSIPHONAGE** — Backflow resulting from negative pressure in the distributing pipes of a potable water supply.

**BOARD** — The Town Board of the Town of Somerset, Niagara County, or its duly authorized representative.

**CERTIFIED BACKFLOW PREVENTION DEVICE TESTER** — A person who is examined annually by the water district and found competent in the testing of backflow prevention devices. Said person shall be provided with an appropriate identification card, renewable annually. Failure to perform duties competently and conscientiously will result in expeditious withdrawal of certification. Said person is one who has taken and successfully completed a backflow prevention course approved by New York State Health Department.

**CHECK VALVE** — A self-closing device which is designed to permit the flow of fluids in one direction and to close if there is a reversal of flow.

**CONSUMER** — The person or corporation to be served or the authorized agent of such person or corporation.

**CONTAMINATION** — See "pollution."

**CROSS-CONNECTION** — Any physical connection between a potable water supply and any waste pipe, soil pipe, sewer, drain or any unapproved source or system. Furthermore, it is any potable water supply outlet which is submerged or can be submerged in wastewater and/or any other source of contamination. See "backflow" and "backsiphonage."

**DISTRICT** — All water districts within the Town of Somerset, Niagara County, New York.

**DOUBLE-CHECK-VALVE ASSEMBLY** — An assembly of at least two independently acting acceptable check valves, including tightly closing shutoff valves located at each end of the assembly with suitable connections for testing the water tightness of each check valve.

**HAZARD, HEALTH** — Any conditions, devices or practices in the water supply system and its operation which create or, in the judgment of the Somerset Water District, may create a danger to the health and well-being of the water consumer. An example of a "health hazard" is a structural defect in the water supply system, whether of location, design or construction, that regularly or occasionally may prevent satisfactory purification of the water supply or cause it to be polluted from extraneous sources.

**OWNERS** — The persons or corporations owning the property to be served or the authorized agent of such persons or corporations.

**POLLUTION** — The presence of any foreign substances (organic, inorganic, radiological or biological) in water that tend to degrade its quality so as to constitute a hazard or impair the usefulness of the water.

**REDUCED-PRESSURE-PRINCIPLE BACKFLOW PREVENTER** — An assembly of two independently acting

§ 195-4 acceptable check valves, together with an automatically operating pressure-differential relief valve between the two check valves. The assembly shall include tightly closing shutoff valves located at each end of the assembly and suitable connections for testing the watertightness of each valve. § 195-4

**SUPERINTENDENT** — The Superintendent of Water, Sewers and Grounds for the Somerset Water District, who is a duly authorized representative of the Board, or his authorized representative.

**SURGE TANK** — The receiving, nonpressure vessel forming part of the air-gap separation between a potable and an auxiliary supply.

**WATER, NONPOTABLE** — Water that is not safe for human consumption or that is of questionable potability.

**WATER, POTABLE** — Water free from impurities in amounts sufficient to cause disease or harmful physiological effects. Its bacteriological and chemical quality shall conform to the requirements of the Niagara County Health Department and Part 5 of the New York State Sanitary Code.

**§ 195-5. Application for service; authorization for connection required.**

- A. Application for service shall be made by the owner in writing, on blanks provided by the Superintendent or his authorized representative. Such application shall be made not later than one week previous to the time of the beginning of such service and shall contain such information as the Board may require.
- B. No person or corporation shall make any connection or opening into a public water main, except upon written authorization of the Superintendent. All connections to water mains, including service-line work and excavation within public rights-of-way, shall be done by the district or its authorized representatives, including all excavation around or near public water mains.



**§ 195-6. Installation of service.**

- A. Approval by Superintendent. No water main shall be tapped nor any service connection made, laid or covered, except in the presence of the Superintendent or his authorized representatives and then only after he shall have approved all work and materials and authorized the making of such tap and the connecting and covering of it. All lines covered without the approval of Superintendent or authorized representative will be uncovered at the owner's expense.
- B. Replacement of existing services. Any existing services which require replacement because of leaks, at any time, shall be replaced with acceptable materials in accordance with these rules and regulations.
- C. Connection. No person, except an authorized district representative, shall turn the water on or off at any connection to the water main. Water will be turned on by the Superintendent or his authorized representative to test the pipes before they are covered and immediately turned off until final approval of the completed service installation.





**§ 195-7. Requirements for permanent service connections.**

- A. Taps and connections shall be 3/4 inch and shall be carried full size from the water main to the meter, except that larger services may be permitted where proper application is made in writing to the Board where need for such service is proven and where water main size is adequate. Where larger than 3/4 inch is required, the owner shall pay to the Board an installation fee, in addition to those hereinafter described, which will fully compensate the district for the cost of the larger service desired.
- B. Service pipe. **[Amended 7-10-2007 by L.L. No. 1-2007]**
- (1) Service pipe two inches or smaller shall be domestic-made Type K copper tubing. No underground joints will be permitted except where distances are greater than the lengths available from the manufacturer. In this case, a minimum number of joints will be permitted.
  - (2) Service pipe three inches and larger shall be cement-lined cast-iron Tyton-joint pipe or AWWA C-900 polyvinyl chloride pipe with push-tight joints.
  - (3) All pipe shall meet all requirements for a working pressure of 150 pounds per square inch. All service pipe shall be laid in a trench not less than four feet below the surface of the earth.
  - (4) At the option of the homeowner, polyethylene (PE) service pipe may be provided, as required, in sizes over 3/4 inch through two inches in diameter. Service shall be copper tube size (CTS) polyethylene tubing and have an outside diameter based dimension ration (DR) to 9 with PE 3408 material and a pressure of 200 pounds per square inch, in accordance with AWWA specifications C901 (latest revision). Tracer wire, for polyethylene service tubing, shall be #14, solid copper conductor with thirty-mil polyethylene insulation, color blue, as manufactured by Kris-Tech Wire Co., Inc., or acceptable equivalent.
- C. Connections from the water main to and including the curb stop and box will be made by the district at a charge to the owner at the prevailing rate as listed in these regulations.
- D. Permission will not be granted to supply more than one consumer from a single tap unless a separate shutoff cock is provided for each such building, and if located on the premises, a perpetual right-of-way must be granted to the Board by the owners.
- E. When premises are occupied by more than one consumer, a meter must be installed for each consumer, unless the owner contracts with the Board for the water for the building.
- F. No installation shall be permitted which has any connections, direct or indirect, with any public or private pumping and/or distribution system or source not fully approved by the New York State Department of Health, regardless of how it is valved or piped. Health Department approved air breaks must be employed in supply tanks, vats or other apparatus which contain liquids, chemicals or other matter which could in any way endanger the water supply if it were drawn back into the district mains.
- G. A double check valve, acceptable to the Superintendent and installed by the owner, in all household lines immediately after the meter is mandatory for all new installations and upon sale of property. Installation of a double check valve is recommended to all previous consumers. It is also the policy of the district to recommend pressure-reducing valves and expansion tanks on all installations. **[Amended 3-11-2003 by L.L. No. 2-2003]**
- H. All services installed shall be accomplished by a duly qualified person approved by the Superintendent.



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**§ 195-8. Requirements for temporary service connections.**

Temporary service connections shall consist of but shall not be limited to the service of water to a premises or property upon which no permanent structure is or has been erected. Except as otherwise directed by the Board or as set forth herein, all requirements for permanent service shall apply to temporary service.



**§ 195-9. Meters.**

- A. All water for domestic, commercial and industrial purposes shall be metered. Meters shall be signed for by the owner, or his duly authorized agent, for whose premises the water is to be used. No charge shall be made for water for fire purposes taken from district-owned hydrants. Each sprinkler-system or private-hydrant installation must be submitted to the Board for review and approval prior to the connection to the supply main. The decision, thereafter, will be made by the Board as to whether meters will be required for the service and use requested.
- B. Meters for water used for the purposes of spraying, irrigation and uses related to the growing only of commodities for human and animal consumption may be available from the district. If the consumer owns an approved meter for these purposes, it may be utilized upon proper application to the Superintendent.
- C. When water is desired and after the service from the main has been installed and approved, the owner shall pay the current meter installation and maintenance charge. Payment of the required sum does not carry with it ownership of the meter, which remains forever the property of the district. In the event that the owner desires to discontinue use of water, he may request removal of the meter by the district at no charge to the owner.
- D. All meters will be maintained by and at the expense of the district insofar as ordinary wear and tear are concerned, but the owner will be held responsible for damage due to freezing, hot water or other causes. In case of damage, the district will repair the meter, if necessary, replacing it with another, the total cost of which shall be paid by the owner.
- E. The Board reserves the right, at all times, to inspect, test, clean, repair, remove and replace any meter at any time and to substitute another meter in its place. In the case of a disputed account involving the question of accuracy of the meter, such meter will be tested by the district upon request of the consumer or owner. The current fee for testing meters shall be paid in advance of the testing. In the event that the meter so tested is found to have an error in registration to the prejudice of the consumer in excess of 4% at any rate of flow within the normal test limits, the fee advance for testing will be refunded and the bill for the current period adjusted to correct such excess registration.
- F. The Board reserves the right, at all times, to stipulate the size, type and make of any and all meters employed within or outside of the district.



**§ 195-10. Preventing backflow into public water systems.**

- A. Purpose. The purpose of these regulations is:
- (1) To protect the public water supply against actual or potential cross-connections by isolation within the premises contamination or pollution that may occur because of some undiscovered or unauthorized cross-connection on the premises.
  - (2) To eliminate existing connections between drinking water systems and other sources of water that are not approved as safe and potable for human consumption.
  - (3) To eliminate cross-connections between drinking water systems and other sources of water that are not approved as safe and potable for human consumption.
  - (4) To prevent the making of cross-connections in the future.
- B. Protection of public water system at service connection.
- (1) Where protection is required.
    - (a) Each service connection from a public water system for supplying water to premises having an auxiliary water supply shall be protected against backflow of water from the premises into the public water system.
    - (b) Each service connection from a public water system for supplying water to premises on which any substance is handled under pressure in such fashion as to permit entry into the water system shall be protected against backflow of the water from the premises into the public system. This shall include the handling of process waters and waters originating from the public water supply system which have been subject to deterioration in sanitary quality.
    - (c) Each service connection from a public water system for supplying water to premises on which a substance of unusually toxic concentration or danger to health is handled in liquid form, even though it is not under pressure, shall be protected against backflow of the water from premises into the public water system. Examples are plating factories using cyanide and hospitals.
    - (d) Backflow prevention devices shall be installed on the service connection to any premises that have actual or potential internal cross-connections.
    - (e) Backflow prevention devices shall be installed on the service connection to any premises in which the district is not allowed to fully and completely review all processes within the facility.
  - (2) It shall be the responsibility of the water user to provide protective devices as required under Subsection C.
- C. Type of protection. The protective device required shall depend on the degree of hazard as tabulated below:
- (1) At the service connection to any premises on which backflow prevention is required, the public water supply shall be protected by an approved check-valve assembly. **[Amended 3-11-2003 by L.L. No. 2-2003]**
  - (2) At the service connection to any premises on which there is an auxiliary water supply meeting the New York State drinking water standards, the public water supply system shall be protected by an approved double-check-valve assembly.
  - (3) At the service connection to any premises on which there is an auxiliary water supply not meeting the New York State drinking water standards, the public water supply system shall be protected by an air-gap separation or an approved reduced-pressure-principle backflow preventer device. The air gap shall



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be located as close as practicable to the water meter, and all piping between the water meter and the surge tank shall be entirely visible.

- (4) At the service connection to any premises on which any material dangerous to health or any toxic substance in toxic concentration is or may be handled under pressure, the public water supply shall be protected by an air-gap separation. The air gap shall be located as close as practicable to the water meter, and all piping between the water meter and surge tank shall be entirely visible. If these conditions cannot reasonably be met, the public water supply shall be protected with an approved reduced-pressure-principle backflow prevention device, provided that the alternative is acceptable to both the district and the local Health Department.
  - (5) At the service connection to any premises on which any material dangerous to health or any toxic substance in toxic concentration is or may be handled but not under pressure, the public water supply shall be protected by an air-gap separation or an approved reduced-pressure-principle backflow preventer device. The air gap shall be located as close as practicable to the water meter, and all piping between the water meter and the surge tank shall be entirely visible.
  - (6) At the service connection to any sewage treatment plant or sewage pumping station, the public water supply shall be protected by an air-gap separation. The air gap shall be located as close as practicable to the water meter, and all piping between the water meter and the surge tank shall be entirely visible. If these conditions cannot be reasonably met, the public water supply shall be protected with an approved reduced-pressure-principle backflow prevention device, provided that this alternative is acceptable to both the Board and the local Health Department.
  - (7) At the service connection to any premises where the Board is not allowed to fully and completely review all processes within the facility, the public water supply system shall be protected by an air-gap separation or an approved reduced-pressure-principle backflow prevention device. The air gap shall be located as close as practicable to the water meter, and all piping between the water meter and the surge tank shall be entirely visible.
- D. Frequency of inspection of protective devices. It shall be the duty of the water user on any premises on account of which backflow protective devices are installed to have competent inspections made at least once a year or more often in those instances where successive inspections indicate repeated failure. These devices shall be repaired, overhauled or replaced at the expense of the water user whenever they are found to be defective. These tests shall be performed by a certified backflow prevention device tester, and all test results and repairs shall be delivered to the Board within 72 hours after test is made.
- E. Reasonable interpretation required. These regulations are to be reasonably interpreted; it is their intent to recognize that there are varying degrees of hazard and to apply the principle that the degree of protection shall be commensurate with the degree of hazard.

**§ 195-11. Termination of service; repair of leaks.**

- A. No person, except the Superintendent or his authorized representative, shall terminate or restrict service at any connection to or from the district water system.
- B. The Board reserves the right to shut off the water from or in any district main or to any service connection, at any time, without notice, that it is deemed necessary, and the Board shall not be responsible for any damage that may result therefrom.
- C. Upon detection of a leak in a service line, between the curb stop and the meter, of any nature prejudicial to the district, the owner, consumer and/or corporation shall make the necessary repairs to said service, at no expense to the district, and shall perform the work in strict accordance with the requirements set forth for a new service.
- D. Upon failure by the owner, consumer and/or corporation to repair such a leak, the district may, at its option, terminate service five days following issuance of a notice to repair. The district reserves the right to enter on any property or premises, at any time, to repair any leak, break or other damage which, if left unrepaired, would or could be prejudicial to the district water system. The expense of such repairs to services shall be at the cost of the consumer while the expense incurred in repair of district mains and fixtures shall be borne by the district.
- E. Water may be turned off, at the direction of the Board by the Superintendent, because of failure of payment by any consumer 60 days after the end of a period, and a charge of an amount as set forth by resolution of the Town Board will be made, in addition to the payment of all bills then in arrears, before the water will again be turned on. All delinquent charges shall be a lien against the property. **[Amended 9-10-1996 by L.L. No. 2-1996]**



**§ 195-12. Hydrants and fire regulations.**

- A. Fire. In case of fire or an alarm of fire, all water consumers are requested to cease the use of water for motors, fountains, sprinkling and power purposes during such fire, in the interest of keeping up a strong and effective pressure for fire-protection purposes.
- B. Hydrants.
  - (1) No person, except the Superintendent of Water, Sewers and Grounds or persons acting under his direction or permission, shall open any fire hydrant or draw water therefrom, except as authorized by the Superintendent in writing for irrigation water or that the Chiefs of the Town/Village Fire Departments and their assistants shall be authorized to draw water as necessary to fight fire. In no case shall inexperienced or incompetent persons be allowed to manipulate or interfere with any such hydrants, gates, valves or other fixtures of said district. **[Amended 3-11-2003 by L.L. No. 2-2003]**
  - (2) Hydrants and shutoff valves approved by the Superintendent will be installed at the time of construction of all water mains so that each developed property or premises shall in no case be farther than 600 feet distant from a hydrant, except that no hydrant will be installed on other than public lands, easements or rights-of-way permanently owned or controlled by the Board, its successors and assigns.
  - (3) Changes in location of existing hydrants will be made, except where otherwise required by law, at the expense of the owner or consumer requesting such change in location. All such requests shall be made in writing to the Board.
  - (4) The Board does not guarantee to provide hydrant service to consumers outside the district or to temporary services within the district.



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**§ 195-13. Vandalism and property damage.**

- A. Any person who shall deface, injure, disturb or interfere with any machinery, pumps, buildings, trucks, tools, valves, hydrants or any other part of the district water system will be prosecuted to the fullest extent of the law.
- B. The penalty for the commission of any of the above offenses is punishable by fine and imprisonment as set forth in Article 145 of the Penal Law.



**§ 195-14. Payment for water service.**

## A. Installation and repair.

- (1) Expenses borne by the district shall be as follows:
  - (a) Maintenance and repair of meters as set forth in § 195-9 of these regulations.
  - (b) Maintenance and repair of service lines from main to curb stop, inclusive.
- (2) Expenses borne by the owner shall be as follows:
  - (a) The cost of all materials and labor for laying and maintaining the service pipe upon and within his premises from the curb box serving said property.
  - (b) The cost of making taps and installing service line from the main to the curb stop, inclusive.
  - (c) Water rentals and special assessments.
  - (d) The cost of installation, repair and testing of meters, except for mechanical defects or natural wear and tear as set forth in § 195-9 of these regulations.
  - (e) The cost of installation, repair and testing of backflow prevention devices.
  - (f) The cost of irrigation connections and maintenance thereof as determined by the Superintendent.  
**[Added 3-11-2003 by L.L. No. 2-2003]**

## B. Water rentals.

- (1) All water rentals will be charged to the owner.
- (2) Water rentals of all kinds shall become due in January, April, July and October, except in the case of large industrial or commercial consumers where monthly billing may be ordered. In all cases where bills remain unpaid for a period of 60 days after becoming due, the Superintendent may shut off the water at the curb stop. Any water bill remaining unpaid on October 1 of the year following rendition will be placed upon the first county tax roll made up after such date. The amount owed, any penalties for being past due and any other fees imposed shall become a part of the tax, along with an additional \$100 levy fee to recoup Town costs in processing the unpaid bill for inclusion on the county tax roll, and shall become due with the same and shall be subject to the same penalties and interest as such taxes.  
**[Amended 11-6-2019 by L.L. No. 1-2020]**
- (3) Rates for water used by consumers living within the district and paying taxes therein or their tenants shall be as set forth in Water Service Classification No. 1.<sup>37</sup> Where payments in lieu of taxes or where other considerations acceptable to the Board and not prejudicial to the best interests of the district are arranged for and agreed to by public agencies or individuals, Water Service Classification No. 1 would apply unless modified by contract between the district and the owner or agency involved.
- (4) Rates for water used by consumers owning property within the district but not subject to payment of taxes or special assessments or by the occupant thereof or by consumers outside the district or by consumers qualifying as temporary services within or without the district shall be set forth in Water Service Classification No. 2,<sup>38</sup> except as otherwise provided for in this section of these regulations.
- (5) Rates for water used by trailer parks or campsites serviced through a master meter and where at least one permanent structure exists shall be set forth in Water Service Classification No. 3.<sup>39</sup>

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37. Editor's Note: Water rates, as may be amended from time to time by resolution of the Town Board, are on file in the office of the Town Clerk.

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- § 195-14 (6) Consumers desiring permanent discontinuance of the use of water or for period in excess of one year may return the meter to the district and be relieved from further water rental charges. For periods of temporary discontinuance extending less than one full year, no release from minimum service charges will be made. § 195-14
- (7) The Board reserves the right, if need be, to refuse water to anyone for consumption outside said district.
- C. Cottages and seasonal users. Where it is desired that water service be shut off during cold weather, the Superintendent, upon written request of the owner, will disconnect and dewater the meter and shut off the service at no charge to the owner. The Superintendent will reconnect the meter and reopen the service at no charge to the owner, upon his request. In the event that no notice is given, it will be expected that the owner will continue to protect the meter and piping from damage from freezing throughout the winter months, and failure to do this shall be charged against the owner as set forth in § 195-9.
- D. Special district assessments.
- (1) Indirect benefit. A special assessment shall be laid against the assessed valuation, including exemptions, public service and public franchise, to all properties within the Town of Somerset, with the exception of those properties within the limits of the Village of Barker to provide for the indirect benefits enjoyed by all properties because of the existence of said District. The Board reserves the right to set and from time to time adjust the rate of this indirect benefit assessment according to the best interest of the Town of Somerset Water District.
- (2) Direct benefit. In addition to the assessment set forth in Subsection D(1) above, a special assessment shall be laid against the assessed valuation, including exemptions, public service and special franchise, of properties abutting water mains or not abutting but receiving water therefrom to provide for the direct benefits enjoyed because of the existence of water service. The Board reserves the right to set and from time to time adjust the rate of this direct benefit assessment according to the best interests of the Town of Somerset Water District.

**§ 195-15. Main extensions.**

- A. The Board reserves the right to accept or reject any or all applications for main extensions in maintaining the best interests of the district.
- B. Application for extension by taxpayer petition.
- (1) The Board will review any petition for main extensions if and when a petition is duly presented to the Board which contains the legal signatures of owners along the route of the proposed extension. Said petition shall represent more than 50% of the owners and assessment thus affected.
  - (2) Said extension shall include all necessary construction from existing district mains to and including the property or premises of all owners signing said petition. Where rights-of-way are necessary, the petitioners will be required to exhibit proof that the same will be provided to the district by deed or easement in perpetuity.
  - (3) The Board, through its engineers, will be the sole judge as to location, size, type and make of all materials and/or work thus performed as to the acceptance or rejection of said petition.
- C. Application for extension by contractors.
- (1) The Board will review any application duly presented in writing by a responsible party, such as but not limited to real estate developers, builders, building contractors or corporations, both public and private, which shall show a proposed development.
  - (2) The owner, in making such application, shall agree to provide all easements, rights-of-way and proof of ownership in full accordance with all Town laws and ordinances and with all conditions herein set forth. The owner, in making his application, shall provide, at his own expense, all maps, plans and the like necessary to clearly indicate the proposed extensions.
  - (3) No main extension will be approved by the Board until the land is owned or controlled forever by the Board, its successors and assigns.
  - (4) Prior to construction of said extension, the Board, upon approval of the extension, will direct its engineer to prepare construction plans and specifications and submit, to the Board, an estimate for the work. The owner shall pay to the Board, on behalf of the district, the full amount of the estimated cost of construction, to be adjusted after construction has been completed to the exact amount expended in the extensions. Thereafter, the owner shall be repaid personally by the Board, without interest, in direct proportion to the existing and permanently developed assessed valuation abutting or directly benefited by the extension until the required assessed valuation has reached sufficient value to repay the cost of the construction, at which time the entire cost without interest shall be returned. The aggregate total repaid to the owner shall not exceed the total of the original cost.
  - (5) All real property benefited by the extension shall become immediately assessable as directly benefited properties under the tax structures set up by the Board on behalf of the district.
  - (6) If a period of 10 years shall elapse before the necessary assessed valuation shall have been developed, then the outstanding amount shall cease to be repayable and shall become the property of the district.
- D. Application for extension by guaranteed-income contract.
- (1) The Board will review any application duly presented, in writing, by a responsible party, such as but not limited to military installations or state or federal parks, which shall agree to pay a guaranteed minimum annual revenue in lieu of taxes, in addition to all other charges set forth in these rules and regulations, of sufficient amount to compensate the district for its expenses in financing the extension proposed. The owner shall also contract for said water for a period of time to be determined by the Board.

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- (2) The owner, in making such application, shall agree to provide all needed easements, rights-of-way and proof of ownership in full accordance with all Town laws and ordinances and in full accordance with all conditions herein set forth and shall provide, at the owner's expense, all maps, plans and the like necessary to perform the proposed extension.
- (3) No main extensions will be approved by the Board until the land is owned and controlled forever by the Board, its successors and assigns.
- (4) The Board reserves the right to determine location, size, type and make of all materials and labor so employed.

**§ 195-16. Water supply; prohibited connections.**

- A. The district undertakes to use reasonable care and diligence to provide a constant supply of water at a reasonable pressure to all consumers but reserves the right, at any time, without notice, to shut off the water in its mains for purpose of making repairs and/or extensions or for any other purpose, and it is expressly agreed that the Board and the district shall not be liable for a variation, deficiency or failure in the supply of water or the pressure thereof for any cause whatsoever nor for any damage caused thereby, or by the breaking or bursting of any main or service pipe or any attachment to the district system. All consumers having boilers upon their premises which are dependent upon the pressure in the district mains are cautioned against danger of collapse or lack of water, and all such damage shall be borne exclusively by the consumer as check valves and backflow preventers are required by the district.
- B. In the interest of public health, the district will not permit its mains or services to be connected, directly or indirectly, with any service pipe or piping which is in any way connected to any other source of water supply not fully approved by the Department of Health of the State of New York. The district will not permit its mains or service pipes to be connected in any way, directly or indirectly, to piping, tanks, vats or other apparatus which contains liquids, chemicals or other matter which, if allowed to backflow into the district system, could endanger the water supply.
- C. The district reserves the right, if need be, in periods of drought or emergency, to restrict the use of water for sprinkling, irrigation or such uses other than human or animal consumption to particular hours determined by the Board or to prohibit it entirely.
- D. The Superintendent in his sole discretion may permit connection to the Town's fire hydrants for irrigation purposes, on application by the owner of the premises to be irrigated, on the following terms and conditions: **[Added 3-11-2003 by L.L. No. 2-2003]**
- (1) The minimum cross-connection protection for an irrigation meter should be a double check valve with a guard valve installed after the check so that the flow of water is regulated by the guard valve and not by the operating nut of the hydrant. (Hydrant must be fully open.)
  - (2) Pumps will not be allowed to connect directly to a fire hydrant. Connections to fire hydrants are only by one two-and-one-half-inch opening. No steamer connections allowed.
  - (3) A pump would only be allowed in the irrigation system if it was connected to the fire hydrant by a minimum of 100 feet of two-and-one-half-inch to three-inch collapsible hose.
  - (4) All meters and cross-connection protection devices should be properly supported so as not to put a strain on the fire hydrant.
  - (5) If irrigator plans to inject any foreign substance while watering, a reduced pressure zone (RPZ) will be required, Also this RPZ must be inspected by authorized personnel and report filed with the Superintendent annually.
  - (6) The Town may discontinue this service at any time for any reasons without notice to irrigator if the Superintendent determines such discontinuance to be in the Town's best interest.
  - (7) Tank filling must be done with overhead fill with twelve-inch minimum air gap.
  - (8) All irrigators must file an application annually as required by the Superintendent and must pay all fees established by the Superintendent prior to use of the irrigation service.



**§ 195-17. Rights reserved by Board.**

The Board reserves the right:

- A. To make such changes in the rules and regulations as it may deem to be in the best interest of the district.
- B. To make changes in the rates for water rental as may, in its judgment, be in the best interests of the district.
- C. To order existing service pipes and fixtures to be replaced with acceptable material, as determined by the Superintendent, and to refuse service, with all penalties herein set forth for failure of an owner to comply with such order.
- D. To have free access to enter upon the premises of any consumer at any reasonable time for the purpose of inspection, reading, repair and/or replacement of meters.
- E. To enter into contracts with other water districts for a supply of water, either into or out of the district, to or from such districts, corporations or individuals, under such terms and conditions as shall properly protect the interests of the district.



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**§ 195-18. Taxes.**

The Board shall have the right, in accordance with the applicable sections of the Town Law and other applicable laws, to levy taxes against all assessable properties for the purpose of meeting the expenses of any and/or all capital construction, maintenance and operation deemed, to be in the best interest of the district. Reference is hereby made to § 195-14A(2)(e) of these regulations.





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**§ 195-19. Notice of violation.**

The Board shall notify the owner or authorized agent of the owner of the building or premises in which there is found a violation of this chapter of such violation. The Board shall set a reasonable time for the owner to have the violation removed or corrected. Upon failure of the owner to have the defect corrected by the end of the specified time interval, the Board may, if in its judgment an imminent health hazard exists, cause the water service to the building or premises to be terminated and not be restored until such condition or defects are corrected and/or recommend such additional fines or penalties to be invoked as herein may be provided.



**§ 195-20. Penalties for offenses.**

- A. Any person found violating any provision of this chapter shall be guilty of an offense and shall be served with a written notice by the Superintendent, stating the nature of the violation and providing a specified time within which the violation shall cease and satisfactory corrective action shall be taken by the violator.
- B. In the event that such violation is not terminated within the time specified within said notice, the violator shall be liable to the people of the district for a penalty of not more than \$1,000 or imprisonment not exceeding six months, or both. Such violation shall also be subject to any actual loss or cost to the district caused by said violation. **[Amended 3-11-2003 by L.L. No. 2-2003]**
- C. Every week that a violation is allowed to continue beyond the time specified in said notice shall constitute a separate offense.
- D. Nothing contained herein shall prevent the Board from exercising such other and additional remedies as are available to it under local law or state or federal law, by injunction or any other remedy.



§ 195-20

§ 195-21

**§ 195-21. Resolution of adoption.**

The foregoing shall be, from this date forward, the ordinance, rules and regulations of the water districts of the Town of Somerset, Niagara County, New York, duly adopted by the Town Board of the Town of Somerset at a meeting held in said Town on October 16, 1984.



**Chapter 197**

**WATERFRONT CONSISTENCY**





**[HISTORY: Adopted by the Town Board of the Town of Somerset 2-8-2005 by L.L. No. 1-2005. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Flood damage prevention — See Ch. 104.**

**Zoning — See Ch. 205.**

**Subdivision of land — See Ch. 171.**



**§ 197-1. Title.**

This chapter will be known as the "Town of Somerset Waterfront Consistency Law."



**§ 197-2. Legislative authority; purpose.**

- A. This chapter is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).
- B. The purpose of this chapter is to provide a framework for the agencies of the Town of Somerset to consider the policies and purposes contained in the Local Waterfront Revitalization Program when reviewing applications for private actions or direct agency actions which are located in the waterfront area and to ensure that such actions are consistent with said policies and purposes.
- C. It is the intention of the Town of Somerset that the preservation, enhancement and utilization of the natural and man-made resources of the waterfront area of the Town occur in a coordinated and comprehensive manner to ensure a proper balance between natural resources and the need to accommodate growth and economic development. Accordingly, this chapter is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing loss of fish and wildlife; adverse impacts to historic structures; diminution of open space areas or public access to the waterfront; erosion of shoreline; losses due to flooding, erosion and sedimentation; or permanent adverse changes to ecological systems.
- D. The substantive provisions of this chapter shall only apply while there is in existence a Local Waterfront Revitalization Program that has been adopted in accordance with Article 42 of the Executive Law of the State of New York.



**§ 197-3. Definitions.**

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

**ACTIONS** — Either Type I or unlisted actions, as defined by the SEQRA regulations (6 NYCRR 617.2), which are undertaken by an applicant or agency and that include:

- A. Projects or physical activities, such as construction or other activities, that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
  - (1) Are directly undertaken by an agency;
  - (2) Involve funding by an agency; or
  - (3) Require one or more new or modified approvals from an agency or agencies.
- B. Agency planning and policy-making activities that may affect the environment and commit the agency to a definite course of future decisions;
- C. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
- D. Any combinations of the above.

**APPROPRIATE MUNICIPAL AGENCY** — The Town Board, Town Planning Board or Town Zoning Board of Appeals reviewing the action.

**CODE ENFORCEMENT OFFICER** — The Building Inspector and/or Code Enforcement Officer of the Town of Somerset.

**CONSISTENT** — That the action will fully comply with the LWRP policy standards and conditions.

**DIRECT ACTIONS** — Actions planned and proposed for implementation by an applicant or agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.

**LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)** — The Local Waterfront Revitalization Program of the Town of Somerset, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42), a copy of which is on file in the office of the Town Clerk of the Town of Somerset.

**WATERFRONT AREA** — The waterfront revitalization area delineated in the Town's Local Waterfront Revitalization Program.

**WATERFRONT ASSESSMENT FORM (WAF)** — The form used by the Town of Somerset to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.





**§ 197-4. Review of actions.**

- A. Whenever an action is proposed to be approved, funded or undertaken in the Town's waterfront area, a waterfront assessment form (WAF) shall be prepared by either the applicant or, if the action is proposed by the Town Board, then the WAF shall be prepared by the Town Board. Applicants shall file the WAF with the appropriate municipal agency. The Town Board shall file the WAF with the Town Clerk.
- B. All actions undertaken within the waterfront area shall be evaluated by the appropriate municipal agency for consistency in accordance with the LWRP policy standards and conditions, as set forth in Section III of the Town of Somerset Local Waterfront Lakefront Revitalization Program, a copy of which is on file in the Town Clerk's office. In the case of direct actions, the municipal agency shall also consult Section IV of the LWRP when making its consistency determination.
- C. As appropriate, an action shall be consistent with the following policies:
- (1) Foster a pattern of development in the Town of Somerset that enhances community character, preserves open space, makes efficient use of the infrastructure, makes beneficial use of a waterfront locations, and minimizes potential adverse impacts of development.
  - (2) Protect existing water-dependent uses in the Town of Somerset and promote the siting of new water-dependent uses in suitable locations.
  - (3) Protect existing agricultural lands.
  - (4) Promote the sustainable use of living marine resources in the Town of Somerset.
  - (5) Protect and restore ecological resources, including significant fish and wildlife habitats, wetlands and rare ecological communities.
  - (6) Protect and improve water resources.
  - (7) Minimize loss of life, structures and natural resources from flooding and erosion.
  - (8) Protect and improve air quality.
  - (9) Promote appropriate use of energy resources.
  - (10) Minimize environmental degradation from solid waste and hazardous substances and wastes.
  - (11) Improve public access to the waterfront and the use of public lands.
  - (12) Enhance visual quality and protect outstanding scenic resources.
  - (13) Preserve and protect historic resources.
- D. Findings of determination.
- (1) After reviewing these policy considerations, the municipal agency shall make written findings of determination relating to the policies, as well as an appropriate SEQRA determination, prior to making a final determination on the action. If it is determined that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken, funded or approved, as proposed, unless the municipal agency finds that:
    - (a) No reasonable alternatives exist that would permit the action to be undertaken in a manner that would not substantially hinder the achievement of such LWRP policy standards and conditions;
    - (b) The action would be undertaken in a manner that would minimize all adverse effects on such LWRP policy standards and conditions;

- § 197-4 (c) The action will advance one or more of the other LWRP policy standards and conditions; and § 197-4
- (d) The action will result in an overriding Town, regional or statewide public benefit.
- (2) Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.
- E. The Town shall maintain a file for each action made the subject of a consistency determination. Such files shall be kept in the office of the Town Clerk and made available for public inspection upon request.

**§ 197-5. Enforcement.**

- A. The Town Code Enforcement Officer shall be responsible for enforcing this chapter. No work or activity on a project in the waterfront area that is subject to review under this chapter shall be commenced or undertaken until the Code Enforcement Officer has issued or been presented with a written determination from a municipal agency that the action is consistent with the Town of Somerset LWRP policy standards and conditions.
- B. In the event that any construction, action or other activity is being performed in violation of this chapter or any conditions imposed hereunder, the Code Enforcement Officer shall issue a stop-work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop-work order is in effect. Posting of a stop-work order at any work site or delivery to any individual shall constitute issuance. Issuance of a stop-work order shall not be a prerequisite to prosecution for violating this chapter.



§ 197-5

§ 197-6

**§ 197-6. Penalties for offenses.**

- A. Noncompliance with any of the provisions of this chapter shall constitute a violation, punishable by a fine not exceeding \$350 or imprisonment for a period not exceeding six months, or both, for a conviction of a first offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate violation.
- B. This chapter may be enforced by civil action, and any violation thereof may be enjoined by a court or competent jurisdiction.



§ 197-6

§ 197-7

**§ 197-7. Severability.**

The provisions of this chapter are severable. If any provision of this chapter is found invalid, such finding shall not affect the validity of this chapter as a whole or any part or provision hereof other than the provision so found to be invalid.





**Chapter 199**

**WELLS**



§ 197-7

§ 197-7

**[HISTORY: Adopted by the Town Board of the Town of Somerset 4-11-1989. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Water — See Ch. 195.**



**§ 199-1. Refusal to secure wells.**

Refusal to immediately secure any well within the Town of Somerset shall authorize the Town to obtain a court order to go upon the property and secure the well; and the cost, including legal fees thereof, shall be assessed as an additional fine against the property owner and may be levied as an additional tax on said property.



§ 199-1

§ 199-2

**§ 199-2. Penalties for offenses. [Amended 9-10-1996 by L.L. No. 2-1996]**

Pursuant to Article 5 of the General Municipal Law, any open well shall be a violation of this chapter and shall subject the owner thereof to a fine of not more than \$250, plus costs, for each day of said violation.





**Chapter 205**

**ZONING**



**[HISTORY: Adopted by the Town Board of the Town of Somerset 5-9-1978. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Planning Board — See Ch. 44.**

**Bed-and-breakfast establishments — See Ch. 68.**

**Campgrounds — See Ch. 80.**

**Development fees — See Ch. 86.**

**Excavations — See Ch. 96.**

**Farming — See Ch. 98.**

**Flood damage prevention — See Ch. 104.**

**Infrastructure preservation — See Ch. 118.**

**Mobile/manufactured homes — See Ch. 125.**

**Subdivision of land — See Ch. 171.**

**Swimming pools — See Ch. 174.**



ARTICLE I  
**General Provisions**

**§ 205-1. Scope.**

This chapter limits and restricts the specified districts and regulates buildings and other structures therein according to their construction and the nature and extent of the use of land, so as to promote health, safety, morals and general welfare of the Town of Somerset, and provides penalties for the violation thereof.

**§ 205-2. Title.**

This chapter shall be known as and may be cited as the "Zoning Ordinance of the Town of Somerset, Niagara County, New York."

**§ 205-3. Purpose. [Amended 9-10-1996 by L.L. No. 2-1996]**

The purpose of this chapter shall be as set forth in § 263 of the Town Law.

**§ 205-4. Interpretation.**

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of public health, safety, comfort, convenience and general welfare. It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any existing provisions of the law or ordinance or any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger yards, courts or other open spaces than are imposed or required by such existing provisions of law or ordinance, or by such rules, regulations or permits or by such easements, covenants or agreements, the provisions of this chapter shall control.

**§ 205-5. Conflict with other provisions.**

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 those imposing the higher standards shall govern.

**§ 205-6. Amendments. [Amended 6-11-1985; 9-10-1996 by L.L. No. 2-1996]**

- A. The Town Board may, in accordance with the Town Law, Article 16, § 264, from time to time on its own motion or on petition or on recommendation of the Planning Board or of the Board of Appeals, amend, supplement or repeal any or all of the regulations and provisions of this chapter. A petition requesting a change in regulations, district boundaries or in the other provisions of this chapter shall be typewritten and be signed and acknowledged by the person presenting it and shall be filed with the Town Clerk in triplicate.
- B. A notice of amendments or changes shall be published at least 10 days prior to such a meeting stating the time, place and date thereof in the official Town newspaper.
- C. A written notice of any proposed change or amendment affecting property within 500 feet of a boundary of an existing or proposed county or state highway right-of-way or any stream or drainage channel under the jurisdiction of the county shall be sent to the Niagara County Economic Development and Planning Department at least 10 days prior to the date of public hearing.
- D. A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any county or state park shall be given to the Regional State Park Commission having jurisdiction over such state park or parkway at least 10 days prior to the date of such public hearing.

## E. Referrals to County Planning Board.

- (1) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any village, Town or county shall be given to the Clerk of such municipality and to the Clerk of the county and to the County Planning Board at least 10 days prior to the date of such hearing.
- (2) Exceptions.
  - (a) This subsection pertains to actions that apply to real property, including the amendment of a Zoning Ordinance (including Zoning Map changes) or local law not having townwide effect, special use permits, approval of site plan, granting of use or area variances and such other authorizations which the Town, Zoning Board or Planning Board may issue under the provisions of any zoning ordinance or local law. Referrals of such matters to the Niagara County Planning Board shall no longer be required, subject to Subsection E(2)(b) and (c) herein, inasmuch as the parties are in agreement that said actions are of local, rather than intercommunity or countywide concern.
  - (b) Both the Town and the county reserve the right to request review of any specific matters.
  - (c) Actions immediately adjacent to a municipal boundary or park, as well as actions concerning corner lots on state or county highways, will continue to be referred to the county.
- F. In case, however, of a protest against such changes signed by the owners of 20% or more of the area of land included in such proposed change or of that immediately adjacent extending 100 feet therefrom or of that directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendments shall not become effective except by the favorable vote of 3/4 of the members of the Town Board.
- G. Any petition filed with the Town of Somerset requesting a change in regulation, district boundaries or any other provisions of this chapter shall be subject to a fee as set forth from time to time by resolution of the Town Board, which fee must be deposited with the Town Clerk of the Town of Somerset prior to the calling of a public hearing for such relief. The fee shall be nonrefundable.<sup>40</sup>

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40. Editor's Note: The current fee schedule is on file in the office of the Town Clerk.

ARTICLE II  
Terminology

**§ 205-7. Word usage.**

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular. The word "district" includes the plural "districts"; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; the words "occupied" or "used" shall be construed as though followed by the words "or intended, arranged or designed to be used or occupied"; and the words "occupancy" or "use" shall be construed as similarly qualified. All minimum measurements pertaining to lots or spaces shall be exclusive of the rights-of-way of any and all highways, streets or roadways.

**§ 205-8. Definitions.**

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

**ACCESSORY BUILDING OR USE** — A subordinate use or building, the purpose of which is incidental to that of the principal use or building and on the same lot. Before there can be any accessory building or accessory use there must first be a principal use or principal building on the lot. **[Amended 12-12-2006 by L.L. No. 6-2006]**

**ALTERATIONS** — As applied to a building or a structure, a change or rearrangement in the structural parts or an enlargement, whether by extending on a side, increasing in height or the moving from one location or position to another.

**ANIMAL HUSBANDRY** — The keeping, grazing, feeding and care of animals other than household pets.

**AUTO COURT** — A building or a group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing accessory off-street parking facilities. A restaurant, tearoom or similar establishment located on the same premises as an "auto court" shall be considered as an accessory use. The term "auto court" includes facilities designed as tourist courts, motor lodges, motels and similar accommodations.

**BASEMENT** — A story partly underground and having half or more than 1/2 of its height above the average level of the finished grade at the front of the building.

**BUILDING, PRINCIPAL** — A building or buildings, in which is conducted the main or principal use of the lot on which said building is situated.

**BUILDING** — Any structure having a roof supported by columns, piers or walls, including tents, lunch wagons, trailers, dining cars, camp cars or other structures on wheels, and intended for the shelter, housing or enclosure of persons, animals or chattel.

**BUILDING AREA** — The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

**BUILDING DIRECTORY SIGN** — A sign listing the name and location of all tenants in a structure. **[Added 9-10-1996 by L.L. No. 2-1996]**

**BUILDING HEIGHT** — The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of roof for flat roofs, to the deck line of a mansard roof and to the average height between the plate and ridge of a gable, hip or gambrel roof.

**BUILDING LINE** — A line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.



§ 205-8 BUILDING PERMIT — A permit issued by the Code Enforcement Officer stating that the purpose for which a building or land is to be used is in conformity with the uses permitted and all other requirements under this chapter for the zone in which it is located or is to be located. Use arrangement or construction not in compliance with this chapter or other applicable laws shall be a violation of this chapter. **[Amended 9-8-1998 by L.L. No. 3-1998]**

CAMPING GROUND — A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of camping trailers, tents or movable temporary dwellings, rooms or sleeping quarters of any kind.

CELLAR — A story partly underground and having more than 1/2 of its clear height below the average level of the finished grade at the front of the building.

CERTIFICATE OF OCCUPANCY — A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this chapter and such adjustments thereto granted by the Board of Appeals.

CLUBHOUSE — A building used to house a social, fraternal or service organization or club not organized or conducted for profit and which is not an adjunct to or operated by or in conjunction with a public tavern, cafe or other place of business.

CLUSTER DEVELOPMENT — A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs and maintaining a minimum amount of open space.

CODE ENFORCEMENT OFFICER — The officially established Code Enforcement Officer for the Town of Somerset.<sup>41</sup>

COMMERCIAL WIND-ENERGY SYSTEM — A wind-energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to solely supply electrical power into a power grid for sale. **[Added 7-11-2006 by L.L. No. 1-2006]**

CURB LEVEL — The officially established grade of the curb in front of the midpoint of the lot.

DUMP or LANDFILL — A place for the disposal, by abandonment, dumping, burial, burning, or by any other means, and for whatever purpose, of garbage, offal, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof or waste materials of any kind. **[Added 6-13-2000 by L.L. No. 2-2000]**

DWELLING, MULTIFAMILY — A building containing three or more dwelling units.

DWELLING, ONE-FAMILY — A building or dwelling unit designed for or occupied exclusively by one or more persons living as a single, nonprofit housekeeping unit, but said dwelling shall not include mobile/manufactured homes. **[Amended 1-13-1998 by L.L. No. 2-1998]**

DWELLING, TWO-FAMILY — A building containing two dwelling units.

DWELLING UNIT — One or more rooms providing living facilities for one family, including equipment for cooking and provisions for the same.

FACTORY MANUFACTURED HOME — A factory manufactured home which incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. The structure and/or components shall bear the insignia of approval issued by the New York State Fire Prevention and Building Code Council, which certifies that the home or component is in compliance with the requirements of Subchapter B of the New York State Uniform Fire Prevention and Building Code. **[Added 9-10-1996 by L.L. No. 2-1996; amended 1-13-1998 by L.L. No. 2-1998]**

FAMILY — One or more persons, related by birth, marriage or other domestic bond, occupying a dwelling unit

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41. Editor's Note: The definitions of "construction standards," added 9-10-1996 by L.L. No. 2-1996, as amended, was repealed 8-8-2000 by L.L. No. 3-2000.

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and living as a single nonprofit housekeeping unit.

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**FARM** — Any parcel of land which is used for gain in the raising of agricultural products, including crops, livestock, poultry or dairy products.

**FARM BUILDING** — Any building used for the housing of agricultural equipment, produce, livestock or poultry or for the incidental or customary processing of farm products, provided that such building is located on, operated in conjunction with and necessary to the operation of the farm as defined by this section. The term "farm building" shall not include "farm dwelling."

**FENCE** — An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials erected for the enclosure of yard areas.

**FLOOR AREA TOTAL** — The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the inside face of exterior walls or from the center line of walls separating two uses. Said areas shall not include areas below the average level of the adjoining ground, garage space or accessory space.

**FREESTANDING SIGN** — A single-faced or multi-faced sign affixed to a supporting structure or embedded in and extending from the ground or detached from the building. Any support structure shall be included in the sign area to the extent that it is larger than that necessary to support the sign. **[Added 9-10-1996 by L.L. No. 2-1996]**

**GARAGE, PRIVATE** — A secondary building used in conjunction with a primary building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.<sup>42</sup>

**GRADE, STREET** — The officially established grade of the street upon which the lot fronts. If there is no officially established grade, the existing grade of the street at the midpoint of the lot shall be taken as the street grade.

**HOME OCCUPATION** — **[Amended 9-10-1996 by L.L. No. 2-1996]**

- A. A casual activity which is not intended to be the principal or sole source of income of the occupant. Such occupations shall include only those activities which will not exert an unsightly impact on the landscape and/or impact or change the character of the neighborhood. The following conditions are examples (noninclusive) of noncompliance with this chapter:
- (1) Vehicular traffic entering and leaving the premises for commercial/retail purposes regularly or on a daily basis.
  - (2) The parking of two or more vehicles (motor vehicles, trailers, etc.) not owned by the occupant for the purpose of commercial/retail trade.
  - (3) The hiring of employees.
- B. Examples of home occupations include the sale of firewood, fruits, vegetables, books, hand crafts, catalog sales (Avon, etc.), antiques and similar activities.
- C. Those activities which exhibit characteristics which are inconsistent with the conditions described herein shall require a commercial or other appropriate permit or a variance.

**HOME PROFESSIONAL OCCUPATION** — The office of a member of a recognized profession when conducted on residential property. Such occupations shall include but not be limited to those of doctors, lawyers, architects, engineers, artists, ministers and other recognized professional persons. **[Amended 9-10-1996 by L.L. No. 2-1996<sup>43</sup>]**

**JUNKYARD** — Two or more abandoned, disabled, dismantled or partly dismantled vehicles allowed to remain on a premises for a period of more than 30 days shall constitute a "junkyard." Also the storage, sale or abandonment of wastepaper, rags, scrap metal or discarded materials or the collecting, dismantling, storage, salvaging or

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42. Editor's Note: The former definition of "public garages," which immediately followed this definition, was repealed 9-10-1996 by L.L. No. 2-1996.

43. Editor's Note: The former definition of "house trailer," which immediately followed this definition, was deleted 9-10-1996 by L.L. No. 2-1996.

§ 205-8 abandonment of machinery or vehicles not in operating condition shall constitute a "junkyard" and is a violation of this chapter. When located in an A District, the storage of agricultural equipment, machinery and vehicles which are being used in farm operation shall not, for the purposes of this chapter, constitute a "junkyard."**[Amended 9-10-1996 by L.L. No. 2-1996]** § 205-8

**LOT** — A parcel or area of land, the dimensions and extent of which are determined by the latest official records or by the latest approved map of a subdivision of which the lot is a part.

**LOT AREA** — An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating "lot area."

**LOT COVERAGE** — That percentage of the lot area which is devoted to building area.

**LOT WIDTH** — The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

**MAJOR MODIFICATION OF PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES** — A modification of the height, silhouette and/or ground area of any telecommunications tower or telecommunications accessory structure and/or the addition of telecommunications antennas of a new provider to an existing tower.**[Added 2-11-1997 by L.L. No. 2-1997]**

**MOBILE/MANUFACTURED HOME** — A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The unit shall meet the requirements of manufactured home construction and safety standards as listed in the Code of Federal Regulations Housing and Urban Development, but not bear the insignia of approval issued by the New York State Fire Prevention and Building Code Council.**[Added 9-10-1996 by L.L. No. 2-1996; amended 1-13-1998 by L.L. No. 2-1998]**

**MOBILE/MANUFACTURED HOME PARK** — Any site, lot, field, plot, parcel or tract of land on which two or more mobile homes are parked or located and for which use said premises are offered to the public or to any person for a fee of any type, including cost sharing.**[Amended 1-13-1998 by L.L. No. 2-1998]**

**MOTOR VEHICLE SERVICE STATION** — Any building or land used to dispense, sell or offer automotive fuels, oils or accessories, including lubrication, washing, polishing or cleaning, and the replacement or installation of minor parts and accessories, major mechanical repair, body repair or painting.**[Added 9-10-1996 by L.L. No. 2-1996]**

**NONCOMMERCIAL WIND-ENERGY SYSTEM** — A wind-energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics which has a rated capacity of not more than 250 kilowatts and a total height less than 150 feet.**[Added 7-11-2006 by L.L. No. 1-2006]**

**NONCONFORMING USE, NONCONFORMING STRUCTURE or NONCONFORMING LOT** — A use or lot which was lawful or a building or structure which was lawfully situated on a lot prior to the adoption, revision or amendment of this chapter but which fails to conform to the requirements of the zone in which it is taking place or located by reason of such adoption, revision or amendment.**[Added 9-10-1996 by L.L. No. 2-1996]**

**PARKING SPACE** — An off-street space available for the parking of one or more motor vehicles and having an area of not less than 200 square feet per vehicle, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or public way.

**PERSONAL WIRELESS TELECOMMUNICATIONS SERVICES** — Commercial mobile services, unlicensed wireless services and common carrier exchange access services.**[Added 2-11-1997 by L.L. No. 2-1997]**

**PERSONAL WIRELESS TELECOMMUNICATIONS SERVICE FACILITY** — Persons, firms or corporations supplying personal wireless telecommunications service, including all equipment, apparatus, facilities and devices used in the supplying of personal wireless telecommunications service.**[Added 2-11-1997 by L.L. No. 2-1997]**

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PLANNING BOARD — The Town of Somerset Planning Board.

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PRINCIPAL USE — The main use to which a building or lot is to be used.

RECREATIONAL VEHICLE — See the definition of "recreational vehicle" in Chapter 80, Campgrounds. **[Added 9-10-1996 by L.L. No. 2-1996]**

RESTAURANT — Any establishment, however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semipublic or community swimming pool, playground, playfield or park operated by the agency or group or an approved vendor operating the recreational facilities for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

ROOMING HOUSE — A dwelling in which three or more persons, either individually or as families, are housed for hire with or without meals. A lodging house or boardinghouse shall be deemed a rooming house.

SIGN — Any device, structure or object for visual communication that is used for the purpose of bringing the subject thereto to the attention of others, but not including any flag, badge or insignia of any public, quasi-public, civic, charitable or religious groups.

SIGN AREA — The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines said sign.

SITE PLAN — A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

SPECIAL PERMIT — The written authorization by the Planning Board to permit, in a given district, a property use which, because of its nature, location or effect on the surrounding neighborhood, warrants special evaluation of each individual case. **[Added 9-10-1996 by L.L. No. 2-1996]**

STREET — A public thoroughfare which has been dedicated or deeded to the public for public use and which has been improved in accordance with municipal standards.

STREET LINE — The dividing line between the street right-of-way and the lot. For the purposes of this chapter, where the street line is not readily determinable, the center line of the improvement or of the traveled way shall be used to compute the location of the street line.

STRUCTURE — A combination of materials to form a construction that is safe and stable and includes, among other things, stadiums, platforms, radio towers, sheds, storage bins, signs, swimming pools and fences which are more than 50% solid.

SWIMMING POOL, PRIVATE — A swimming pool operated as a secondary use to a residential dwelling unit or units and located on an individual residential lot.

SWIMMING POOL, PUBLIC — A public or privately owned pool open to the general public or on a membership basis and having appropriate dressing room facilities, recreation facilities and off-street parking areas.

TELECOMMUNICATIONS ACCESSORY STRUCTURE — Accessory buildings and structures, including base stations, designed and used to shelter telecommunications equipment and/or to support personal wireless telecommunications facilities. **[Added 2-11-1997 by L.L. No. 2-1997]**

TELECOMMUNICATIONS ANTENNA — An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission (FCC). Design examples of telecommunications antennas are described as follows: whip; panel; and dish. **[Added 2-11-1997 by L.L. No. 2-1997]**

TELECOMMUNICATIONS TOWER — A tower greater than 35 feet in height and which does not exceed 300 feet in height (including antenna) and which supports communication (transmission or receiving) equipment. The term "telecommunications tower" shall not include amateur radio operators' equipment as licensed by the FCC. Design examples of telecommunications towers are described as follows: self-supporting lattice; guyed; and

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monopole. **[Added 2-11-1997 by L.L. No. 2-1997]**

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**TEMPORARY USE** — An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this chapter. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

**TOTAL HEIGHT (also MAXIMUM OVERALL HEIGHT)** — The height of the wind-energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position. **[Added 7-11-2006 by L.L. No. 1-2006]**

**TOWER** — The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted. **[Added 7-11-2006 by L.L. No. 1-2006]**

**TOWER HEIGHT** — The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades. **[Added 7-11-2006 by L.L. No. 1-2006]**

**TOWNHOUSE** — One of a series of attached one-family dwelling units, each having a common wall between adjacent sections and having direct access to a private, individual and/or front yard designed as an integral part of each one-family dwelling unit.

**USE** — The specific purposes for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

**WIND-ENERGY SYSTEM** — The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system. **[Added 7-11-2006 by L.L. No. 1-2006]**

**WIND-ENERGY CONVERSION SYSTEMS** — One or more mechanical devices, such as wind chargers, windmills or wind turbines, which are designed and used to convert wind energy into a form of useful energy for sale or redistribution to others. **[Added 7-11-2006 by L.L. No. 1-2006]**

**WINDOW** — An opening in a building to the outside other than a door which provides all or part of the required natural light or natural ventilation, or both, to an interior space. The glass portion of a door in an exterior wall may be considered to be a "window."

**YARD, REAR** — A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a rear yard shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side building lines.

**YARD, SIDE** — An open, unoccupied space between the side line of the lot and the nearest line of the building. It shall extend from the front yard to the rear yard or, in the absence of either, to the street or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the side line of the lot.

**YARD AREA, FRONT** — An open, unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of that lot. "Setback line" shall be synonymous with the rear limit of the required front yard area.

**ZONING BOARD** — The officially established Zoning Board of Appeals of the Town of Somerset.<sup>44</sup>

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44. Editor's Note: The former definition of "zoning permit," which followed this definition, was changed to "building permit" 9-8-1998 by L.L. No. 3-1998. Additionally, the former definition of "Zoning Enforcement Officer," which also followed this definition, was deleted 9-10-1996 by L.L. No. 2-1996.

ARTICLE III  
General Regulations

**§ 205-9. Applicability.**

No building shall hereafter be erected and no existing building shall be moved, structurally altered, rebuilt, added to or enlarged nor shall any land be used for any purpose other than those included among the uses listed as permitted uses in each zone by this chapter and meeting the requirements set forth in the appended Schedule.<sup>45</sup> No open space contiguous to any building shall be encroached upon or reduced in any manner, except in conformity with the area and bulk requirements, off-street parking requirements and all other regulations designated in the Schedule and this chapter for the zone district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building or use shall be deemed to be in violation of this chapter, and the certificate of occupancy shall become void.

**§ 205-10. Preservation of natural features.**

- A. No structure shall be built within 50 feet of the bed of a stream carrying water on an average of six months of the year or on land subject to periodic overflow.
- B. Before any excavation is commenced to remove from the ground topsoil, earth, sand, gravel, rock or other substance, the owner of lessee of the premises or agent of either shall obtain a written permit therefor from the Planning Board.
  - (1) Before issuing such a permit, the Planning Board shall require the submission of a property plan drawn to scale giving location and dimensions of the premises upon which it is proposed to excavate, including location of existing buildings, also the sworn consent in writing of the owner of the premises, including his address and mortgages, if any. Proof of the existence of no lax liens against the property shall also be submitted.
  - (2) The Planning Board shall also require the submission of a plan for the future care or restoration of the area to be excavated, including the preparation of a seed bedding, liming, fertilization and seed.
  - (3) Nothing contained in this chapter shall require a person to obtain a permit or prevent a person from removing topsoil from one part of the lands to another part of the same premises or other premises owned by him in the Town when removal is necessary as an accessory use or is made for the purpose of improving said property.
- C. Topsoil, earth, sand, gravel, rock or other substance deposited on land in the R-1, R-2 and RLS Districts in the Town shall not be stored more than 45 days before used for its intended purpose, unless permitted by the Zoning Board of Appeals after a public hearing. **[Added 6-10-1980]**
- D. Existing natural features such as trees, brooks, drainage channels and views shall be retained. Whenever such features interfere with the proposed use of such property, a retention of the maximum amount of such features consistent with the use of the property shall be required.

**§ 205-11. Regulations applicable to all zones.**

- A. No lot shall have erected upon it more than one principal building. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered to provide a yard or open space for any other building.
- B. An accessory building attached to a principal building shall comply in all respects with the yard requirements of this chapter for the principal building. Detached accessory buildings shall be located to the rear of the front

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45. Editor's Note: The Zoning Schedule is included as an attachment to this chapter. See also § 205-23.

§ 205-11 building line of the principal building and, if located in a side yard area, shall conform to side yard requirements of the schedule.<sup>46</sup> § 205-11

- C. Every principal building shall be built upon a lot with frontage upon a public street improved to meet the Town's requirements.
- D. At the intersection of two or more streets, no hedge, fence or wall (other than a single post or tree) which is higher than three feet above curb level, nor any obstruction to vision, shall be permitted in the triangular area formed by the intersection street lines and a line joining each 30 feet distant from said intersection along said street line.
- E. Where a building lot has frontage on a street which is proposed for right-of-way widening, the required front yard area shall be measured from such proposed right-of-way line.
- F. Unsightly property.
  - (1) Consistent with the purpose and intent as described in § 205-3, this section specifically addresses the need to prevent and/or eliminate unsightly property. Therefore, it shall be unlawful for a property owner and/or resident of the Town of Somerset to have on his or her property at one time, for 30 days or more, two or more unlicensed, unregistered vehicles without obtaining a special use permit or building permit from the Code Enforcement Officer for the operation of a commercial sales and service, motor vehicle repair shop, junkyard or other appropriate business as determined by the Planning Board. **[Amended 6-10-1980; 9-8-1998 by L.L. No. 3-1998]**
  - (2) When implementing this chapter, the following shall apply:
    - (a) Thirty days will be counted as either consecutive days or a total of 30 days in any sixty-consecutive day period.
    - (b) Current registration by New York State will be required.
    - (c) The same or different vehicles of the following type will be counted: motor vehicles, trailers, motor homes, snowmobiles, motorcycles and/or similar vehicles.
- G. Business structures or uses shall not display goods for sale purposes or coin-operated vending machines of any type in any location which would infringe upon the required yard areas specified in this chapter.
- H. All yards, open space, off-street parking and required landscaping must be contained within the zone in which the use is permitted.
- I. No commercial vehicle of over one ton's load capacity shall be parked out-of-doors overnight or on Sunday in conjunction with a residential property in a residential zone. No display vehicles for commercial purposes shall be parked in any district for display purposes.
- J. For the purpose of regulating the locations of accessory buildings on corner lots, and on lots extending through between two parallel streets, all portions of a corner lot or a through lot which fronts on a public street shall be subject to the front yard requirements of the zone district in which said corner or through lot is located.
- K. When a new lot is formed so as to include within its boundaries any part of a former lot on which there is an existing building or use, the subdivision must be carried out in such a manner as will not infringe upon any of the provisions of this chapter either with respect to any existing structures or use and any proposed structures or use.
- L. Nothing in this chapter shall restrict the construction, use or maintenance of public buildings, structures or

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46. Editor's Note: The Zoning Schedule is included as an attachment to this chapter. See also § 205-23.

- § 205-11 facilities, parks or other publicly owned properties nor the installation and maintenance of such public utilities as may be required to service any district. All facilities will be subject to the yard requirements of this chapter and to Town Planning Board site plan review. § 205-11
- M. Junkyards. Two or more abandoned, disabled, dismantled or partly dismantled vehicles allowed to remain on a premises for a period of more than 30 days shall constitute a junkyard. Also the storage, sale or abandonment of wastepaper, rags, scrap metal or discarded materials or the collecting, dismantling, storage, salvaging or abandonment of machinery or vehicles not in operating condition shall constitute a junkyard and is a violation of this chapter. When located in an A District, the storage of agricultural equipment, machinery and vehicles which are being used in farm operations shall not, for the purposes of this chapter, constitute a junkyard.
- N. The limitations on signs as set forth by this chapter for the various zones shall not apply to any sign or directional device erected by the federal, state, county or local government or agency thereof.
- O. The limitations on sign areas as set forth by this chapter for the business and industrial zones shall not apply to parking lot markers, directional signs, entrances and exit signs and other such signs which are erected on the premises, provided that such signs do not exceed two square feet in area on any one side and do not contain any advertising of the use on the premises.
- P. Fences.
- (1) Any fences erected in the Town shall adhere to the following:
    - (a) Fences may be erected, altered or reconstructed to a height not to exceed three feet above ground level when located within 25 feet of the street right-of-way line.
    - (b) Fences may be erected, altered or reconstructed to a height not to exceed six feet above ground level when located more than 25 feet from the street line, except when such fence protects a swimming pool, in which event a height of eight feet is allowed.
  - (2) These restrictions shall not be applied so as to restrict the erection of a wall for the purpose of retaining earth, except if within the highway right-of-way when permission of the Highway Superintendent is required.
  - (3) These restrictions shall not be applied to restrict the erection, alteration or reconstruction of fences used in connection with farms except insofar as such fences might affect the public safety.
  - (4) Fences used for agricultural purposes in the A District shall be exempt from these provisions.
- Q. It shall be unlawful to occupy all or any part of a cellar for living purposes.<sup>47</sup>
- R. Any structure or excavation in the Town of Somerset that, in the unanimous opinion of the quorum of the Town Board, is a source of danger or which constitutes a nuisance or for which a temporary permit has expired shall be repaired, removed, demolished or filled as directed by the Town Board.
- S. Slope of yards. Proper grading and drainage of any improved lot shall be provided to the reasonable satisfaction of the Code Enforcement Officer so as to adequately direct storm runoff away from the building foundation, avoid excessive draining of waters onto abutting properties and minimize risk of flood damage where flood hazard exists. As a guideline only, the surface grade of the front yard at the front wall of a principal building shall not be less than 18 inches above the elevation of the center line of the traveled way of the street or highway measured at the midpoint between the side lines of the lot. **[Amended 11-7-2011 by L.L. No. 7-2011]**
- T. Motor vehicle storage and parking. There shall be provided with every dwelling, storage space for motor

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47. Editor's Note: Former Section 203.18, regulating septic tanks and sewerage, which immediately followed this subsection, was deleted 9-10-1996 by L.L. No. 2-1996.



- § 205-11 vehicles in an amount of not less than one parking area for each family unit in the dwelling. For all other permitted uses, there shall be provided sufficient off-street parking area to accommodate the normal number of vehicles which may simultaneously congregate in the course of the normal use of such building, structure or premises. § 205-11
- U. No two-family dwelling shall be permitted on a lot less than 200 feet in width and 200 feet in depth.<sup>48</sup>
- V. Unsafe, unsightly buildings.
- (1) Any unoccupied structure which has been unoccupied for one year or more and which has had any utility service disconnected may not be used for residential purposes without obtaining a new certificate of occupancy.
  - (2) Any structure completely or partially destroyed by fire shall require a building permit before any reconstruction as well as a new certificate of occupancy before premises may be occupied. **[Added 6-10-1980]**
  - (3) Any structure partially destroyed by fire or natural cause shall be secured. **[Added 9-10-1996 by L.L. No. 2-1996]**
    - (a) All openings shall be covered with outdoor building material of at least 1/2 inch thickness being plywood, aspenite or equivalent material.
    - (b) Doors need not be covered additionally if securely locked and if the door is of substantial material and in good condition.
    - (c) Cover material is to be cut to size to completely cover openings and must be of neat and acceptable appearance.
    - (d) Cover material is to be fastened with two-inch nails or screws spaced no more than 12 inches apart.
    - (e) Cover material must be securely fastened so that it cannot be removed or displaced by hand pressure.
    - (f) All covering material and methods of securing must meet the satisfaction of the Code Enforcement Officer or deputy.
- W. The New York State Uniform Fire Prevention and Building Code, as amended, shall be made a part of this chapter and shall be in full force and effect in the Town of Somerset, and any construction within the Town of Somerset must be subject to the requirements of such code. **[Amended 9-10-1996 by L.L. No. 2-1996]**
- X. All structures damaged by fire are to be reconstructed by removing all burned wood and materials and replacing with materials meeting state and Town Building Codes. **[Added 6-10-1980]**
- Y. Exterior walls of all structures shall be completed by finishing with wood, stone, brick, stucco, vinyl, aluminum, cement or similar permanent material. **[Added 6-10-1980]**
- Z. Notwithstanding the provisions of Chapter 96, there shall be no lot, structure or use that allows for the storage of waste, debris, garbage or hazardous material so as to constitute a landfill in any district. Such landfill shall be prohibited in all districts. **[Added 6-13-2000 by L.L. No. 2-2000]**
- AA. New cemeteries. **[Added 4-9-2002 by L.L. No. 3-2002]**
- (1) No person shall cause the remains of a human being to be buried or establish a burial ground for such purpose, by disposal or burial by cremation or in a grave, mausoleum, vault, columbarium or other

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48. Editor's Note: Former Section 203.23, regulating unsafe, unsightly buildings, which immediately followed this subsection, was deleted 9-10-1996 by L.L. No. 2-1996.

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receptacle within the Town of Somerset outside the Village of Barker not set apart and recognized as a municipal, religious or not-for-profit corporation cemetery, without the consent of the Town Board after a public hearing and having deposited adequate and appropriate funds for perpetual maintenance of said grounds.

- (2) The Town Board shall consider availability of suitable and appropriate approved sites; the health and safety of the community; the character of the site under consideration as appropriate for a burial site; the likelihood of the site becoming a public charge as well as considerations raised under the New York State Environmental Quality Review Act (SEQRA).
- (3) A bond shall be deposited with the Town of Somerset to insure adequate and appropriate funds are available for the maintenance of said burial grounds. The amount of the maintenance fund shall be determined annually by the Town Board.
- (4) "Adequate and appropriate funds" is a relative term to be determined by the Town Board of the Town of Somerset in each instance in order to establish an adequate trust fund for the perpetual maintenance of said ground, however in no event shall it be less than \$10,000; and
- (5) Any person who shall be found to violate any provision of this subsection shall be served by the Town Code Enforcement Officer with written notice providing a reasonable time limit for the exhumation of the buried remains. The offender shall, within the period of time stated in such notice, permanently cease all violations. Any person who shall continue any violations beyond said time limit shall be guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding \$250 for each violation. Each day in which any violation shall continue shall be deemed a separate offense. The provisions of this subsection shall be in addition to and shall not preclude the enforcement of this chapter by application to the New York Supreme Court for injunction or by any other lawful remedy. Any person violating any of the provisions of this subsection shall become liable to the Town for any expense, loss or damage, including attorney's fees, occasioned by it by reason of such violation.

**BB. Restrictions on industrial wind system. [Added 1-29-2018 by L.L. No. 1-2018]**

- (1) "Industrial wind energy conversion system" shall mean any machine or wind facility that converts the kinetic energy in the wind into electricity and where the electricity is primarily produced for commercial sale.
- (2) Industrial wind energy conversion systems shall be prohibited in all districts other than Industrial (I).
- (3) If this law is found to be illegal, void, or is otherwise waived, or not applied, by any court or government body, then all other substantive requirements of the Somerset Town Code relating to the siting of wind energy conversion systems and/or tall structures shall be applied.



ARTICLE IV  
**Permitted Modifications**

**§ 205-12. Height modifications.**

- A. The height limitations of this chapter shall not apply to silos, church spires, belfries, cupolas and domes not used for human occupancy.
- B. Chimneys, ventilators, skylights, water tanks, heating and cooling towers, television and radio antennas and similar features and necessary mechanical appurtenances usually carried on and above the roof level may exceed the height limitations of this chapter by not more than 20 feet. **[Amended 6-13-2000 by L.L. No. 2-2000]**
- C. The provisions of this chapter shall not apply to prevent the erection of a parapet wall or cornice for ornament extending above the height limits of this chapter by not more than five feet. Public and quasi-public buildings, schools, churches and other similar permitted uses shall increase the front, rear and side yards by one foot for each foot by which such buildings exceed the height limit herein established for such zone in which it is located.

**§ 205-13. Yard area modifications.**

In such cases in residential zones where the frontage on the same side of the street within 500 feet is 50% or more developed, the required front yard for a new structure may be modified to the average for such existing development. Otherwise, the requirements of the schedule shall apply.<sup>49</sup>

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**49. Editor's Note: The Zoning Schedule is included as an attachment to this chapter. See also § 205-23.**



ARTICLE V  
**Nonconforming Uses**

**§ 205-14. Existing uses.**

Except as otherwise provided in this article, the lawful use of land or buildings existing at the date of the adoption of this chapter may be continued although such use or building does not conform to the regulations specified by this chapter for the zone in which such land or building is located; provided, however, that:

- A. No nonconforming lot shall be further reduced in size.
- B. No nonconforming building shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.
  - (1) Exception if the nonconformance is an area setback, the structure may be modified if the new construction shall conform to the setback requirements stated in the Code, provided that the lot size conforms to the 100 feet of minimum width and 200 feet of minimum depth, or a minimum of 20,000 total square feet. **[Added 1-13-1998 by L.L. No. 2-1998]**
- C. No nonconforming use may be expanded.

**§ 205-15. Abandonment.**

A nonconforming use shall be considered abandoned when there occurs a cessation of any use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of one year from the date of cessation or discontinuance. Also a certificate of occupancy shall be required.

**§ 205-16. Restoration. [Amended 6-10-1980]**

Any building damaged by fire or other cause to the extent of 75% of true value which is nonconforming shall not be repaired or used unless the building shall conform to the requirements of this chapter. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any wall or roof which has been declared unsafe by the Code Enforcement Officer.

**§ 205-17. Reversion.**

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

**§ 205-18. Alterations.**

A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50% of the assessed value of the building unless said building is changed to conform to the requirements of this chapter.

**§ 205-19. District boundary changes.**

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein or created thereby.

**§ 205-20. Unlawful uses.**

Notwithstanding any other provision of this chapter, any automobile wrecking yard or junkyard in existence in any R District and any billboard, advertising structure or nonconforming sign in existence in any district at the time of

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enactment of this chapter shall, at the expiration of a period of five years from such date, become a prohibited and § 205-20  
unlawful use and shall be discontinued. Lawfully existing signs accessory to a nonconforming use or building shall  
not be subject to this provision.

ARTICLE VI  
**Establishment of Zones**

**§ 205-21. Enumeration of districts. [Amended 6-13-2000 by L.L. No. 2-2000]**

For the purposes of this chapter, the Town of Somerset is hereby divided into the following districts, which are referred to in this chapter by the abbreviations indicated:

<b>District</b>	<b>Abbreviation</b>
Agricultural District	A
Single-Family Residential District	R-1
Single- and Two-Family Residential District	R-2
Lake Shore Residential District	RLS
Business District	B
Industrial District	I
General Industrial District	GI
Planned Unit Development District	PUD

**§ 205-22. Zoning Map.**

The boundaries of all zone districts set forth in this chapter shall be shown on a map bearing the date of adoption. Said map shall be filed in the office of the Town Clerk and shall hereafter be the Official Zoning Map of the Town.<sup>50</sup> Such map is hereby declared a part of this chapter and shall be duly certified in accordance with Article 16 of the Town Law of the State of New York.

**§ 205-23. Zoning Schedule.**

The Schedule of Area, Lot and Bulk Requirements enclosed herein is made a part of this chapter.<sup>51</sup> The regulations included in said Schedule are hereby established as minimum regulations of this chapter. Municipal facilities deemed necessary and appropriate by the Town Board are hereby exempted from such area and bulk requirements.

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50. Editor's Note: The Zoning Map is on file in the office of the Town Clerk and is available for inspection during regular business hours.

51. Editor's Note: The Zoning Schedule is included as an attachment to this chapter.





ARTICLE VII  
A Agricultural District

**§ 205-24. Permitted principal uses.**

The following uses shall be permitted principal uses in the A Agricultural District:

- A. Single-family dwellings.
- B. Farms and related farming activities, provided that no storage of manure or odor- or dust-producing substance shall be permitted within 100 feet of an adjoining lot line.

**§ 205-25. Permitted accessory uses.**

The following uses shall be permitted accessory uses in the A Agricultural District:

- A. Private garages.
- B. Customary residential storage structures.
- C. Other customary residential structures such as private swimming pools, fireplaces, trellises, lamps, posts and the like.
- D. Customary farm buildings for the storage of products or equipment located on the same parcel as the principal use. Tenant farm dwellings shall also be permitted as an accessory use, provided that each permanent structure shall be on an area as required in the zoning schedule, § 205-23, for a single-family residence, shall be at least 100 feet from all other structures and shall be occupied by a permanent full-time employee of said farm. **[Amended 9-8-1998 by L.L. No. 3-1998]**
- E. Parking in accordance with Article XIV.
- F. Signs in accordance with the following: one nameplate sign situated within the property line and not exceeding two square foot in area on either of two sides.
- G. Accessory buildings used exclusively for the sale of homegrown agricultural products may be constructed upon approval of the Planning Board, following submission of an approved site plan. The following regulations shall apply: **[Amended 6-10-1980]**
  - (1) The application must be for the use of such building by the owner or tenant of the property in question.
  - (2) Buildings may be permitted in any district in which agricultural activity is permitted.
  - (3) Buildings shall be placed only in an approved location which shall encourage safety and discourage traffic congestion. No portions of any stand or any attendant use shall be located closer than 35 feet to the highway pavement edge. Parking space for no less than three cars shall be maintained in connection with the operation of any stand. All parking spaces shall be well marked and easily discernible by an approaching motorist.
  - (4) Trucks, trailers, tractors or other vehicles parked for the purpose of sale or disposal of agricultural products to the general public shall be permitted only under the same limitations which apply to the use of accessory buildings for the sale of such products.
- H. Stands of a nonpermanent nature (movable and temporary) may be utilized for the sale of homegrown agricultural products and/or other products during the harvest season under the following conditions:
  - (1) Stand setback must be at least 20 feet from the edge of the road pavement.
  - (2) Parking space large enough to accommodate at least three vehicles must be provided on site.

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(3) A sign, not to exceed 16 square feet, may be erected on site for the purpose of advertising.

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**§ 205-26. Uses permitted with special use permit.**

The following uses shall be permitted with a special use permit:

- A. Public utility uses.
- B. Campgrounds.
- C. Restricted industrial uses.
- D. Motor vehicle service stations.
- E. Excavation operations.
- F. Cluster residential developments.
- G. Mobile/manufactured home parks. (See Chapter 125, Mobile/Manufactured Homes.) **[Amended 1-13-1998 by L.L. No. 2-1998]**
- H. Mobile/manufactured homes when temporarily occupied by members of the farm family for not more than six months of any calendar year or when occupied by persons temporarily employed on the premises and their families. **[Amended 9-8-1998 by L.L. No. 3-1998]**
- I. Air strips (private).
- J. Retirement and convalescent homes, in compliance with the laws of such agencies having jurisdiction.
- K. Public buildings, libraries and public and nonprofit private schools accredited by the State Education Department.
- L. Churches and other similar places of worship, parish houses, convents, cemeteries and other such facilities of recognized religious groups.
- M. Municipal parks, playgrounds and buildings deemed appropriate by the Town Board.
- N. Professional offices and home occupation uses, provided that they are carried on in conjunction with a residential use on the property.
- O. Animal husbandry on lots smaller than six acres in size.
- P. Wind-energy conversion systems. **[Added 7-11-2006 by L.L. No. 1-2006]**

ARTICLE VIII  
**R-1 Single-Family Residential District**

**§ 205-27. Permitted principal uses.**

The following uses shall be permitted principal uses in the R-1 Residential District:

- A. Single-family dwellings.

**§ 205-28. Permitted accessory uses.**

The following uses shall be permitted accessory uses in the R-1 Residential District:

- A. Private garages.
- B. Customary residential storage structures.
- C. Animal shelters for domestic pets.

**§ 205-29. Uses permitted with special use permit.**

The following uses shall be permitted with a special use permit:

- A. Cluster residential developments.
- B. Animal husbandry when lot size is in excess of six acres in size.



ARTICLE IX  
**R-2 Single- and Two-Family Residential District**

**§ 205-30. Permitted principal uses.**

The following uses shall be permitted principal uses in the R-2 Single- and Two-Family Residential District:

- A. Single- and two-family dwellings.

**§ 205-31. Permitted accessory uses. [Amended 9-10-1996 by L.L. No. 2-1996]**

The following uses shall be permitted accessory uses in the R-2 Single- and Two-Family Residential District:

- A. Private garages.
- B. Customary residential storage structures.
- C. Animal shelters for domestic pets.

**§ 205-32. Uses permitted with special use permit.**

The following uses shall be permitted with a special use permit:

- A. Cluster residential development.
- B. Membership clubs and lodges or other community organizations.
- C. Medical centers or clinics; convalescent homes.



ARTICLE X  
**RLS Lake Shore Residential District**

**§ 205-33. Permitted principal uses.**

The following uses shall be permitted principal uses in the RLS Lake Shore Residential District:

- A. Single-family dwellings.

**§ 205-34. Accessory uses. [Amended 9-10-1996 by L.L. No. 2-1996; 12-12-2006 by L.L. No. 6-2006]**

- A. Permitted accessory uses. The following uses shall be permitted accessory uses in the RLS Lake Shore Residential District:

- (1) Private garages.
- (2) Customary residential storage structures.
- (3) Animal shelters for domestic pets.

- B. Before there can be any accessory building or accessory use in a Residential Lake Shore District (RLS), there must first be a principal use or principal dwelling on the lot, except as provided in § 205-35B. **[Amended 5-13-2015 by L.L. No. 1-2015]**

- C. On the south side of the road:

- (1) All accessory buildings shall be set back a minimum of 100 feet from the road right-of-way. **[Amended 5-13-2015 by L.L. No. 1-2015]**
- (2) The maximum height of an accessory building shall be 25 feet.
- (3) The minimum square footage of an accessory structure shall be 250 square feet, and the maximum square footage of an accessory structure shall be 900 square feet. **[Added 5-13-2015 by L.L. No. 1-2015]**

**§ 205-35. Uses permitted with special use permit.**

The following uses shall be permitted with a special use permit:

- A. Cluster residential development.
- B. An accessory structure on a separate lot used to service a principal structure located on a lot having lake frontage when either: a) The accessory structure is located on a lot on the south side of the same road as the lot upon which the principal structure is located, or b) the accessory structure is located on a lot on a road intersecting the road which the principal structure is located and within 500 feet of the principal structure. The Planning Board shall take into consideration and review the structure's overall appearance and proposed location, including, but not limited to, architectural styles, design materials, and colors; the surrounding area including the impact of lake views and other buildings located in area; and the overall aesthetic enhancement of the Town and the Lake Shore District. Any approval of the special use permit by the Planning Board may be conditioned upon its review of the foregoing considerations. **[Added 5-13-2015 by L.L. No. 1-2015]**

**§ 205-35.1. Height of fences. [Added 12-12-2006 by L.L. No. 6-2006]**

On the lake side of road only, the maximum height of fences is four feet from grade level, from the high bank to the front forward line of the primary structure.



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**§ 205-35.2. Yards for lots along Lake Ontario. [Added 9-17-2013 by L.L. No. 5-2013]**

Notwithstanding the provisions of § 205-8, regarding "yard, front" and "yard, rear," for lots along the north side of the road and abutting Lake Ontario, the full width of that portion of the lot lying between the northerly line of the primary structure extended the full width of the lot and the edge of the high bank (or, if there is no bank, the mean high water line of Lake Ontario) shall be regarded as the front yard, and the full width of that portion of the lot lying between the southerly line of the primary structure extended the full width of the lot and the street line shall be regarded as the rear yard for purposes of determination of front yard and rear yard setbacks and locations of accessory buildings.

ARTICLE XI  
**B Business District**

**§ 205-36. Principal permitted uses.**

The following uses shall be permitted principal uses in the B Business District:

- A. Retail business establishments which are clearly of a community service characteristic such as, but not limited to, the following:
  - (1) Stores selling groceries, meats, baked goods and other such food items.
  - (2) Drugstores.
  - (3) Stationery, tobacco and newspaper stores and confectionery stores.
  - (4) Variety and general merchandise stores.
  - (5) Hardware, appliance, radio and television sales and service.
  - (6) Restaurants, including drive-in.
- B. Personal service establishments which are clearly of a community service character such as, but not limited to, the following:
  - (1) Barber and beauty shops.
  - (2) Shoe repair and fix-it shop.
  - (3) Dry cleaning stores and laundromats.
  - (4) Business and professional offices, including medical clinics.
  - (5) Funeral homes.
- C. Other business uses which, in the opinion of the Planning Board, are similar in nature and scale to those permitted above. **[Amended 6-10-1980]**

**§ 205-37. Permitted accessory uses.**

The following uses shall be permitted accessory uses in the B Business District:

- A. Private garage space for the storage of commercial vehicles used in conjunction with a permitted business use.
- B. One sign per business, per street front. Said sign shall not exceed an area of one square feet per linear foot of building frontage upon which it will be placed as occupied by that use.

**§ 205-38. Uses permitted with special use permit.**

The following uses shall be permitted with a special use permit:

- A. Public utility uses, such as dial stations and substations, exclusive of maintenance buildings and yard and equipment storage yards.
- B. Motor vehicle service stations.

**§ 205-39. Special provisions.**

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- A. Site plan. A site plan showing the location and proposed business use of buildings, structures and lands shall be submitted with each application for a building permit for the erection, alteration or location of a building or structure in the B District, and such site plan shall be subject to review and approval by the Town Planning Board. **[Amended 2-9-1999 by L.L. No. 1-1999]**
- B. Combination uses. A principal building may be used for a combination of business and residence use, subject to approved building use and site plan.

ARTICLE XII  
**I Industrial and GI General Industrial Districts**

**§ 205-40. Industrial District (I). [Amended 9-10-1996 by L.L. No. 2-1996; 6-13-2000 by L.L. No. 2-2000]**

- A. Permitted principal uses. Any of the following uses are permitted in the Industrial District, provided that such use complies with all dimensional and other requirements of this chapter, including obtaining any permits required by the Town of Somerset or any other government agencies. The intent is to provide for light industry, research and development and related uses in a planned setting that establishes a coordinated and harmonious development of any area so zoned.
- (1) Laboratory engaged in research, testing and experimental work, including any process normal to laboratory practice and technique.
  - (2) The assembly and/or treatment of articles or merchandise from previously prepared materials consisting of fiber, glass, fur, leather, paper, plastics, wax, wood and wire, provided that no chemical process is involved in the basic manufacture of such materials.
  - (3) The manufacture and/or assembly of mechanical devices, electrical appliances, the machining and assembly of parts made of metal, electrical and electromechanical devices and components, not to include heavy stamp forging and the like that would produce earth jarring or other objectionable noise beyond the property boundaries, and further provided that all necessary and approved safeguards are employed to reduce hazard and annoyance to the community.
  - (4) The processing and storage of candy and confections, frozen foods, cosmetics, pharmaceutical products, toiletries and food products, excluding a slaughterhouse.
  - (5) Wholesale business and storage for the following types of commodities: clothing, drugs, dry goods, packaged food, furniture, hardware, beverage and other similar commodities as approved by the Planning Board.
  - (6) Office use necessary and incidental to any permitted use within the district.
  - (7) Farm.
  - (8) Industrial wind energy conversion system, as defined by § 205-11BB. Siting and construction of any industrial wind energy conversion system shall be subject to all other requirements of this chapter, including but not limited to requirements applicable to any tall structure and wind energy conversion system. **[Added 1-29-2018 by L.L. No. 1-2018]**
- B. Uses permitted by special use permit. Special uses may be permitted with a special use permit in the Industrial Use District, provided that such use complies with all applicable dimensional and other requirements of this chapter, including any permits required by Article XII.
- C. Permitted accessory uses. Any other related uses consistent with the uses in this section and accessory uses related and incidental to the uses permitted herein (i.e., enclosed storage, equipment storage in tanker/trailer operations and limited retailing of the above uses where the retail portion is restricted to a maximum of 15% on premises of the area of the building).
- D. Prohibited uses.
- (1) No building(s) in the Industrial District shall, at any time, be used, erected or converted for the manufacture, storage, distribution or sale of any product or items which shall increase the fire hazard to adjoining buildings, or land adjacent to the district; or for any use which constitutes a nuisance or causes the emission of odors or gases which could reasonably be expected to be injurious to people or products manufactured or stored within such building(s), or upon such land; or for any purpose or use in violation

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of the laws of the United States, the State of New York or any political subdivision thereof. § 205-40 Storage of junk or secondhand material, the use of equipment or manufacturing processes which cause earth tremors or vibrations beyond the boundaries of any building lot upon which they are situate and the manufacture, storage, distribution and sale of explosives are prohibited.

- (2) The storage of materials necessary in conjunction with approved uses herein, and which meet all legal, state and federal codes, shall not be prohibited but shall be clearly incidental to the permitted uses.

E. Dimensional requirements.

- (1) Area. The minimum lot area shall be one acre.
- (2) Lot width. The minimum lot width shall be 200 feet of frontage on a dedicated street.
- (3) Setback. The minimum setback shall be 50 feet to any street right-of-way.
- (4) Side yard. The minimum side yard shall be 25 feet to the property line, except where it abuts another nonindustrial district in which case 75 feet shall be required. Driveways shall not be constructed closer than 10 feet to any side lot line.
- (5) Rear yard. The minimum rear yard shall be 10 feet, except where the lot abuts a residential district in which case it will be 100 feet.
- (6) Height. Thirty feet (maximum).
- (7) Building coverage. 25% (maximum of total area).

F. Design standards. All building(s) and/or addition(s) thereto shall be designed by a New-York-State-registered architect or licensed professional engineer. No building(s) or any addition(s) thereto shall be erected or any lot improved until the building plans, specifications and site plans have been approved in accordance with this chapter. All plans and permits for site and building improvements in this district shall be approved by the Town of Somerset Planning Board prior to any final approval or the issuance of any permits for construction.

- (1) Materials. All building(s) or addition(s) thereto shall be of masonry construction. No such building(s) or addition(s) shall be covered with sheet aluminum, iron or steel, or corrugated aluminum, asbestos or iron, except when such materials form an integral part of a standard modular curtain wall panel or insulated sandwich wall as defined by the modular industry. In the event that any such buildings or additions thereto shall be constructed with concrete, concrete blocks, tile blocks or tile brick, the outside face of the wall(s) thereof which are exposed to the street, shall be finished with face brick, insulated curtain wall, insulated sandwich wall, their equivalent or better; and, in addition, the outside face of walls abutting such walls exposed to streets shall be so finished to a minimum depth of 15 feet.
- (2) Rooftop structures. All objects such as water and cooling tanks, processing equipment, fans, vents and other rooftop structures and equipment shall be architecturally compatible and shielded from public view. Such structures or facilities shall be subject to height regulations in accordance with § 205-12 of this chapter.
- (3) Storage. Outdoor storage is not allowed in the front or side yard. Permitted outdoor storage areas shall be suitably screened or fenced from view from adjacent parcels.
- (4) Fencing. No fence shall be erected in any required setback area.
- (5) Landscape and screening. All lots in the district shall be suitably landscaped in accordance with the provisions of this chapter. All setback areas shall be landscaped, including street trees (deciduous, minimum two-inch caliper) at intervals of 50 feet along the frontage of any street, yet outside the dedicated street right-of-way. In addition, a fifty-foot buffer strip of plant materials, suitably planted and maintained, shall be provided between the park boundary and any adjacent residential uses.

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- (6) Fill dirt. Where fill is necessary to obtain the proper topography and finish ground elevation, it shall be soil or earth fill, free of waste material and slag and shall not contain noxious materials that will give off odors of any kind. All fill material shall be leveled immediately after completion of any building or addition thereto, and any excess excavation earth shall be removed promptly therefrom. § 205-41
- (7) Maintenance. The buildings, improvements and appurtenances erected and situate upon any lot in the district shall at all times be kept in a safe, clean, wholesome condition and shall comply with all government, health and police requirements. All rubbish of any kind which may accumulate on any such building lot shall be promptly removed.
- (8) Parking. There shall be no parking on public streets situate in the district or required yards. Employee parking facilities shall conform to § 205-51 of this chapter. Employee parking shall not be located within any setback area or in front of the building.
- (9) Signage. No sign shall be permitted in the district unless and until it has been approved as part of the building and site plans as prescribed in this chapter. Such signs shall be attached to the walls or roof of the building(s) thereof and shall not project above the roof of any such building. Employee directional, parking and other similar signs shall be included in all plans and permits and shall be approved accordingly. Flashing or animated signs are prohibited.
- (10) Plan required. A concept plan is required for the coordination of development and utilities, including site layout, access, traffic impact and circulation, principal structures, stormwater management, grading and utilities. Consolidated signage and landscaping will be required. A final site plan will be required in accordance with site plan review procedures.<sup>52</sup>

**§ 205-41. General Industrial (GI) District. [Added 6-13-2000 by L.L. No. 2-2000<sup>53</sup>]**

A. Permitted principal uses.

- (1) Any of the following uses are permitted in the General Industrial District, provided that such use complies with all dimensional and other requirements of this chapter, including obtaining any permits required by the Town of Somerset or other government agency. Unless a use is permitted, it is prohibited. The district is intended to provide for unique heavy commercial uses and industrial uses that accommodate or are directly related to the generation of electrical power from coal and natural fuels, specifically excluding nuclear power and facilities.
- (a) Fossil-fuel-fired electrical power-generating stations.
- (b) Industrial uses and their accessory uses that are directly related to an existing fossil-fuel-fired power-generating facility or similar use that utilize a waste or by-product of said power generation to divert or lessen the waste system produced by the power-generating station.
- (2) All uses in this district shall comply with the following performance standards:
- (a) Hazardous condition. Any use, building, structure or land in the GI District shall be operated or occupied in a manner so as to avoid any hazardous, noxious, injurious, dangerous or otherwise objectionable fire, explosive, radioactive or other hazardous condition.
- (b) Noise. All noise shall be muffled or restricted so as not to be objectionable as a result of intermittence, frequency or shrillness. No sound levels, measured at the nearest lot line, shall exceed 65 decibels during the day and 47 decibels at night (6:00 p.m. to 7:00 a.m.).

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52. Editor's Note: See Art. XVA, Site Plan Review.

53. Editor's Note: Provisions of this local law also superseded former § 205-41, Permitted accessory uses, pertaining to the Industrial (I) District. See now § 205-40.

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- (c) Vibration. No vibration that can be detected at the nearest lot line without the aid of instruments shall be permitted.
  - (d) Air pollution smoke. There shall not be discharged into the atmosphere from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that could result in damage to public health, animals or vegetation or that exceeds the approved regulatory standards of state or federal permitting agencies.
  - (e) Fugitive dust. There shall not be discharged locally from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that results in an unsightly condition or could result in damage to public health, animals, vegetation or that exceeds the approved regulatory standards of state or federal permitting agencies.
  - (f) Odor. No odorous or noxious gas or any other odorous or noxious material shall be discharged or permitted to escape into the atmosphere from any operation on any lot in the GI District.
  - (g) Radioactivity. Radioactive material, processes or uses shall be prohibited in the district, and no such material shall be stored, handled or discharged in the district.
  - (h) Electrical interference. There shall be no electrical disturbance emanating from any lot that would adversely affect the operation of any equipment, use or other operation on any lot or premises or the navigation or control of aircraft.
  - (i) Liquid or solid wastes. There shall be no discharge of any liquid or solid wastes from any establishment into any stream, pond, waterway or land or groundwater except as authorized by the New York State Department of Environmental Conservation. No waste, debris or other discarded materials shall be allowed to accumulate in any yard or open space on the premises.
  - (j) Glare and heat. No direct or sky-reflected glare as a result of lighting, high-temperature processes, combustion, welding or other activities, so as to be visible from the lot line, right-of-way or adjacent use, shall be permitted. All lighting shall be diffused and hooded or screened to avoid glare or spread to adjacent properties.
- B. Uses permitted by special use permit. Any of the following uses may be permitted with a special use permit in the General Industrial District, provided that such use complies with all applicable dimensional and other requirements of this chapter, including any permits required by the Town of Somerset or other government agencies.
- (1) The manufacture and/or assembly of musical instruments, novelty toys or related products; mechanical and electrical devices, appliances and components; wood products; compounding, processing and storage of candy and confections; frozen foods; cosmetics, pharmaceutical products, toiletries and food products, including a slaughterhouse.
  - (2) Wholesale business and storage for the following types of commodities: clothing, drugs, dry goods, packaged food, furniture, hardware, beverage and other similar commodities as approved by the Planning Board.
  - (3) Office uses necessary and incidental to any permitted use within the district.
  - (4) Laboratory research, testing and experimental work.
  - (5) Any other related uses consistent with the uses in this section and accessory uses related and incidental to the uses permitted herein (i.e., enclosed storage, equipment storage in tanker/trailer operations, etc.).
  - (6) Excavations as regulated under Chapter 96 of the Code of the Town of Somerset.
- C. Prohibited uses.

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- (1) No residential uses shall be allowed in the General Industrial District. Storage of junk or secondhand material, automobiles or scrap is prohibited. No landfills shall be allowed.
- (2) The storage of materials necessary in conjunction with approved uses herein which meet all legal, state and federal codes shall not be prohibited but shall be clearly incidental to the permitted use.

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D. Dimensional requirements.

- (1) Area. The minimum lot area shall be five acres.
- (2) Lot width. The minimum lot width shall be 200 feet of frontage on a dedicated street.
- (3) Setback. The minimum setback shall be 50 feet to any street right-of-way.
- (4) Side yard. The minimum side yard shall be 25 feet to the property line, except where it abuts another agricultural or residential district, in which case 200 feet shall be required.
- (5) Rear yard. The minimum rear yard shall be 25 feet, except where the lot abuts an agricultural or residential district, in which case it will be 200 feet.
- (6) Height. Thirty-five feet (maximum).
- (7) Building coverage. 35% percent (maximum of total area).

**§ 205-42. Parking, loading and other regulations. [Amended 2-9-1999 by L.L. No. 1-1999]**

- A. Site plan. A site plan showing the location and proposed industrial use of buildings, structures and lands shall be submitted with each application for a building permit for the erection, alteration or location of a building or structure in the I District, and such site plan shall be subject to review and approval by the Town Planning Board.
- B. Parking areas may be located in any of the required yard areas, provided that they are not less than 50 feet from a street line or 20 feet from a property line.
- C. Each use located in this zone shall provide truck loading and unloading space on the same lot and in other than the required front yard so as to permit the transfer of goods in other than a public street.
- D. Each use established in this zone shall set aside 10% of the tract for seeding and landscaping and use this area for no other purpose.
- E. All industrial processes shall take place within an enclosed building. Industrial storage of materials out of doors shall be permitted. Industrial uses shall be located so as to be a minimum of 100 feet from any nonindustrial district. This one-hundred-foot buffer strip shall be perpetually maintained so as to provide visual screening of the industrial uses.





ARTICLE XIII  
Supplemental Regulations

**§ 205-43. Uses requiring special use permit.**

- A. The uses contained in this article may be permitted, provided that a special use permit is obtained from the Planning Board under the terms and specifications herein. Whereas the necessity for certain specific uses is recognized and at the same time appreciating the fact that they or any one of them may be, or become, inimical to the public health, safety and general welfare of the community if located without consideration to the existing conditions and surroundings, the following standards and proceedings are hereby established which are intended to provide the Planning Board with a guide for the purpose of reviewing certain uses not otherwise permitted in this chapter. The Planning Board shall review and administer applications for the following uses according to procedures spelled out for the Planning Board under Article XX of this chapter. **[Amended 10-3-2011 by L.L. No. 5-2011]**
- B. In specific cases which are not clearly covered by other existing ordinances, special use permits will be required. Examples would be cemeteries, pet cemeteries and other uses not specifically covered in other sections of these ordinances.

**§ 205-43.1. Personal wireless telecommunications service facilities. [Added 2-11-1997 by L.L. No. 2-1997]**

- A. The placement, construction and major modification of all personal wireless telecommunications facilities within the boundaries of the Town of Somerset shall be permitted only by special permit, upon site plan approval issued by the Planning Board herein and issuance of a building permit, and subject to all the provisions of this chapter and all other applicable regulations.
- B. Any new telecommunications antenna which is to be attached to any structure other than a telecommunications tower (i.e., smokestack, building, etc.) shall also comply with the requirements of this section to the extent applicable. **[Amended 5-14-2013 by L.L. No. 2-2013]**
- C. All telecommunications towers existing on February 11, 1997 (the effective date of this local law), shall be allowed to continue their usage as they presently exist and additional new telecommunications antennas shall be permitted thereon without regard to the zoning district in which the tower is located. New construction other than routine maintenance on an existing telecommunications tower shall comply with the requirements of this chapter.
- D. Applications under this section shall be made as follows:
- (1) Co-location. New telecommunications facilities shall be sited on existing telecommunications facilities or in areas already in use for telecommunications and/or utility distribution lines in order to preserve the aesthetic and scenic value of the Town unless the applicant demonstrates that collocation is not feasible.
  - (2) Applicants for a special permit to place, construct or modify personal wireless telecommunications facilities within the Town of Somerset shall submit the following information to the Planning Board for its referral to a professional engineer or consultant for review and recommendation:
    - (a) Visual environmental assessment form (visual EAF), landscaping plan and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the Visual EAF, existing treelines and proposed elevations.
    - (b) Preliminary report describing:
      - [1] Feasibility of co-location on existing structures and telecommunications facilities.
      - [2] Applicant's full map and grid coverage in the Town.

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- [3] Surrounding topography and relation to line-of-sight transmission.
  - [4] Available road access, electric power and land-based telephone lines and/or microwave link capability.
  - [5] Required improvements or construction activities, including those within the public right-of-way or lands owned or controlled by the Town of Somerset.
  - [6] Identity of location, ownership and usage of currently existing telecommunications facilities within the Town.
  - [7] Plans for construction of telecommunications accessory equipment building or structure and landscaping plan.
  - [8] Proposed mitigation measures for visual impacts.
  - [9] Proposed safety measures.
  - [10] Compatibility with existing telecommunications networks, New York State Thruway Authority telecommunications network and public safety and emergency networks, such as fire, ambulance, police and 911.
- (c) In the case of an application for a telecommunications tower, additional information shall be provided describing the telecommunications tower height and design, including a cross-section of the structure; the telecommunications tower's compliance with applicable structural standards; the telecommunications tower's capacity, including the number and type of telecommunications antennas it can accommodate and the basis of calculation of capacity.
  - (d) In the case of a telecommunications antenna mounted on an existing structure, additional information shall be provided indicating the existing structure's suitability to accept the telecommunications antenna; the proposed method of affixing the telecommunications antenna to the structure; and complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.
  - (e) Filing of certificate of public convenience and necessity in this geographic area, from New York State Public Service Commission for applicant with the Town.
  - (f) Demonstration that the proposed site is the most appropriate available site within the immediate area for the location of the cellular telephone facility.
  - (g) Inventory of existing telecommunications facilities within the Town, outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed telecommunications tower or telecommunications antenna cannot be accommodated on an existing approved telecommunications tower or facility.
  - (h) Filing map with Town showing all of applicant's proposed facilities within the geographic area covered by the certificate of public convenience and necessity.
  - (i) Proof of certified mail announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.
  - (j) A map showing the location of the premises for which the permit is sought and a sketch plan showing all features of the facility necessary for providing road access, electrical service, land-based telephone line connection and/or microwave link capability within the property boundaries of the proposed location.
  - (k) In the case of an application for a telecommunications antenna or tower to be located on private

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lands owned by a party other than the applicant or the Town, a copy of the lease agreement, without requiring the amount of rent, with the property owner shall be provided to the Planning Board.

- (l) Such other information as may be required by the Planning Board or its engineer.
- (m) All plans or specifications required by the State Education Law to be prepared by or under supervision of a professional engineer (PE), surveyor or architect shall be stamped and signed by such licensee.

E. Special permits issued for personal wireless telecommunications service facilities shall be subject to the following general conditions:

- (1) Separation distance. Telecommunications facilities shall be separated from all residential dwellings by a distance of 250 feet or 1 1/2 times the height of the tower, whichever is greater.
- (2) All telecommunications accessory structures shall comply with zoning setback regulations in the affected zone. In any event, a telecommunications tower shall be set back a distance at least equal to its height. Additional setbacks may be required by the Planning Board in order to provide for the public safety.
- (3) Minimal visual impacts. All telecommunications towers and telecommunications antennas shall be sited to have the least possible practical visual effect on the environment.
- (4) Lighting. Telecommunications towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority.
- (5) Material and paint. Telecommunications towers and telecommunications antennas shall be of a galvanized finish, or painted gray above the surrounding tree line and gray or green below the tree line; the mountings of telecommunications antennas shall be nonreflective and of the appropriate color to blend with their backgrounds, unless otherwise required by the FAA.
- (6) Screening.
  - (a) Screening may be required by the Planning Board to screen portions of the telecommunications tower and tower base from nearby residential property or important views.
  - (b) Architectural character. Design measures shall be used to integrate the facilities with existing buildings in the area.
- (7) Height. The size of telecommunications sites shall be limited to the minimum required to provide proposed telecommunications services but shall include consideration of height needed for co-location.
- (8) Access roads. Existing roadways shall be used for access to the site whenever possible.
- (9) Telecommunications accessory structures. Telecommunications support facilities such as vaults and equipment rooms, utilities and other support structures shall be screened, placed underground, depressed, earth bermed or sited below the ridge line to the greatest extent feasible, particularly in areas of high visibility.
- (10) Telecommunications antennas. Due to their high visibility, dish and parabolic telecommunications antennas shall be located at as low an elevation as possible without compromising the function of the device, preferably on the sides of buildings or ground mounted on slopes below the ridge line wherever possible, rather than elevated on telecommunications towers. Microwave and satellite dishes shall be of mesh construction wherever possible.
- (11) Utility service. At the discretion of the Board, electrical and land-based telephone utilities extended to serve telecommunications sites shall be undergrounded on the applicant's property.

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- (12) Security provisions. Each site shall have a security program, including physical features such as fencing, anti-climbing devices or elevating ladders on the telecommunications towers, and/or monitoring either by staff or electronic devices, to prevent unauthorized access and vandalism.
  - (13) Safe zone. Telecommunications towers shall be designed so that in the event of failure they will fall within the setback area of the site and/or away from adjacent development.
  - (14) Noise. Noise-producing equipment shall be sited and/or insulated to minimize noise impacts on adjacent properties.
  - (15) Annual inspection and report. Unless waived by the Board, telecommunications towers over 100 feet in height, including towers existing on the effective date hereof, shall be inspected annually by a licensed professional engineer or at any other time upon a determination by the Town's Building Inspector that the telecommunications tower may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer.
  - (16) Removal. All telecommunications facilities, including but not limited to antennas, towers and accessory structures, shall be dismantled and removed from the site when they have been inoperative, abandoned or had their special permit revoked for six months. Applicants shall post a bond or other suitable undertaking as a condition of the use permit in order to guarantee removal of abandoned structures.
  - (17) Post-installation field report. A post-installation field report identifying the facility's coverage area, the telecommunications tower's maximum capacity, committed capacity and unused capacity, if any, and co-located users of the telecommunications tower shall be submitted to the Town.
  - (18) Proof of insurance. The applicant shall annually provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.
  - (19) Special permit term. Special permits granted pursuant to this section shall be issued for a term of one year. Permits may be renewed yearly, without the need of a public hearing.
  - (20) To the extent determined by the Board, the applicant shall provide for the placement of antennas and other telecommunication devices on its facilities for public safety organizations.
  - (21) The applicant shall pay the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.
- F. The Planning Board may grant the special permit, deny the special permit or grant the special permit with written stated conditions. Denial of the special permit shall be by written decision based upon substantial evidence submitted to the Board.
- G. The special permit shall be assignable and shall run with the land; provided, however, that the assignee must comply with the conditions of the special permit, must assume all obligations thereunder, and must provide proof of insurance and proof of removal cost bonding to the Town Clerk. **[Amended 5-14-2013 by L.L. No. 2-2013]**
- H. Revocation. If the applicant violates any of the conditions of its permit or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit. Revocation may occur after the applicant is notified of the violations and the Planning Board holds a hearing on same.

§ 205-43.2. (Reserved)<sup>54</sup>

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54. Editor's Note: Former § 205-43.2, Commercial wind-energy conversion systems, added 7-11-2006 by L.L. No. 1-2006, was repealed 1-29-2018 by L.L. No. 3-2018.

**§ 205-43.4. Bioremediation. [Added 10-10-2006 by L.L. No. 5-2006]**

The purpose of this section is to allow for use of bioremediation for the treatment of petroleum-contaminated soils within the I and A Districts. It is recognized that operation of such uses without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

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

CONTAMINATED SOIL(S) — Any material that contains petroleum products is prohibited from being discharged into the ground or water by any local, state, or federal law, or whose discharge requires any type of permit from any governmental agency or official.

B. Prohibitions and restrictions. The movement of contaminated soils into or within an R-1, R-2, or RLS District is prohibited. The movement of contaminated soils into or within an I or A District without an approved bioremediation plan is prohibited. The movement of contaminated soils into or within an I District with an approved bioremediation plan shall be permitted only by special use permit, upon site plan approval issued by the Planning Board herein, and issuance of a building permit, and subject to the provisions of this chapter and all other applicable regulations. The movement of contaminated soils within an A District with an approved bioremediation plan shall be permitted only by special use permit if bioremediation occurs on the originating parcel, upon site plan approval issued by the Planning Board herein, and issuance of a building permit, and subject to the provisions of this chapter and all other applicable regulations. All contaminated soils to be treated must have originated from within the Town of Somerset. No contaminated soils from property located outside of the Town of Somerset shall be used in a bioremediation process located within the Town.

C. Applications under this section shall be made as follows:

(1) In addition to the requirements for a site plan set forth in Article XVA, applicants for a special permit shall submit the following information to the Planning Board.

(a) A report from a New York State Department of Environmental Conservation (DEC) licensed testing laboratory:

[1] Specifying and explaining the testing protocol performed on the contaminated soil;

[2] Listing the contaminants and their levels or strengths;

[3] Providing MSDS sheets for the contaminants.

(b) A detailed bioremediation plan specifying and explaining the:

[1] Size, location and depth of the area that will be receiving contaminated soil ("the bioremediation cell");

[2] The amount of soil, in cubic yards, that will be brought onto the bioremediation cell;

[3] The location from which contaminated soil is being brought ("the originating parcel");

[4] A grading, site drainage and landscaping plan;

[5] The amount of time to complete the final grading of the bioremediation cell;

[6] Time frame for final seeding and/or landscaping.

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55. Editor's Note: Former § 205-43.3, Noncommercial wind-energy conversion systems, added 7-11-2006 by L.L. No. 2-2006, was repealed 1-29-2018 by L.L. No. 3-2018.

(c) A detailed plan specifically explaining the:

- [1] Size, location and depth of the area that will be providing the contaminated soil from the originating parcel;
- [2] The amount of soil, in cubic yards, that will be brought onto the originating parcel;
- [3] The location from which replacement soil is being brought;
- [4] A grading, site drainage and landscaping plan;
- [5] The amount of time to complete the final grading;
- [6] Time frame for final seeding and/or landscaping of the originating parcel.

(2) If SEQRA has not already been completed by the NYSDEC, the applicant shall prepare a full environmental assessment form impact statement, unless the Planning Board, in its sole discretion, decides that a full environmental assessment form is not required.

(3) A copy of the NYSDEC permit authorizing bioremediation, if applicable.

D. Special use permits issued for bioremediation cells shall be subject to the following general conditions as well as any other conditions which the Planning Board deems appropriate:

- (1) Separation distance. For other than the property containing the cell, the boundaries of any bioremediation cell shall be separated from all residential dwellings, places of public assembly, and sources of drinking water by a distance of 1,000 feet.
- (2) Final appearance. All bioremediation cells and originating parcels shall be graded, seeded and otherwise landscaped so that the result is consistent with the appearance of the property prior to any remediation work. If a liner is used in the bioremediation process, it shall be perforated and excess sheeting removed prior to final grading and seeding.
- (3) Safety. During the course of any bioremediation work, the applicant shall be required to keep any and all public roads traversed by trucks or other equipment associated with the bioremediation project clean and free from dust, mud, gravel or other debris associated with the project.
- (4) Storage. During the course of any bioremediation work, the applicant shall not store any materials or equipment on any Town road right-of-way without permission from the Town Highway Superintendent.
- (5) Damage to roads or bridges. During the course of any bioremediation work, the applicant shall ensure that any trucks or other equipment associated with the bioremediation project comply with the weight postings for all roads and bridges within the Town.
- (6) Contents prohibited. No contaminated material may include concrete, blacktop, asphalt macadam, wood, metal, or any material that is foreign to natural soil, other than the chemical contaminants.
- (7) Other permits. Any conditions imposed in any other permits issued by any other governmental agency shall, in the discretion of the Planning Board, be incorporated into the special use permit.
- (8) Security. Prior to approval of any special use permit, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the cleanup and/or remediation of said bioremediation cell(s) during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the bioremediation cell(s) and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary

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construction, sampling, maintenance and reclamation data to the authorizing board prior to approval of any application to accomplish the foregoing.

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- (9) Reports. Any time within three years after final grading, the applicant shall supply either: a report from the DEC certifying that bioremediation is complete and the soil at both the bioremediation cell and the originating parcel comply with all then-existing DEC requirements; or a report from a DEC-approved soil testing laboratory certifying that the soil at both the bioremediation cell and the originating parcel comply with all then-existing DEC requirements.
- (10) Any conditions necessary to mitigate the long- or short-term effects on the originating parcel, the bioremediation cell, and any property adjacent to either parcels.
- (11) Failure to complete. After three years, if the soil on the originating parcel or the bioremediation cell is contaminated according to then-current DEC specifications, the soil shall be removed to a landfill licensed to accept the contaminated soil outside the Town of Somerset within six months.
- (12) Nontransferable. Any special use permit issued pursuant to this section is issued to the applicant and not transferable or assignable without permission of the Planning Board.
- (13) Revocation. Any violation of the conditions of the special use permit or any violation of any other local, state or federal laws, rules or regulations by the applicant shall be grounds for revocation of the special use permit. Revocation will occur after the applicant is notified of the violations and the Planning Board has held a hearing on the same.

E. Fees. Fees for special use permits issued under this section shall be set by resolution of the Town Board.

F. All applications made after effective date for a special use permit shall be subject to all requirements of this chapter. Any existing bioremediations projects regulated by DEC shall be subject to Subsection D(2), (8), (9), (10) and (11).

**§ 205-43.5. Commercial/industrial wind energy conversion systems. [Added 2-24-2016 by L.L. No. 3-2016]**

A. Purposes. The Town Board of the Town of Somerset adopts this section to regulate the placement of commercial and industrial wind energy conversion systems to protect the public safety, health and welfare; to provide a regulatory structure that promotes the protection of the Town of Somerset residents; to minimize the adverse impacts on the Town's character and environment and economy and property values; to minimize negative impacts on the unique resources, including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways, and the residential and farming communities of the Town.

B. Authority. The Town Board of the Town of Somerset enacts this section under the authority granted by:

- (1) Article IX of the New York State Constitution, § 2(c)(6) and (10).
- (2) New York Statute of Local Governments, § 10, Subdivisions 1, 6 and 7.
- (3) New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii)a(6), (11), (12) and (14).
- (4) The supersession authority of New York Municipal Home Rule Law, § 10, Subdivision 1(ii)d(3), specifically as it relates to determining which body shall have power to grant variances under this section, and what variances may be granted to the extent such grant of power is different than under Town Law § 267 and § 274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this section differ from the authority granted to the Town by Article 16 of the Town Law.



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- (5) New York Town Law, Article 16 (Zoning).
- (6) New York Town Law § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
- (7) New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests), and Subdivision 23 (General powers).
- (8) New York Real Property Tax Law § 487.
- (9) Police powers of the Town of Somerset; and the laws of the State of New York.

C. Findings. The Town Board of the Town of Somerset makes the following findings:

- (1) Shortsighted planning has often resulted in creation of problem industries which adversely affect public health and quality of life; examples are found in Somerset, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Commercial wind energy facilities are not exempt from these problems, and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning, been primary protectors of their citizenry. This section will contribute to this effort. The existence of Article 10 of the Public Service Law does not negate this responsibility, and in fact recognizes it. Further, Article 10 remains untested by judicial review addressing several potential legal issues. This section is not unduly burdensome to the mandates or the process set forth in Article 10 but is rather compatible with them.
- (2) The findings set forth in this section are cumulative and interactive and shall be liberally interpreted in conjunction, one with another.
- (3) Commercial/industrial wind energy facilities have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.
- (4) Commercial/industrial wind energy facilities should benefit the residents of the local areas where they are sited.
- (5) Commercial/industrial wind energy facilities are, by their very nature, not aesthetically pleasing due to their height and disruption of views and skylines, especially in rural, flat-landed communities without many high structures.
- (6) The Town of Somerset is a rural community devoid of large hills and consists of mostly flat terrain.
- (7) The Town of Somerset is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region.
- (8) The Town of Somerset has very few tall structures.
- (9) The Town of Somerset is bordered on the north by Lake Ontario and on the east, south and west by towns which share Somerset's agricultural and rural residential character and are similarly low, flat areas.
- (10) The only other municipality in the Town of Somerset is the Village of Barker, which is a small village bedroom community, and which is also part of the rural, residential community devoid of high structures.

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- (11) Commercial/industrial wind energy facilities represent potential for extreme adverse aesthetic impacts due to their height as well as other effects.
- (12) The Town of Somerset is located on a major migration route for many species of birds and is a habitat for many species, both year-round and seasonal.
- (13) The bat population in the Town of Somerset is important and in distress.
- (14) Commercial/industrial wind energy facilities are known to pose danger to birds and bats and have been demonstrated to kill numerous members of both species annually.
- (15) Commercial/industrial wind energy facilities can cause danger to humans and animals, including livestock, resulting from ice throw.
- (16) If not properly regulated, installation of commercial/industrial wind energy facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites and can harm farmland through improper construction methods.
- (17) Commercial/industrial wind energy facilities, when improperly sited, are known to adversely affect property values and cause economic hardship to property owners.
- (18) The Town of Somerset contains clusters and stretches of homes, including along the Lake Ontario shoreline, in and around the Village of Barker and West Somerset, along Route 18 and Lake Road, as well as disbursed residences which residents have chosen as their homes, often because of a love for rural-pastoral lifestyle.
- (19) Town of Somerset residents and visitors enjoy outdoor activities, including marine (boating, fishing, sailing, swimming, kayaking, etc.) and land (hunting, hiking, cycling, snowmobiling, jogging, etc.), all of which are potentially adversely affected by the presence of commercial/industrial wind energy facilities.
- (20) Commercial/industrial wind energy facilities may be significant sources of noise, including infrasound, that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents.
- (21) Construction of wind facilities can create traffic problems and can cause damage to local roads and infrastructure.
- (22) Commercial/industrial wind energy facilities have the potential to cause electromagnetic interference with various types of communications.
- (23) Commercial/industrial wind energy facilities have the potential to adversely interfere with orderly development of the Town of Somerset, including single-family residences and small subdivisions, by making such development unappealing.
- (24) Commercial/industrial wind energy facilities need to be regulated for removal when no longer utilized.
- (25) Commercial/industrial wind energy facilities provide renewable energy. Their viability is highly dependent on state and federal subsidies, and renewable energy companies are subject to economic pressure and potential bankruptcies. Funding and mechanisms for removal when the facilities are no longer operating need to be in place.
- (26) The Town of Somerset has regulated wind energy facilities for the past decade through local laws. This section represents an updating of said regulation.
- (27) In formulation of this section, many studies have been reviewed and taken into consideration. Wind energy laws in other locations have been reviewed and considered; experiences of other areas have been

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studied; the Town of Somerset Local Waterfront Revitalization Program and Law have been considered and reviewed for compliance; the Town of Somerset Comprehensive Plan has been considered and complied with; and an ad hoc committee was appointed to review the need for this section and to make recommendations; and its conclusions and recommendations have been duly considered and given great weight.

- (28) When considering large-scale construction and maintenance, due weight should be given to the following:
- (a) The relative distress caused to a community and its residents;
  - (b) The actual necessity for such facility given energy production in the area and region, including clean energy production;
  - (c) Past and present stresses and disruption imposed upon an area due to all types of energy production;
  - (d) Alternatives to facilities, including location in other areas, location in areas where demand is needed, and alternative methods of producing clean energy;
  - (e) Location in areas of highest consumption; and
  - (f) The burden on a community and its residents versus reward to the community and its residents, with emphasis upon quality of life.

- D. Definitions. As used in this section, the following definitions apply. If any definition herein conflicts with a definition found elsewhere in the Town Code, the definitions set forth here apply. If not defined in this section, the definitions as set forth in § 205-8 shall apply. As used in this section, the following terms shall have the meanings indicated:

**AMBIENT SOUND** — Ambient sound encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient sound also includes insect and other nearby sounds from birds and animals or people. The nearby and transient events are part of the ambient sound environment but are not to be considered part of the long-term background sound.

**ANSI** — Refers to or means the American National Standards Institute.

**APPLICANT** — The person or entity filing an application and seeking license under this section; the owner of a WECS or a proposed project; the operator of a WECS or proposed project; or any person acting on behalf of an applicant, WECS project or proposed WECS. Whenever the term "applicant" or "owner" or "operator" is used in this section, said term shall include any person acting as an applicant, owner or operator.

**BACKGROUND SOUND** — Background sounds are those heard during lulls in the ambient sound environment and represent the quietest 10% of the time, for example, the quietest one minute.

**dba** — A-weighted sound-pressure level. A measure of overall sound-pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of the low frequencies with respect to the frequencies centered around 1,000 Hz. The resultant sound level is said to be "weighted," and the units are "dba." Sound-level meters have an A-weighting network for measuring A-weighted sound levels (dba) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, 51.43-1997, for Type 1 instruments and are capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dba or lower. In this section, dba means LAeq unless specified otherwise.

**dbc** — C-weighted sound-pressure level, similar in concept to the A-weighted sound Level (dba), but

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C-weighting does not deemphasize the frequencies below 1kHz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI SI. 43-1997, Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this section, dBC means L unless specified otherwise.

DECIBEL — A dimensionless unit describing the amplitude of sound and denoting the ratio between two quantities that are proportional to power, energy, or intensity. One of these quantities is equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micropascals.

EAF — The environmental assessment form used in the implementation of SEQRA as that term is defined in 6 NYCRR 617.

LWRP — The Local Waterfront Revitalization Program or Plan of the Town of Somerset, together with the Town of Somerset Waterfront Consistency Law.

NONPARTICIPANT — Any and all Somerset landowners having no contractual relationship with a wind developer.

PARTICIPANT — Any and all landowners having a signed lease, easement, or good neighbor agreement with a wind developer.

PERSON — Any person, partnership, LLC, corporation, joint venture, trust or other entity.

QUALIFIED ACOUSTICAL CONSULTANT — A person with demonstrated competence in the specialty of community noise testing who is a person with full membership in the Institute of Noise Control Engineers (INCE).

RESIDENCE — Any building suitable for habitation in the Town of Somerset on the date an application for a wind energy facility permit is received. A residence may be part of a multidwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, hotels, hospitals, motels, dormitories, nursing homes, schools, churches or buildings used for educational purposes or public gatherings.

ROTOR DIAMETER — The diameter of the largest swept area of a rotating turbine blade.

SECTION or THIS SECTION — Shall mean, unless otherwise identified, § 205-43.5.

SEQRA — The New York State Environmental Quality Review Act and its implementing regulations in 6 NYCRR 617.

SETBACKS — A distance measured from the closest rights-of-way line of the road rights-of-way, property lines, village limits, edge of wetlands, high-water level of Lake Ontario, edge of streambed, closest point of residence foundation to the base of the turbine or measurement tower, zoning districts, LWRP boundaries, or other point or line of reference.

SHADOW FLICKER — The visual effect of viewing the moving shadow of the wind energy conversion system (WECS) rotor blades when they are in a position between the receptor (person viewing them) and the sun and/or the "strobe" lighting effect of this condition as perceived by the receptor, whether directly or indirectly (as in a reflection off a light-colored wall).

SITE — The minimum area necessary for a wind energy facility to satisfy the required setbacks and any other standards in this section. The site may be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where an individual or group of individuals owns or control adjacent properties, those properties may be combined for the purposes of this section through an easement or other legally enforceable agreement recorded in the real property records in the Niagara County Clerk's office. The agreement must, at a minimum, describe all lands that may be impacted if the WECS fell and must remain in effect as long as the WECS is in place. Where multiple adjacent lots are in single ownership or are combined through such agreement, such multiple or combined lots shall together be

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considered the "site."

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**SOUND-PRESSURE LEVEL** — The level, expressed in decibels, which is equaled or exceeded a stated percentage of time. Sound-pressure level is spectrally weighted to correspond to a spectrum of interest. For example, the A-weighted decibel scale (dBA) represents those frequencies most readily audible to the human ear. The C-weighted decibel scale (dBC) approximates response of the human ear to low-frequency sounds. The G-weighted decibel scale (dBG) is designed for infrasound. Sound measurements shall use sound meters that meet the American National Standards Institute Specifications for Integrating Averaging Sound Level Meters, S1.43-1997, for Type I instruments and be capable of accurate readings (corrections for interval noise and microphone response permitted) at 20 dBA or lower.

**SPECIAL USE PERMIT** — A construction and operating permit granted in accordance with the provisions of this section.

**TOTAL HEIGHT** — The height of the tower from the finished ground elevation to the furthest vertical extension of the turbine rotor plane.

**TOWER HEIGHT** — The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for turbine blades.

**WIND ENERGY CONVERSION SYSTEM ("WECS") or WIND ENERGY CONVERSION FACILITY** — Any machine or wind facility that converts the kinetic energy in the wind into electricity, including all related infrastructure, electrical lines and substations, access roads and accessory structures; also known as a commercial/industrial wind energy conversion system. Excluded from the definition are noncommercial wind energy conversion systems regulated by § 205-43.3 and having a height of 150 feet or less.

E. **Applicability/severability.** No wind facility or wind energy conversion system shall be constructed, reconstructed, modified or operated in the Town of Somerset except in compliance with this section and in compliance with all conditions of approval established by the Town Board. **[Amended 1-29-2018 by L.L. No. 3-2018]**

- (1) This section shall not supersede §§ 205-11BB, 205-40A(8), or 205-55B(8)(g) of the Somerset Town Code. If any provision of this section conflicts with any provision of the Town of Somerset Town Code other than §§ 205-11BB, 205-40A(8), or 205-55B(8)(g), provisions of this section shall apply.
- (2) If any provision, section, or requirement of this section shall be finally determined not to apply or to be unenforceable by any court or government agency or body, then all other applicable provisions of the Somerset Town Code shall apply, including but not limited to §§ 205-11BB, 205-40A(8), and 205-55B(8)(g), and any tall structures zoning law the Town may adopt.
- (3) If any provision, section or requirement of this section shall be finally determined not to apply, or to be unenforceable or void, by any court, state or federal agency having authority to so determine, it shall not affect the validity or enforceability of this section as a whole or any other part thereof.
- (4) Nothing in this section shall prevent the ability of the Town of Somerset to appeal or seek court determination of any action by any agency, tribunal, or lower court.

F. **Applications for wind energy conversion systems.**

- (1) An application for a special use permit for a wind energy facility or a single WECS shall include the following:
  - (a) Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent, as well as an original signature of the applicant authorizing the representation.
  - (b) Name and address of the property owner. If the property owner is not the applicant, the application shall include proof of site control by recorded document establishing that the applicant is

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- authorized to utilize the property for the intended purpose.
- (c) Address, or other property identification, of each proposed WECS location, including Tax Map section, block and lot number, and latitude and longitude coordinates.
  - (d) A description of the project, including the number and maximum rated power output capacity of each WECS.
  - (e) For each WECS proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
    - [1] Property lines and physical dimensions of the site;
    - [2] Location, approximate dimensions and types of existing structures and uses on site, public roads, and adjoining properties within a three-thousand-foot radius of the proposed WECS.
    - [3] Location and ground elevation of each proposed WECS.
    - [4] Location of all above- and below-ground utility lines on the site, and all related transformers, power lines, interconnection points with transmission lines, and other ancillary facilities or structures.
    - [5] Location and size of structures above 35 feet within a three-thousand-foot-radius of any proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open-lattice towers are considered structures.
    - [6] Location of, and measured distances (accurate GPS measurements may be utilized) of, each proposed WECS tower from every setback required pursuant to this section.
    - [7] To help demonstrate compliance with the setback requirements of this section, circles drawn around each proposed tower site having a radius equal to:
      - [a] Five times the total height of the proposed WECS;
      - [b] One thousand feet;
      - [c] Three thousand feet;
      - [d] One-half mile;
      - [e] One mile;
      - [f] One and one-half times the total height of the proposed WECS;
      - [g] Two times the total height of the proposed WECS; and
      - [h] Five thousand feet.
    - [8] All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
    - [9] The names and addresses of all property owners within a three-thousand-foot-radius of each WECS, as shown on the assessment roll of the Town of Somerset, together with the current use of all such property.
  - (f) Elevation drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between the ground and the lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.

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- (g) Landscaping plan: depicting vegetation and forest cover, describing the area to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added, identified by species and size of specimens at installation, and their locations.
- (h) Lighting plan: showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure; but if such determination is not available at the time of the application, the application shall so state, and such determination shall be submitted prior to final approval.
- (i) Decommissioning plan: a decommissioning plan as specified in this section.
- (j) Complaint resolution plan: a complaint resolution plan to address complaints within 24 hours of receipt of notice thereof and to resolve any complaint in a diligent and timely manner under the circumstances.
- (k) Information relating to the construction/installation of the wind energy facility as follows:
  - [1] A proposed construction schedule describing commencement and completion dates of the project and beginning and ending hours of daily construction.
  - [2] A description of the routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.
- (l) Completed Part 1 of the full EAF.
- (m) For each proposed WECS: include make, model, picture, and manufacturer's specifications, including noise decibel data. Include manufacturers' material safety data sheet documentation for the type and quantity of all materials used in the operation of all equipment, including, but not limited to, all lubricants and coolants.
- (n) As part of the application, or as a supplement to the application and simultaneously submitted, the following: Each submittal shall contain a thorough analysis/explanation of the ability and means to comply with the "Standards for commercial/industrial WECS," Subsection H of this section.
  - [1] Shadow flicker: The applicant shall submit a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may be present at locations of any residences, highways, parks or open recreation areas and detail measures that will be taken to mitigate or eliminate such interference and to comply with the requirements of this section.
  - [2] Visual impact: Applications shall include a visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least several locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - [3] Fire protection/emergency response plan: a fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed wind energy facility, to address coordination with local emergency/fire protection providers during the construction or operation phase in the event of an emergency, fire or other hazard.
  - [4] Noise analysis/study: a noise analysis by a qualified acoustical consultant documenting the

noise levels associated with each proposed WECS. The study shall document noise levels at property lines and at the property line of the nearest residences not on the site for each residence in a three-hundred-sixty-degree circle of the site. The noise analysis shall be performed according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other procedure accepted by the Town Board, and shall include both a dBA analysis and dBC analysis. The noise analysis/study shall demonstrate compliance with the noise provisions as set forth in the "Standards for commercial/industrial WECS," Subsection H of this section.

- [5] Property value analysis: property value analysis, prepared by a New York State licensed appraiser experienced in appraising rural properties of the type and nature typically found in the Town of Somerset, evaluating the potential impact of the project on values of properties in the Town of Somerset, and in addition a proposed means to protect property owners from decrease in values caused by the establishment and operation of the proposed WECS, and to comply with the property value preservation subsection set forth in the "Standards for commercial/industrial WECS," Subsection H of this section.
- [6] Electromagnetic interference: an assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, including broadband, weather and other radar, identifying specific potential interference to established systems.
- [7] Transportation impacts: an analysis of impacts on local transportation, identifying impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Transportation impacts to be considered shall include, at a minimum: potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of WECS' materials; impacts on school bus routes; and impacts of visitors to the WECS' facilities. Local roads shall include all state highways, county highways, Town highways, and village streets and highways, which will be or may be used by the applicant.
- [8] Transportation plan: a transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes and all other infrastructure following construction. Roads shall include all state highways, county highways, Town highways, and village streets and highways, which will be or may be used by the applicant.
- [9] Groundwater impacts: an analysis of impacts on local groundwater resources shall be prepared regarding impacts anticipated during construction, reconstruction, modification, or operation, decommissioning and post-decommissioning of each WECS. A geotechnical report shall be provided and shall include: soil and geologic characteristics of the site based on site sampling and testing; a bedrock profile within 1 mile of the site; information on depth of well; average flow rate; and with permission by owner, test of water quality for all wells within two miles of the site; grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.
- [10] An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground- and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the site preparation phase.
- [11] Cultural, historical and archaeological resources plan: an analysis of impacts on cultural, historical and archaeological resources addressing and assessing impacts anticipated during construction, reconstruction, modification or operation of each WECS. This assessment shall



be conducted in accordance with standards of the New York State Office of Parks, Recreation and Historic Preservation.

- [12] Wildlife impacts: An analysis of impacts on local wildlife shall be prepared, addressing impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. An assessment of the impact of the proposed development on the local flora and fauna shall also be prepared. The analysis will include migratory and resident avian species and bat species. The scope of such assessment shall take into consideration New York State Department of Environmental Conservation and United States Fish and Wildlife Service studies, standards and recommendations and must, at a minimum, consist of preconstruction data of three years, and literature/studies/survey for threatened and endangered species and species of concern, and migratory species that provide relevant information on critical flyways and migration routes, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies. The reports shall provide sufficient information to allow the Town Board to make a determination on any mitigation conditions or a denial of permits as provided in the standards for commercial/industrial WECS section.
- [13] Operation and maintenance plan: an operation and maintenance plan providing for regular periodic wind energy facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- [14] Blade throw report: a report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade may be thrown. (The basis of the calculation and all assumptions must be thoroughly explained and justified.) The frequency incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included, and the report must specifically address the climatic and weather conditions found in the Town of Somerset.
- [15] Stray voltage report: an assessment, pre- and post-installation, of possible stray voltage problems on the site and neighboring properties within one mile of the project boundary to show what properties need upgraded wiring and grounding.
- [16] A health report utilizing available background health, including mental health, analysis for the Town and the region, including age, proliferation of known health disorders, and effects of noise presence of WECS and flicker effect on people, as well as a proposed means of accessing a health background on individuals who wish to participate for determination of health effects if a WECS is constructed; a thorough analysis of the potential health effects, including mental health, related to commercial/industrial wind turbines, and a plan to mitigate each of the effects and to address them.
- [17] An agriculture effect report, including impacts on all types of agricultural activities present in the Town of Somerset. The report shall address the effects of wind turbulence and disruption on fruit production, effects on beef and dairy farms, grain farming and all other farming activities. The report must address insect and bee population effects, effects on orchard and crop pollination, micro-climate effects and impacts on orchard and crop growing seasons.
- [18] A report/analysis of the effects on the economy of the Town, including income of residents and effects on other industries and jobs.
- [19] A report and analysis on any effect on any military installation in the County of Niagara, including the Niagara Falls Air Reserve Station, its potential effects on flight patterns, its

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potential to cause radar interference, effect on base siting evaluations, and the potential economic effect on the County of Niagara should the base be closed, including job loss and economic impact.

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- [20] A report and analysis on any outdoor activities common in the Town of Somerset, including hunting, hiking, biking, etc.
- [21] A complete report on:
- [a] The need for the project, including demand analysis and limitations on transport of power to high-demand areas.
  - [b] Other "clean" energy power projects in the area, including the Niagara Power Project, with analysis of total clean power generated in Niagara County versus other areas in the state.
  - [c] The effect on the Great Lakes Seaway Trail, a national scenic byway.
  - [d] Increased expenses imposed upon the Town of Somerset as a result of the proposed project.
  - [e] All alternative sites identified by the applicant and its affected entities.
  - [f] Local power needs in the Town of Somerset and total power generated.
  - [g] Total disruption/burden placed upon the Town of Somerset for all power-generation activities, including existing facilities and infrastructure. Compare to other areas of the state; use population/energy usage per capita versus total energy burden.
- (o) For any requirement of a report, analysis or study, required pursuant to this Subsection F or required by any other provision of this section, or by the Town Board in its review process, the Town may require an expanded or supplemental report or study by the applicant, or an independent study, analysis or report by a consultant of the Board's choosing. The applicant shall be responsible for the cost of any review/report study or analysis commissioned by the applicant, to be paid for from the escrow fund established pursuant to this section.
- (p) The applicant shall, prior to the receipt of a special use permit, provide proof that it has executed an interconnection agreement with the New York independent system operator and the applicable transmission owner. The applicant shall also provide proof of complying with Public Service Commission power purchase requirements.
- (q) A statement, signed under the penalty of perjury, that the information contained in the application is true and accurate to the best of the applicant's knowledge.
- (r) Proof of continuous liability insurance in the amount of \$5,000,000 per occurrence with a total policy minimum of \$10,000,000 per year. This shall be submitted to the Town of Somerset indicating coverage for potential damages or injury to landowners and the public.
- (s) Disclosure of financial interests. For any financial interest held by a municipal officer, or his or her relative, in any wind development company or its assets, within three years prior to the date of an application for a permit under this section, the wind company shall disclose on the application the municipal officer or his or her relative and the nature and scope of the financial interest of each person.
- (t) All wind speed data obtained by the applicant from any wind measurement tower in the Town, including an explanation of the methodology utilized to obtain measurements.

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- (u) The applicant shall fund an escrow as required by this section to cover the amount by which the Town's cost to review the applicant's application, including the cost of any independent study, analysis or report and the cost of the Town Engineer, exceeds the application fees paid by the applicant. The applicant and the Town may enter into an agreement as to the amount of the escrow. If no agreement is reached prior to review, the fund shall be 1.5% of the total estimated cost of the project, including both "hard" and "soft" costs, approvals, etc. The amounts paid to the Town shall not exceed this amount. This amount is determined to be the best estimate of all costs to the Town for its review process as set forth in this section. The escrow shall be funded prior to review of the application. If, at the end of the review process and decision on the application by the Town Board, funds remain in the escrow fund, the balance shall be returned to the applicant together with an accounting of the expenditures incurred by the Town.
- (v) Copies of all applications and proposed plans should be made available to the public within seven days of receipt by the Town Board and placed in the Town Library and Town Clerk's office as well as on the Town of Somerset website.

G. Application review process.

- (1) Applicants may request a preapplication meeting with the Town Supervisor, Town Code/Zoning Enforcement Officer and such consultants as the Supervisor shall determine. Such meeting shall be informal, and no party shall be bound by any statements made.
- (2) An original executed and 15 copies of the application and a complete digital version shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. The Town Clerk shall forward one copy to the Code/Zoning Enforcement Officer, five copies to the Town Supervisor, and additional copies to such individuals as the Supervisor shall direct.
- (3) The Code/Zoning Enforcement Officer, in consultation with the Town Engineer and any other consultants deemed necessary, shall determine whether the application is complete. If the application is deemed incomplete, the Town Code/Zoning Enforcement Officer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information, unless the number of WECS proposed is increased. When the application is complete, it shall be filed, and the applicant shall be notified it has been accepted for filing.
- (4) Upon filing of a complete application, the Town Clerk shall transmit the application to the Board.
- (5) In addition to the public hearing requirement, the Town Board may, in its discretion, require the applicant to conduct information sessions for the public benefit. The number of such sessions shall be at the discretion of the Town Board, and notice shall be given to media in such a manner as the Town Board shall determine. During these sessions, the public will be afforded the opportunity to question the applicant regarding the project.
- (6) The Town Board shall hold at least one formal public hearing on the application. Notice shall be published in the Town's official newspaper no less than 10 days before the hearing. In the event any hearing is adjourned by the Board to hear additional comments, no further publication or mailing shall be required. Notice shall also be given to property owners in the Town of Somerset at the address shown on the assessment roll of the Town of Somerset, or by publishing such notice in the Town's newsletter.
- (7) At the discretion of the Town Board, the public hearing may be combined with public hearings on any environmental impact statement. Notice for SEQRA public hearings must meet the specification set out in 6 NYCRR 617.12(c).
- (8) Notice of the project shall also be given, when applicable, to: the Niagara County Planning Board, if required by General Municipal Law § 239-l and 239-m; and to adjoining towns where the project site is

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located within 3,000 feet of the adjoining town boundary.

- (9) SEQRA review. Applications for commercial/industrial WECS are deemed Type I projects under SEQRA. The Town Board may conduct its SEQRA review in conjunction with other agencies or communities, in which case the records of review by said agencies or communities shall be part of the record of the Town Board's proceedings. The applicant shall be responsible for the Town's legal and engineer's fees in connection with the SEQRA.
  - (10) After a thorough and detailed evaluation of the application in which the Town Board completes the required "hard look" of all materials and public input, and upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board shall approve, approve with conditions, or deny the application(s). The Board shall issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
  - (11) If approved, the Town Board will issue to the applicant a special use permit for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions for said permit. This authorizes the Code Enforcement Officer/Building Inspector to issue a building permit for each WECS upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this section.
  - (12) The decision of the Town Board shall be filed within five business days in the office of the Town Clerk and a copy mailed to the applicant by first-class mail.
  - (13) If any approved WECS is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.
- H. Standards for commercial/industrial WECS. The following restrictions on location, standards and conditions shall apply to all commercial/industrial WECS. Applications must demonstrate compliance with these standards.
- (1) Restricted areas:
    - (a) No commercial/industrial wind energy systems shall be allowed in any zoning district other than Industrial. **[Amended 1-29-2018 by L.L. No. 3-2018]**
    - (b) No commercial/industrial wind energy systems shall be allowed within the boundary areas of the Town of Somerset LWRP.
    - (c) No commercial/industrial wind energy systems shall be allowed in any area where such system or systems are likely to have a material and adverse impact on the land use plans set forth in the Somerset Power Plant Multiple Use Plan, prepared by the Erie and Niagara Counties Regional Planning Board, dated November 1979. **[Added 1-29-2018 by L.L. No. 3-2018]**
    - (d) No wind energy conversion systems shall be allowed within three miles of the Lake Ontario shoreline, the boundary areas of the Town of Somerset LWRP, or any planned or existing public park. **[Added 1-29-2018 by L.L. No. 3-2018]**
  - (2) Setbacks. No commercial/industrial wind energy systems shall be allowed within the following setbacks. If more than one setback applies, the most - restrictive setback shall prevail. To protect the public health and safety, the setbacks set forth in this section shall not be waived by any person or entity. **[Amended 1-29-2018 by L.L. No. 3-2018]**
    - (a) The minimum setback from any residence, structure, public road, or property line where one property owner has not entered into an agreement with any person or entity seeking to develop or operate a wind energy conversion system shall be 1/2 mile or six times the height of the turbine,

whichever is higher.

- (b) Minimum setback from any villages, hamlets, schools, churches, cemeteries shall be one mile.
  - (c) Minimum setback from any structure, district, building, or site eligible for listing on the National Registry of Historic Places shall be one mile.
  - (d) Notwithstanding the setbacks described in § 205-43H(2)(a), the minimum setback for a residence, if greater than the setbacks described in § 205-43H(2)(a), shall be the minimum distance necessary to ensure that  $L_{max}$  does not exceed 6 dB above preexisting daytime or nighttime A-weighted background noise levels. For the purposes of this subsection, " $L_{max}$ " shall mean the maximum instantaneous sound level modeled within a one-second period.  $L_{max}$  for any given distance from a wind turbine shall be modeled in accordance with ISO 9613-2, using a ground attenuation factor of zero ( $G = 0$ ) to compensate for the elevated height of the noise source. In addition, low-frequency sound with a frequency below 63 Hz shall be modeled in accordance with ISO 9613-2 assuming no atmospheric attenuation. The input to the ISO 9613-2 propagation model shall be the test results for loudest turbine model considered under IEC 61400-14. Model output should be used to generate a map of 6 dB  $L_{max}$  isolines around each proposed noise source. If the distance from the noise source to the modeled 6 dB isoline is greater than the setbacks described in Subsection H(2)(a), the setback of 6 dB described here shall apply.
- (3) All power transmission lines from the tower to any building or other structure shall be located underground.
  - (4) No television, radio or other communication antennas may be affixed or otherwise made part of any commercial/industrial WECS, except pursuant to the Town Site Plan Review and Subdivision Law. Applications may be jointly submitted for WECS under this section and telecommunications facilities under the Site Plan and Subdivision Law.
  - (5) No advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.
  - (6) Lighting of tower. No tower shall be lit except to comply with FAA requirements. Motion-sensitive on-demand lighting is required. Minimum-security lighting for ground-level facilities shall be allowed as approved on the site plan.
  - (7) All applicants shall use measures to reduce the visual impact of WECS to the extent possible. All structures in a project shall be finished in a single, nonreflective, matte-finished color. Individual WECS shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the project so as to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
  - (8) No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antennas for radio, television, or wireless phone or other personal communication systems will produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the special use permit for the specific WECS causing the interference.
  - (9) All solid waste and hazardous waste and construction debris shall be removed from the site and managed

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in a manner consistent with all applicable rules and regulations.

- (10) WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. The use of previously developed areas will be given priority wherever possible. All topsoil disturbed during construction, reconstruction or modification of each WECS will be stockpiled and returned to the site upon completion of the activity that disturbed the soil.
- (11) WECS shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the United States Fish and Wildlife Service as threatened or endangered. When the Town Board determines that significant negative impacts have not or cannot be sufficiently mitigated by a proposed WECS, no permit may be issued.
- (12) WECS shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- (13) Stormwater runoff and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- (14) For all aspects of the application and operations of WECS, the New York State Department of Agriculture and Markets' guidelines for agricultural mitigation for wind power projects in effect as of the date of the application shall be adhered to, and any other agricultural effects identified shall be mitigated, both inside and outside of agricultural districts.
- (15) The maximum total height of any WECS shall not exceed 200 feet under any circumstances. **[Amended 1-29-2018 by L.L. No. 3-2018]**
- (16) Construction of the WECS shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. **[Amended 1-29-2018 by L.L. No. 3-2018]**
- (17) If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems, up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for suspension or revocation of the special use permit for the specific WECS causing the problems.
- (18) WECS shall be located in a manner that minimizes significant negative impacts on the historical and cultural aspects of the community (i.e., high concentration of historic stone houses and buildings and old-style barns). This shall be done in coordination with the New York State Office of Parks, Recreation and Historic Preservation. In addition, the review of New York Department of State Guidelines for Scenic Areas of Statewide Significance shall be respected.
- (19) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- (20) Fencing may be required, as determined by the Town Board.
- (21) Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower, warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with twenty-four-hour, seven-day-a-week, coverage. The Town Board may require additional signs based on safety needs.
- (22) No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the tower structure.

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- (23) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- (24) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- (25) The owner and/or operator of a WECS that has received approval under this section, and for which a permit has been issued, shall file with the Town Clerk on an annual basis an operation and maintenance compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the operation and maintenance plan. The annual report shall include a noise analysis by a qualified acoustical consultant, performed according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11) or such other procedure as accepted by the Town Board during the permit review process, which certifies to the Town that the noise level of the WECS is in full compliance with the provisions of this section and the permit as issued.
- (26) Traffic routes.
- (a) Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process.
- (b) The applicant is responsible for remediation of damaged roads and infrastructure upon completion of the installation and/or maintenance of a WECS. The applicant shall comply with all requirements of any Town of Somerset infrastructure, preservation or protection law.
- (c) In addition to complying with any Town of Somerset infrastructure preservation or protection law, prior to placing the wind energy facility in operation, and for the life of the project, the applicant shall repair or reconstruct all state highways, county highways, Town highways and village streets and highways damaged by the applicant to the standards set forth by the Niagara County Highway Department, regardless of the condition of such highways, roads and streets prior to the commencement of construction by the applicant.
- (27) Noise standards for wind energy systems. No wind generation facility shall be measured or modeled to emit A-weighted sound levels in excess of the following during operation: **[Amended 1-29-2018 by L.L. No. 3-2018]**
- (a) Facilities with a plant capacity up to and including 50 kilowatts. Operation of facilities with a plant capacity up to and including 50 kilowatts shall not result in 1) sound pressure levels that exceed 42 dBA more than 5% of the time at a distance of 100 feet from any residence or inhabitable structure or 2) audible prominent discrete-frequency tones pursuant to the latest revision of ANSI S1.13 Annex A at a distance of 100 feet from any residence or inhabitable structure.
- (b) Facilities with a plant capacity greater than 50 and up to and including 150 kilowatts. Operation of facilities with a plant capacity greater than 50 kilowatts and up to and including 150 kilowatts shall not result in sound pressure levels in excess of 42 dBA, including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.
- (c) Facilities with a plant capacity greater than 150 kilowatts. Operation of facilities with a plant capacity greater than 150 kW shall not result in sound pressure levels in excess of 42 dBA between the hours of 7:00 a.m. and 9:00 p.m. or 35 dBA between the hours of 9:00 p.m. and 7:00 a.m., including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.
- (d) Modeling sound levels. Modeled sound levels for a proposed facility shall not exceed the limits set forth in this section. The sound impact of any proposed wind turbine shall be modeled such that broadband sound is modeled in accordance with ISO 9613-2, assuming no ground attenuation ( $G = 0$ ). In addition, low-frequency noise with a frequency lower than 63 Hz shall be modeled in

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- accordance with ISO 9613-2 assuming no atmospheric attenuation. The input to the ISO 9613-2 propagation model shall be the test results for loudest turbine model considered under IEC 61400-14. Sound modeling shall include and report Lmax sound levels that could be generated by the project, and such report shall include a map of isolines representing Lmax sound levels at 1 dB intervals up to and including 6 dB for each proposed wind turbine.
- (28) Economic effects. WECS shall be sited and constructed so as to minimize any adverse economic effects on the Town, its residents and its economic activities, including agricultural activities, in accordance with conditions established by the Town Board.
- (29) Health effects. WECS shall not adversely affect the health, including mental health, of the residents of the Town of Somerset. All available material and studies as well as baseline health reports of willing residents must be contained in a health maintenance plan for any WECS project. Preconstruction health exams shall be provided to willing residents. Reports of residents' exams shall be sealed or maintained in the possession of residents or their physicians, unless they are made available by residents in accordance with HIPAA procedures.
- (30) No WECS shall be located in the Town of Somerset which, after all data, required reports and studies are considered, as determined by the Town Board, will cause unacceptable interference with or danger to bird or bat populations or to migration routes.
- (a) When a WECS has been constructed in the Town of Somerset, the applicant/owner/operator shall inventory all bird or bat kill and report the same to the Town on a monthly basis. The applicant/owner/operator shall also provide access to the site and surrounding area to the Town-designated representative to inventory killed birds or bats on a daily basis, if requested.
- (b) If a tower or towers in a WECS are determined to cause numbers of bird or bat kill which are determined to be excessive, after consultation with the Department of Environmental Conservation and other involved agencies, remedial action shall be required, up to and including suspension or revocation of a permit or any part thereof.
- (31) Real property value protection plan. The WECS owner(s) ("applicant") shall assure the Town of Somerset that there will be no loss in real property value within two miles of each wind turbine within their WECS. To legally support this claim, the applicant shall consent, in writing, to a real property value protection agreement ("agreement") as a condition of approval for the WECS. This agreement shall provide assurance to nonparticipating real property owners (i.e., those with no turbines on their property) near the WECS that they have some protection from WECS-related real property value losses. The applicant shall agree to guarantee the property values of all real property partially or fully within two miles of the WECS. Any real property owner(s) included in that area who believes that his/her property may have been devalued due to the WECS may elect to exercise the following option:
- (a) All appraiser costs are paid by the applicant from the escrow account. The applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("diminution value"), caused by the proximity to the WECS. This shall be determined by calculating the difference between the current fair market value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WECS was proposed or constructed.
- [1] If the higher of the diminution valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("average diminution value" ADV.)
- [2] If the higher of the diminution valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to the applicant and property owner a written appraisal report as to the diminution value for the real property. The parties agree that the resulting average of the two highest diminution valuations



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shall constitute the ADV.

- [3] In either case, the property owner may elect to receive payment from the applicant of the ADV. The applicant is required to make this payment within 60 days of receiving said written election from the property owner to have such payment made.

(b) Other agreement conditions.

- [1] If a property owner wants to exercise this option, he/she must do so within 10 years of the WECS receiving final approval from the Town of Somerset.
- [2] A property owner may elect to exercise this option only once.
- [3] The applicant and the property owner may accept mutually agreeable modifications of this agreement, although the applicant is not allowed to put other conditions on a financial settlement (e.g., confidentiality). If the property owner accepts some payment for property value loss, based on an alternative method, that is considered an exercise of this option.
- [4] This agreement applies to the property owner of record as of the date of the issuance of the permit and is not transferrable to subsequent owners.
- [5] The property owner of record as of the date of the issuance of the WECS permit must reasonably maintain the property from that time, until he/she chooses to elect this option.
- [6] The property owner must permit full access to the property by the appraisers, as needed, to perform the appraisals.
- [7] The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the WECS application.
- [8] This agreement will be guaranteed by the applicant (and all its successors and assigns) for 10 years following the WECS receiving final approval from the Town of Somerset, by providing a bond (or other surety), in an amount determined to be acceptable by the county;
- [9] Payment by the applicant not made within 60 days will accrue an interest penalty. This will be 12% annually, from the date of the written election from the property owner.
- [10] For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the applicant.
- [11] Upon application, the applicant shall provide a performance bond (or equivalent) in an amount determined by the Town of Somerset and held by the Town of Somerset. This surety account will ensure execution of all aspects of this agreement (including compensation of eligible property owners in the case of default by the applicant). Failure to maintain this surety account shall be cause for revocation or suspension of the WECS permit.

(32) Any other standard or requirement established by the Town Board as set forth as a condition of approval of an application shall apply.

(33) All electrical transmission lines associated with WECS shall be buried underground to the maximum extent physically possible. Where aboveground transmission lines must be installed, guy wires or similar support structures shall be prohibited. **[Added 1-29-2018 by L.L. No. 3-2018]**

I. Decommissioning.

(1) If any WECS remains nonfunctional or inoperative for a continuous period of one year, the applicant

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shall, without any further action by the Town Board, remove said system at its own expense in accordance with the provisions of Subsection C of this section. This provision shall not apply if the applicant demonstrates to the Town that it has been making good-faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town Board's ability to order a remedial action plan.

- (2) Nonfunction or lack of operation may be proven by reports to the Public Service Commission, NYSEDA or by lack of income generation. The applicant shall make available to the Town all reports from the purchaser of energy from individual WECS. Upon request of the Supervisor, the Supervisor may also require periodic documentation reporting the power output generated by the WECS.
- (3) Decommissioning and site restoration plan and requirements. An application for a wind energy facility permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.
  - (a) The plan shall provide for the removal from the project parcels, and lawful disposal or disposition of, all wind turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 60 inches below grade. The plan shall provide for the removal of all access roads that the owner of the project parcels wants removed. The plan shall provide for the restoration of the project parcels to farmland of similar condition to that which existed before construction of the WECS.
  - (b) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the nonfunctioning of the WECS.
  - (c) The plan shall include: the estimated decommissioning cost in current dollars; how said estimate was determined; the method of ensuring that funds will be available for decommissioning and restoration; and the method that will be used to keep the decommissioning costs current, adjusted annually based on a suitable index such as the "RS Means Heavy Construction Cost Data" index.
  - (d) The plan shall include provisions for financial security to secure completion of decommissioning (removal of nonfunctional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 125% of the estimated cost of full decommissioning and restoration in the form of a cash deposit with the Town in the amount of 25% of such fund, and the balance of such fund in the form of an irrevocable bond in form and content as approved by the Town Board. All decommissioning funding requirements shall be met prior to commencement of construction.
  - (e) The plan shall include written nonrevocable authorization from the permit holder and the owners of all parcels within the project for the Town to access the parcels and implement the decommissioning and site restoration plan, in the event the permit holder fails to implement the plan. The written authorization shall be in a form approved by the Town and shall be binding on the heirs, assigns and distributees of the owner(s) and shall be recorded in the office of the Niagara County Clerk.
  - (f) Use of decommissioning fund.
    - [1] Any nonfunctional WECS or any WECS for which the special use permit has been revoked shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration within 180 days of the date on which the facility becomes nonfunctional or of the revocation of the special use permit, by the applicant or owner of the WECS.
    - [2] If removal of the WECS is required and the applicant, permittee, or successors fail to remove

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the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.

- [3] If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.

J. Limitations on approvals; easements on Town property.

- (1) Nothing in this section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the wind energy facility. Nothing in this section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any wind energy facility.
- (2) Notwithstanding anything to the contrary contained in this section or any other local law, ordinance, rule or regulation of the Town of Somerset, building permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction is located within a setback required by this section. No property or lot upon which a WECS has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks required by this section and/or as set forth in the permit.

K. Permit enforcement revocation.

- (1) Testing fund. A special use permit shall contain a requirement that the applicant perform periodic noise testing by a qualified acoustical measurement consultant, which shall be included in the annual operation maintenance and compliance report required under this section, and may be required more frequently upon request of the Code Enforcement Officer in response to complaints or reasonable suspicion of violation of permit requirements. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this section and shall include an evaluation of any complaints received by the Town. The Town may, if the Code/Zoning Enforcement Officer so determines, conduct or have conducted such testing as it determines, in addition to the applicant/operator. Such testing shall be paid for by the applicant.
- (2) Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions and requirements of this section. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition or any provision of this section, the owner or operator shall immediately notify the Code Enforcement Officer. Upon such notice, or if the Code Enforcement Officer determines that a violation exists, he shall determine the severity of the noncompliance. If he determines the violation to be a threat to the life, safety, health or immediate well-being of the public, he may order the WECS to be shut down. Upon notification of a violation, the applicant/owner/operator shall submit a remediation plan, in writing, within 10 days outlining the steps to be taken to remedy the violation. If no plan is submitted, or if remediation is not completed within 90 days of notice, or at any other time the Code Enforcement Officer deems appropriate, the Code Enforcement Officer shall notify the Town Board.
- (3) Notwithstanding any other enforcement provision under this section, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: order either remedial action within a particular time frame; or order suspension of the permit until compliance is achieved; or order revocation of the wind energy permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town shall have the right to use the security posted as part of the decommission plan to remove the WECS.

- (1) Nonrefundable application fees for WECS, wind measurement towers, and small WECS shall be established by the Town Board and reviewed periodically. The fee may be changed by resolution of the Town Board. Until established, the fee shall be \$1,000 per megawatt of rated maximum capacity, submitted with the application.
- (2) Reimbursement of expenses related to WECS project. The Town Board of the Town of Somerset has determined that the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, for such facilities (WECS), an administrative fee of \$500 per permit request shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant(s) hired by the Town to review the plans and inspect the work. The Town and the applicant will enter into an agreement for an inspection and/or certification procedure for these unique facilities, and the applicant will be required to deposit the sum of \$100,000 in an escrow account with the Town, which the Town may use to pay for any expenses it incurs related to this project. The fees established herein may be amended from time to time by resolution of the Town Board.
- (3) Nothing in this section shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

M. Project management and oversight.

- (1) Upon approval by the Town Board of a WECS special use permit application, and as a condition to the issuance of a WECS special use permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the permit. Such representative and site manager shall be in place for as long as the WECS is in place. This person will have the authority to make management and technical decisions as situations demand. The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of the field representative and site manager to the Town Code Enforcement Officer and the Town Supervisor. The applicant shall also provide contact information for all entities providing operation, maintenance and monitoring services.
- (2) As a condition to the issuance of a WECS special use permit, the services of an engineering firm will be retained by the Town of Somerset during the construction phase of the WECS project.
- (3) Prior to commencing construction, the applicant shall pay the Town a project inspection fee in the amount of 3% of the estimated cost of construction, including all materials, contracts and labor. Said amount is determined to be the reasonable cost to the Town to provide for such inspection. If the cost to the Town is less than that amount, the balance shall be refunded to the applicant upon completion of the construction, issuance of a certificate of occupancy and approval of all state and federal agencies.
- (4) The engineering firm will oversee all aspects of construction and will be included in all design, construction, and planning meetings and shall be provided with all technical information, specifications and drawings. A representative of the engineering firm shall be on site at all times during the construction phase. The firm will also monitor road and infrastructure use and determine any damages to the same.
- (5) The engineering firm's duties shall include coordination with the Code Enforcement Officer for enforcement actions and project specification compliance, and it will be confirming that all project specifications are implemented. The firm's representative may recommend that the Code Enforcement Officer issue a stop-work order for issues including but not limited to: safety; developer compliance issues; and insufficient project documentation.

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- (6) The applicant shall file daily, weekly and monthly construction plans and will follow the planned work schedule as much as possible. When daily, weekly, or monthly schedules are not completed as planned, updated schedules shall be developed and given to the engineering firm representative.
- (7) The applicant shall provide the engineering firm representative and the Code Enforcement Officer with as-built drawings within one week of completion of each portion of the construction phase, or as requested by the engineering firm representative, or Building Inspector.
- (8) All upgrades or changes to the WECS project, as permitted, shall be reviewed and approved by the engineering firm and Code Enforcement Officer prior to the implementation of such upgrades or changes. No changes to basic design, height or location will be permitted unless approved as an amendment to the application by the Town Board.
- (9) A final maintenance plan shall be provided to and approved by the Code Enforcement Officer, with input from the engineering firm, prior to issuance of a certificate of occupancy, including but not limited to:
  - (a) A list of all items requiring regular maintenance.
  - (b) Duration of accumulated time between scheduled maintenance.
  - (c) Work to be completed during the maintenance operation.
  - (d) Person responsible for the maintenance.
  - (e) Process the applicant uses to ensure maintenance is carried out appropriately.
- (10) All performance data routinely monitored during turbine operation shall be provided to the Code Enforcement Officer. Data shall include, but is not limited to:
  - (a) Vibration levels.
  - (b) Noise levels.
  - (c) Rotational speeds.
  - (d) Kilowatt-hours of production.
- (11) All maintenance reports shall be filed with the Code Enforcement Officer monthly, or more frequently as required.
- (12) In the event of an accident, the Town Code Enforcement Officer shall have the authority to shut down all of the affected turbines until a thorough investigation has taken place, a cause has been determined and steps have been taken to ensure the problem will not reoccur, as evidenced by a report to the Code Enforcement Officer.

N. Enforcement; penalties and remedies for violations.

- (1) This section shall be enforced by the Town Code Enforcement Officer.
- (2) Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy facility in violation of this section, or who operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this section, shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.
- (3) The Code Enforcement Officer may, after notice of violation, enter into a consent order with the

§ 205-43.5 applicant/owner/operator to remedy the violation with specifications to be taken and an agreed schedule. § 205-45

- (4) Special proceeding. In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a wind energy facility, and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the court deems appropriate.

O. Miscellaneous.

- (1) Nothing in this section, including the issuance of the permit by the Town, shall eliminate any property or rights of property owners or residents to enforce their legal remedies, including, but not limited to, actions in law or equity, in the nature of nuisance proceedings, or tort or negligence proceedings.
- (2) The Town reserves its right to opt out of the tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Subsection (8) of said law, or by any other provision of law.

P. Effective date. This section shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

**§ 205-44. Public utilities.**

Public utility uses, such as dial equipment centers and substations, but no service or storage yards, may be permitted in Agricultural or Business Districts with a special use permit. No special use permit shall be issued unless the Planning Board shall determine that:

- A. The proposed installation in a specific location is necessary and convenient for the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located.
- B. The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights of the zone in which it is located.
- C. Adequate and attractive fences and other safety devices will be provided.
- D. A buffer strip 10 feet in width shall be provided around the perimeter of the property.
- E. Adequate off-street parking shall be provided.
- F. All of the area, yard and building coverage requirements of the respective zone will be met.

**§ 205-45. Motor vehicle service stations.**

Motor vehicle service stations may be permitted in the Agricultural and Business Districts of the Town, provided that the following standards are observed:

- A. In addition to the information required in the special permit application and enumerated in § 205-65 of this chapter, the site plan submitted shall also show the number and location of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, the number and location of pumps to be installed and the type of structure and accessory buildings to be constructed.
- B. The area and yard specifications for motor vehicle service stations are identified in the Schedule included as an attachment to this chapter.
- C. The entire area of the site traveled by motor vehicles shall be hard surfaced.

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- D. Any repair of motor vehicles shall be performed in a fully enclosed building, and no motor vehicle shall be offered for sale on the site. No motor vehicle parts or partially dismantled motor vehicles shall be stored outside of an enclosed building.
- E. No vehicles shall be permitted to be standing or parked on the premises of a motor vehicle service station other than those used by the employees in the indirect or direct operation of the establishment.
- F. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or antifreeze and similar products may be placed on the respective island if provided for in a suitable stand or rack.
- G. No motor vehicle service station or public garage shall be located within 500 feet of any public entrance to a church, school, library, hospital, charitable institution or place of public assembly. Such distance shall be measured in a straight line from said public entrance to the lot line nearest said entrance along the street line.
- H. Where a motor vehicle service station abuts a residential zone, it shall be screened by a buffer area no less than 10 feet in depth composed of densely planted evergreen shrubbery, solid fencing or a combination of both which, in the opinion of the Planning Board, will be adequate to prevent the transmission of headlight glare across the zone boundary line. Such buffer screen shall have a minimum height of six feet above the station. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide an adequate screen, the Code Enforcement Officer may direct the property owner to replace said shrubs.
- I. All fuel pumps shall be located at least 40 feet from any street right-of-way or property line.
- J. Each motor vehicle service station shall be permitted to have one freestanding pylon sign setting forth the name of the station and for the principal products sold on the premises, including a special company or brand name, insignia or emblem, provided that such sign shall not exceed 20 square feet in area on either of two sides and shall be hung within the property line and no less than 10 feet nor more than 25 feet above the ground. In addition, one sign may be placed or inscribed upon the front of a motor vehicle service station. Said sign shall not exceed an area equal to 15% of the surface upon which it is located and shall not project more than 12 inches in front of the facade. Such signs may be illuminated but shall not be flashing.
- K. Service stations may also exhibit one temporary sign located no less than 10 feet inside the property line and specifically setting forth special seasonal servicing of automobiles, provided that such sign does not exceed seven square feet in area.

**§ 205-46. Excavation operations.**

- A. Excavation operations, including the extraction of sand and gravel and processing, or other operations for the preparation of sand and gravel, but not including excavations for building construction, may be permitted in the I Industrial District, provided that the following conditions and standards are observed: **[Amended 6-10-1980; 3-11-1997 by L.L. No. 3-1997]**
- (1) The minimum lot area for any such use shall be 10 acres. All buildings and excavation operations shall be located or shall occur not less than 200 feet from any street right-of-way and 100 feet from property lines. The Planning Board may require fencing or some similarly effective barrier six feet in height where excavations are to exceed a depth of four feet.
  - (2) All buildings and structures used in such operations shall be dismantled and removed within 12 months following the termination of the operations, shall be made at the expense of the operator and shall be a condition of approval of the special use permit.
  - (3) All buildings, structures and plants used for the processing of excavated materials shall be maintained so as to assure that such buildings, structures and plants shall not become dangerously dilapidated.

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- (4) All equipment used for the excavation of sand and gravel and processing thereof shall be constructed, maintained and operated in such a manner as to eliminate, as far as is practicable, noises and vibrations and dust conditions which are injurious or substantially annoying to all persons living in the vicinity. All operations shall be conducted between the hours of 7:00 a.m. and 6:00 p.m., except on Sundays and except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
- (5) All land which has been excavated must be rehabilitated, within one year after the termination of operations, at the expense of the operator in accordance with standards set and shall be a condition of approval of the special use permit.
- (6) All excavations must either be made to a water-producing depth or graded and backfilled.
- (7) Excavations made to a water-producing depth shall be properly sloped to the waterline, with banks sodded or surfaced with soil of an equal quality to adjacent land area topsoil. Such topsoil required under this section shall be planted with trees, shrubs, legumes or grasses upon the parts of such area where revegetation is possible.
- (8) Excavations not made to a water-producing depth must be graded or backfilled with nonnoxious, nonflammable noncombustible solid material and a topographic character which will result in substantial general conformity to adjacent lands. Such grading or backfilling shall be designed to minimize erosion and shall be surfaced with a soil equal in quality to the adjacent land area and planted with trees, shrubs, legumes or grasses upon the parts of such areas where revegetation is possible.

B. All the foregoing conditions shall be bonded, the amount subject to the discretion of Planning Board.

**§ 205-47. Structures taller than general district regulations.<sup>56</sup> [Added 1-29-2018 by L.L. No. 2-2018]**

A. General provisions.

- (1) A "tall structure" is any structure taller than generally permitted within a zoning district.
- (2) Unless otherwise specified in this chapter, structures taller than 150 feet are not permitted in any district.
- (3) Any request for a tall structure as defined in this section shall be considered a Type I action under the New York State Environmental Quality Review Act.
- (4) No tall structure shall hereafter be used, erected, moved, reconstructed, changed or altered except in compliance with a special use permit granted by the Planning Board in conformity with these regulations. No existing structure shall be modified, and no existing special use permit shall be renewed, unless in conformity with these regulations.
- (5) These regulations shall apply to all districts in the Town.
- (6) Exceptions to these regulations are limited to new uses that are accessory to residential uses and lawful or approved uses existing prior to the effective date of these regulations. No existing special use permit shall be renewed unless in conformity with these regulations.
- (7) Where these regulations conflict with other laws and regulations of the Town of Somerset, the more restrictive shall apply.
- (8) No special use permit shall be issued for a tall structure unless the proposed use is deemed by the Planning Board to be in compliance with the Comprehensive Plan, the LWRP, and the Somerset Power Plant Multiple Use Plan, prepared by the Erie and Niagara Counties Regional Planning Board, dated

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56. Editor's Note: Former §§ 205-47, 205-48 and 205-49, regarding cluster residential developments, planned unit developments and planned business areas, respectively, were repealed 5-14-2013 by L.L. No. 2-2013.



November 1979.

- (9) At all times shared use of existing structures shall be preferred to the construction of new structures. Additionally, where such shared use is unavailable, location of antenna(s) on preexisting structures shall be considered. An applicant shall be required to present an adequate report listing existing tall structures within a reasonable distance of the proposed site and the possible use thereof.
- (10) The applicant shall pay all reasonable fees and costs of adapting an existing structure to a new shared use. These costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening and other changes, including real property acquisition or lease required to accommodate shared use.

B. Use-specific regulations.

- (1) Residential and commercial buildings and their accessory use(s) may, by special use permit, use a tall structure not in accordance with regulations for the underlying district if the tall structure does not detract from the character of the surrounding structures and character of the neighborhood.
- (2) Telecommunications facilities may be allowed by special use permit in the Agricultural (A), Industrial (I), General Industrial (GI), and Planned Unit Development (PUD) Districts only if the applicant provides specific scientific evidence that the facility site is required to maintain adequate service. Telecommunication facilities in all other districts shall not be permitted. Telecommunication structures shall conform to static structure setback requirements of this article.
- (3) Church steeples may be erected by special use permit in any district.
- (4) Elevated water tanks connected to any public water supply system may be erected by special use permit in any district and shall conform to static structure setback requirements of this article.
- (5) Commercial and industrial smokestacks may be erected by special use permit only in Industrial (I), General Industrial (GI), and Planned Unit Development (PUD) Districts and shall conform to static structure setback requirements of this article.
- (6) Small chimney flues from heating appliances attached to residential and commercial structures shall not require a special use permit and are limited in height to 10 feet above the highest roof elevation. The structure and chimney may be subject to other requirements in this chapter.
- (7) Amusement and carnival rides such as roller coasters and Ferris wheels shall conform to static structure setback from parcel boundaries. Temporary installations associated with traveling shows installed for no more than 15 days do not require a special use permit. Installations for longer durations, including permanent structures, require a special use permit before construction.
- (8) Any wind energy facility shall use its electricity for primarily on-site consumption to offset utility expenses and/or provide independence from the power grid, with ties to the electrical grid as approved by the utility company. Power production primarily for sale to the electrical grid shall not be permitted unless in accordance with this chapter. Each facility shall conform to height and setback requirements of Subsection D(1)(b) of this section.
- (9) Agricultural silos, barns, and other tall agricultural accessory use structures shall conform to the height regulations and special use permit requirements outlined in this article. Agricultural wind energy facilities shall conform to height, setback and special use permit requirements defined in this article.
- (10) Public utility poles required for the delivery of electric, telecommunications, and/or streetlighting service(s) to customer premises may be erected without a special use permit in any district.
- (11) No tall structure shall be permitted within the Town unless the structure's use is explicitly enumerated

§ 205-47 in this section or otherwise permitted under this chapter.

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C. Regulations relating to new tall structures.

- (1) Any applicant seeking a special use permit under this article shall be required to submit a site plan as described in Article XVA of this chapter. If the application is for a wind energy facility, the site plan shall also include documentation on the proposed capacity and uses as well as justification for the height of any structure and associated instrumentation or turbines. Additionally, all special use permit applications to the Planning Board under this article shall require that the site plan include a completed Visual Environmental Assessment Form. The Planning Board may require submittal of a more detailed visual analysis and/or Local Waterfront Revitalization Plan (LWRP) review, or other review, based on the results of the Visual Environmental Assessment Form.
- (2) For new telecommunications structures, the applicant shall be required to submit a "search ring" prepared, signed and sealed by a licensed engineer in New York State and overlaid on an appropriate background map depicting the area within which a communications facility needs to be located, in order to provide proper signal strength and coverage to the target cell. The applicant must explain to the Planning Board why it selected the proposed site and discuss the availability or lack thereof of a suitable structure within the search ring for co-location and the extent to which the applicant has explored locating the proposed structure in a less sensitive area. All correspondence with other telecommunications providers shall be included as part of the application.
- (3) In the interest of minimizing the number of new tall structures, the Planning Board shall require, as a condition of any permits granted, that the applicant indicate in writing its commitment to co-location of other uses on its tower(s). The applicant will agree to negotiate in good faith for shared use of the proposed tower by other co-locators in the future. The condition for future co-location may not be required if the applicant demonstrates that provisions of future shared usage are not feasible based on:
  - (a) Whether the kind of structure and site plan proposed is compatible with co-located uses.
  - (b) Whether there are already adequate available spaces on other existing and approved structures.
  - (c) Whether the potential for adverse visual impact of a new or changed structure would be increased by a design accommodating shared use and co-location.
- (4) All tall structures shall be sited to minimize the adverse visual effect on the environment.

D. Additional substantive requirements.

- (1) Setbacks.
  - (a) Static structure setbacks. Tall structures supporting only nonmoving instruments shall maintain a property line setback of 1.5 times the total structure height. The setback measurement shall begin from the outermost edge of the structural base.
  - (b) Dynamic structure setbacks. Tall structures supporting any moving features or parts larger than one meter in diameter, including but not limited to a wind energy facility, shall maintain a property line setback of 5.5 times the total structure height. For wind energy facilities, the setback measurement shall start from the outermost point of any turbine blade at any directional position on the tower or outermost edge of the structural base, whichever is further from the central vertical axis of the tower. Tall structures with moving features or parts larger than one meter in diameter shall not be permitted closer than three miles of the Lake Ontario shoreline, the boundary areas of the Town of Somerset LWRP, or any planned or existing public park; nor within the greater of 1/2 mile or six times the height of the turbine of any residence, structure, public road, or property line where one property owner has not entered into an agreement with any person or entity seeking to develop or operate a wind energy conversion system; nor within one mile of any village, hamlet,

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- school, church, cemetery, or area eligible for listing on the National Registry of Historic Places.
- (c) Setbacks shall apply to all structural foundations, appurtenances, and turbine parts, excluding guy wires and anchors. All accessory structures shall comply with the existing setbacks within the underlying district regulations found in this chapter.
  - (d) Guy wires and anchors shall have a minimum of 15 feet setback from any structure or property line.
  - (e) In no case shall setbacks be less than the existing setbacks within the underlying district.
  - (f) Additional setbacks may be required by the Planning Board to preserve privacy or protect health, safety and welfare of adjoining property owners.
- (2) **Lighting.** Tall structures shall not have artificial lighting except to assure human safety as required by the FAA and employ ground-avoidance in lighting fixture selection. Aviation safety lighting shall be night-vision-goggle compliant. Tall structures shall be galvanized finish or painted gray unless other standards are required by the FAA. Structures should be designed and sited, including height limitations, so as to avoid, whenever possible, application of the FAA lighting and painting requirements. Ground-based floodlights used for nighttime illumination shall minimize light dispersion and pollution in directions other than onto the structure. The Planning Board may impose additional restrictions regarding illumination to reduce impacts to adjoining parcels and maintain neighborhood character.
  - (3) **Screening and fencing.** Tall structures shall be screened from public view to the maximum extent practicable. Existing on-site vegetation shall be preserved to the maximum extent possible. Deciduous or evergreen tree planting may be required to screen portions of the structure(s) from nearby property. In addition, all tall structures, guy wires, and other supporting or appurtenant structures shall be surrounded by fencing sufficient to protect the public health and safety, as determined by the Planning Board and/or the Code Enforcement Officer.
  - (4) **Parking.** The applicant shall provide a single-lane service road to assure adequate emergency and service access. Road construction shall be consistent with proper practice to reduce loss of vegetation and eliminate soil erosion.
  - (5) **Supporting documentation.** The following documentation related to any tall structure sited in the Town of Somerset shall be provided to the Planning Board:
    - (a) All information prepared by the manufacturer of the proposed structure, tower, instruments, and/or turbine (if a wind energy facility), including but not limited to i) Make and model of tower or structure; ii) Manufacturer's design data for installation instructions and construction plans; iii) Applicant's proposed maintenance and inspection procedures and records systems; iv) Anti-climb devices for the structure and any guy wires.
    - (b) A copy of the applicant's FCC and/or FAA licenses (if applicable).
    - (c) When shared use is possible, an engineer's report certifying that a proposed shared use will not diminish the structural integrity and safety of the existing tall structure or explaining what modification(s), if any, will be required in order to certify to the above.
    - (d) Documentation from the owner of an existing tall structure or tower for allowed shared use.
    - (e) Documentation that all guy wires, guy wire anchors and structures shall be sufficiently secured to protect them from trespassing or vandalism.
    - (f) The applicant shall agree in writing to keep the tall structure facility, including road and all surrounding area, in good working order and safe condition.

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(6) Removal of obsolete and/or unused tall structures.

- (a) The applicant shall agree in writing, and post a bond or other security acceptable by the Planning Board approximate to the sum of anticipated removal expenses at the end of useful service, to remove the structure if the facility becomes obsolete or damaged beyond use or ceases to be used for its intended use for 12 consecutive months. After that twelve-month period, removal shall take place within six months. Such agreement shall also include a commitment by the applicant to impose a similar obligation upon any person subsequently securing any rights to the structure.
  - (b) All applicants applying for tall structure special use permits shall reimburse the Town of Somerset for fees incurred for consultants and/or specialists to assist in the application and/or engineering costs and may be required to enter into an agreement and maintain a fund with the Town for such purpose.
  - (c) The owners of any tall structure shall have it inspected by a New York State-licensed engineer for structural integrity at least one time each calendar year, or more frequently if required by technical documentation, or if requested by the Code Enforcement Officer. A copy of the inspection report shall be submitted to the Code Enforcement Officer.
- (7) Additional conditions. The Planning Board may impose any additional conditions to a tall structure special use permit necessary to protect public health, safety, and welfare or any conditions that are otherwise to enforce the goals and objectives of this chapter.

**§ 205-48. through § 205-49. (Reserved)**



ARTICLE XIV  
**Off-Street Parking and Loading Regulations**

**§ 205-50. Parking regulations. [Amended 9-8-1998 by L.L. No. 3-1998; 6-13-2000 by L.L. No. 2-2000]**

- A. All parking/loading areas shall be adequately drained with appropriate stormwater management facilities and subject to the approval of the Town Engineer.
- B. None of the off-street facilities that are required in this article shall be required for any existing building or use unless said building or use shall be enlarged or changed to a more intensive use requiring additional parking, in which case the provisions of this chapter shall apply.
- C. Off-street parking areas located in commercial zones and which provide parking for 20 or more vehicles shall be provided with a landscaped buffer strip along the highway or primary access drive planted with shade trees of a type approved by the Town Superintendent of Highways and located on the approved site plan as shown. Total green space in such parking areas shall be 25% of the total parking area and designated to provide for separation of parking areas, snow storage and organization of circulation in the parking area.
- D. Improvements. Every parcel used as a parking area (other than parking required for single- and two-family dwellings) shall be provided with safe and convenient access to a street and shall be improved in accordance with the following requirements:
- (1) Paving. The ground surface shall be paved with a durable, dust-free and hard material, such as bituminous hot mix or Portland cement concrete or some comparable material. Such paving shall be maintained for safe and convenient use at all times.
  - (2) Curbs and delineation. Fixed and permanent wheel bumpers at least four inches high shall be installed for each parking space that faces a highway or slope declining down from the parking area. Parking spaces shall be delineated and periodically restored to maintain a clear identification of separate parking stalls.
  - (3) Curb cuts. Driveway openings through the right-of-way shall be a minimum of 30 feet in width and a maximum of 50 feet in width, measured at the street line. There shall not be less than 25 feet between driveway openings, and there shall not be less than 10 feet from any driveway openings to any property line. All the above requirements may be superseded by the State of New York or the County of Niagara. All driveways located in the state highway right-of-way will be required to conform to the New York State Department of Transportation Policy and Standards for Entrances to State Highways.
  - (4) Screening. Except between abutting R-zoned lots or where topography achieves the same effect, where any part of such parking area is located closer than 50 feet to a side or rear lot line of a lot in A or R Districts, or where such parking extends into A or R Districts as a permitted transitional use, a wall or fence shall be erected along the boundary thereof. Such wall or fence shall consist of durable material so arranged that direct light cannot penetrate the face thereof. Such wall or fence shall have a minimum height of 3 1/2 feet above the finished surface.
  - (5) Lighting. Any lights used to illuminate any such area shall be so arranged and shielded as to confine all light rays entirely within the boundary lines of such area.
  - (6) Plans. Any application for a building permit, or for a certificate of occupancy where no building permit is required, shall include plans in duplicate covering all the foregoing requirements, which shall be approved by the Code Enforcement Officer before work is commenced.

**§ 205-51. Required off-street parking space. [Amended 9-10-1996 by L.L. No. 2-1996; 6-13-2000 by L.L. No. 2-2000]**

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- § 205-52
- A. Parking or standing spaces shall be provided for each use, as permitted in respective classifications, in not less than the amounts set forth as follows for every building, or addition thereto, and for all uses of land hereafter established or expanded. Parking or standing space required by this chapter shall be used only for those purposes. Any other use of said space, including any repair work or servicing of any kind, shall be deemed to constitute a separate commercial use of said space in violation of the provisions of this chapter.
- B. Residential uses.
- (1) Establishment with sleeping accommodation, other than dwellings, including hotels, motels, tourist homes and courts and lodging or rooming houses: one space for each room or unit and one space for each two employees or permanent residents.
- C. Commercial uses.
- (1) Offices.
- (a) One space for each 300 square feet of gross floor area for general administrative uses.
- (b) One space for each 200 square feet of gross floor area for physicians, surgeons and dentists.
- (2) Drive-in facilities (bank, restaurant, etc.): five standing spaces for each drive-in teller or customer window (plus any spaces required for non-drive-in facilities).
- D. Industrial, warehouse and wholesale uses.
- (1) One parking space for each employee, plus one space for each 1,000 square feet of gross floor area in the buildings for use by visitors to the building or buildings.
- (a) The employee ratio shall be applied to the shift of work activity that has the greatest number of employees.
- (b) Such parking area may be located in the required yard area but shall not be located within 50 feet of a public street or within a buffer area as required by this section.
- (2) Sufficient parking for trucks waiting for loading, unloading and transfer.
- E. Dimensions.
- (1) Minimum of all parking and maneuvering space. All parking (spaces) shall be a minimum of nine feet by 20 feet. The minimum aisle space for 90° parking shall be 24 feet in width. The minimum aisle space for 60° parking shall be 22 feet in width. The minimum aisle space for 45° parking shall be 20 feet in width.
- (2) Computation.
- (a) For the purpose of computing required off-street standing and parking or loading space in relation to floor area, the gross floor area shall be used.
- (b) When computing parking space requirements on the basis of the number of occupants, practitioners or employees, the total maximum number of said occupants on the premises at any one time shall be used.
- (c) When application of the requirements would result in a fractional space, any fraction shall be counted as one space.
- (d) If there is any uncertainty with respect to the amount of parking space(s) required by the provision of this chapter as a result of any indefiniteness as to the proposed use of a building or of land, the maximum requirement for the general type of use that is involved shall govern.

**§ 205-52. Off-street loading regulations.**

- A. For every building, structure or part thereof having over 5,000 square feet of gross building area erected and occupied for commerce, hospital, laundry, dry cleaning, places of public and quasi-public assembly, industry and other similar uses involved in the receipt and distribution by vehicles of materials or merchandise, there shall be provided and permanently maintained adequate space for standing, loading and unloading services in order to avoid undue interference with the public use of streets or alleys. Every building, structure or addition thereto having a use which complies with the above definition shall be provided with at least one truck standing, loading and unloading space to the rear or side of the premises not less than 12 feet in width and 35 feet in length. One additional truck space of these dimensions shall be provided for every additional 20,000 square feet, or fraction thereof, of gross area in the building.
- B. Access to truck standing, loading and unloading space shall be provided directly from a public street or alley or from any right-of-way that will not interfere with public convenience and will permit orderly and safe movement of truck vehicles.
- C. Loading space as required under this section shall be provided an area in addition to customer off-street parking space and shall not be considered as supplying off-street parking space.
- D. Off-street loading and unloading areas shall be surfaced with a dustless, all-weather pavement, which shall be adequately drained, subject to the approval of the Town Superintendent of Highways.
- E. Whenever an off-street loading and unloading area shall be located next to a residential zone, said loading and unloading area shall be screened and buffered.





ARTICLE XV  
**Planned Unit Development (PUD) District**  
**[Amended 6-13-2000 by L.L. No. 2-2000]**

**§ 205-53. General regulations. [Amended 5-14-2013 by L.L. No. 2-2013]**

It is the intent of the PUD District to provide greater flexibility and opportunity for the development of mixed uses in specific areas of the Town. Innovative design and creative use mixes are encouraged to offer the potential for a sustainable development that can provide the economic and service base consistent with the objectives of the Somerset Comprehensive Plan. In addition, the PUD District is intended to encourage imaginative ways of accommodating environmental considerations and conservation into the development plan to strike a balance of physical features, environmental responsibility and development opportunity. The PUD District is a "floating zone," which can be applied through a rezoning application, to a property or properties within the Town. The Town, in determining whether to allow the use of the PUD District, shall consider the Town's Comprehensive Plan and the objectives of this district.

- A. A requisite of the PUD District is the planning of the entire site of integrated uses (human, physical and environmental) to redefine land use concepts into a consolidated, coordinated group that offers new approaches to community development. Therefore, instead of traditional zoning and subdivision requirements and standard development review procedures, this section establishes new procedures for the review and consideration of a proposal for a PUD District.
- B. An application for any development within an existing PUD District and any proposed new PUD District must promote and adhere to most of the following objectives:
- (1) Present a varied choice of the type of environment, tenure, types and costs of housing, commercial uses, economic opportunities and/or recreation and community facilities that exist within the Town.
  - (2) Offer a more efficient and economic arrangement of land uses, traffic circulation, utilities, open space and services that would lessen the cost and maintenance of the development.
  - (3) Incorporate uses and facilities that consolidate infrastructure and ancillary services to encourage self-sufficiency of the ultimate development.
  - (4) Integrate the comprehensive design of stormwater management drainage, flood control and open space into the development plans.
  - (5) Provide for the safe and adequate conveyance of trucks, automobiles, pedestrians and bicyclists consistent with public safety and the capacity of the existing transportation system.
  - (6) Extend and enhance the usable recreation and open space in the community via size, location, diversity and suitability for use.
  - (7) Preserve the physical features of the area to the greatest extent possible, including the natural topography, soils, woodlands, vegetation, marshlands, floodplains and geologic features of the landscape.
  - (8) Offer a creative use of land and existing natural elements to provide an orderly transition from adjacent area uses to the proposed development and, where such a transition cannot be fulfilled, incorporate buffering and landscaping to enhance this transition.
  - (9) Achieve a balance of natural and developmental elements to complement the surrounding environment and provide a succession of land uses within the development area.
  - (10) In the coastal area, promote the use and access to the waterfront consistent with the resources of the area and its environmental sensitivities.

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- (11) Provide a consistent and unified architectural design theme or concept for the site and its elements to produce a cohesive visual appearance throughout the development.
  - (12) Create a more desirable development atmosphere than would be possible through the strict application of other sections of this Zoning Ordinance.
  - (13) Offer a development pattern in harmony with and in furtherance of the Town of Somerset Comprehensive Plan.

**§ 205-54. Objectives.**

- A. A requisite of the PUD District is the planning of the entire site of integrated uses (human, physical and environmental) to redefine land use concepts into a consolidated, coordinated group that offers new approaches to community development. Therefore, instead of traditional zoning and subdivision requirements and standard development review procedures, this section establishes new procedures for the review and consideration of a proposal in the PUD District.
- B. An application for any development within an existing PUD District or any proposed new PUD District must promote and adhere to the following objectives:
  - (1) Present a varied choice of the type of environment, tenure, types and costs of housing, commercial uses, economic opportunities and/or recreation and community facilities that exist within the Town.
  - (2) Offer a more efficient and economic arrangement of land uses, traffic circulation, utilities, open space and services that would lessen the cost and maintenance of the development.
  - (3) Incorporate uses and facilities that consolidate infrastructure and ancillary services to encourage self-sufficiency of the ultimate development.
  - (4) Integrate the comprehensive design of stormwater management drainage, flood control and open space into the development plans.
  - (5) Provide for the safe and adequate conveyance of trucks, automobiles, pedestrians and bicyclists consistent with public safety and the capacity of the existing transportation system.
  - (6) Extend and enhance the usable recreation and open space in the community via size, location, diversity and suitability for use.
  - (7) Preserve the physical features of the area to the greatest extent possible, including the natural topography, soils, woodlands, vegetation, marshlands, floodplains and geologic features of the landscape.
  - (8) Offer a creative use of land and existing natural elements to provide an orderly transition from adjacent area uses to the proposed development and, where such a transition cannot be fulfilled, incorporate buffering and landscaping to enhance this transition.
  - (9) Achieve a balance of natural and developmental elements to complement the surrounding environment and provide a succession of land uses within the development area.
  - (10) In the coastal area, promote the use and access to the waterfront consistent with the resources of the area and its environmental sensitivities.
  - (11) Provide a consistent and unified architectural design theme or concept for the site and its elements to produce a cohesive visual appearance throughout the development.
  - (12) Create a more desirable development atmosphere than would be possible through the strict application of other sections of this Zoning Ordinance.

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(13) Offer a development pattern in harmony with and in furtherance of the Town of Somerset Comprehensive Plan. § 205-55

**§ 205-55. Permitted uses. [Amended 5-14-2013 by L.L. No. 2-2013]**

A. Uses and structures permitted in the PUD District are as follows:

- (1) Principal and special permit uses and structures including farm-related activities and other activities as permitted in the RLS Lake Shore Residential District, R-2 Single- and Two-Family Residential District, B Business District, GI General Industrial District and I Industrial District or similar uses as determined by the Planning Board and related accessory uses.
- (2) Permitted uses shall provide a mixture of activities, open space, services and infrastructure to provide a multiuse development designed as a cohesive development and planned as a consolidated entity. The development may contain a mixture of business/industrial type uses and residential uses, or can contain just a mixture of business/industrial type uses. It is not the intent of the Somerset PUD zoning to only create a mixture of business and residential uses. Approved concept and development plans are required for the entire area.
- (3) Accessory uses and structures as permitted in the RLS, R-2, B, GI and I Districts.

B. Dimensional and developmental requirements.

- (1) Area. The minimum area designated for establishment of a PUD District shall be 10 acres. The minimum area eligible for addition to any existing PUD District for the expansion of that district shall be two acres, subject to the approval of the Planning Board for infrastructure and coordination of area development.
- (2) Lot size and yard requirements: If creating lots within the proposed PUD, the minimum lot designated for any eligible use shall generally be as required for the district in which it is allowable (RLS, R-2, B, GI or I Districts). However, clustering and innovative grouping of structures for site design and protection of open space or natural features is encouraged and eligible for approval through the PUD rezoning process rather than through strict adherence to the lot setback, width and yard requirements (no variances would be needed by the Zoning Board of Appeals).
- (3) Height. The maximum height of any structure shall be set by the approved plan.
- (4) Landscape and open space. There shall be a minimum of 25% open space for the entire development, which shall be exclusive of stormwater management areas, roadways, driveways, buildings, paved surfaces of parking areas, and utility facilities. Such areas may be left in a natural state or landscaped for aesthetics or functional use. Landscaped and open space areas shall be designed to coordinate development uses, buffer dissimilar uses, protect natural and environmental features, separate buildings, prevent erosion and accommodate drainage, ensure proper light and ventilation around buildings and/or link development elements.
- (5) Public facilities. There shall be the provision of adequate public facilities to accommodate the proposed development, including sanitary sewerage, potable water and roadways sufficient in size and design in accordance with local and state standards. Appropriate sites suitable for fire protection shall be identified and offered for dedication to the Town.
- (6) Streets. All streets, rights-of-way, entrances and circulation drives shall conform to the Town of Somerset Highway Construction Standards (Chapter 114) and as regulated by the New York Department of Transportation for state highways and their entry, Niagara County Department of Public Works for county highways and their entry and the Somerset Highway Department for Town roads and their entry.
- (7) Parking. Minimum parking for each use shall be as required in Article XIV for that individual activity.

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Multiuse parking facilities are encouraged, and the total required spaces shall be reduced up to 15% for those required for the separate uses due to the shared nature of the multiuse plan. Parking spaces shall be a minimum of nine feet by 18 feet with a twenty-foot aisle for circulation. There shall be at least 25% of each parking area reserved for open space and properly landscaped to interrupt the continuity of paved surface [which shall be countable as open space under the requirements listed in Subsection B(4) above]. All parking lots shall be paved with asphalt or an equivalent permanent surface, curbed and properly drained.

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- (8) Use limitation. The following uses shall be prohibited in the PUD District:
- (a) Uses that produce earth jarring, vibration or noise beyond the structure within which the use is contained.
  - (b) The storage, sale, distribution or use of hazardous materials or their by-products; or the storage of any material which would unreasonably increase the risk of fire hazard to adjoining buildings.
  - (c) Any use or process which would cause the emission of noxious odors or gases beyond the building, constituting a nuisance to adjacent structures or potentially injurious to nearby occupants or property.
  - (d) Activities which produce smoke, fly ash, dust, dirt, fumes or stack emissions that exceed state air quality regulations.
  - (e) Fugitive dust. There shall not be discharged locally from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that results in an unsightly condition or could result in damage to the public health, animals or vegetation or that exceeds the approved regulatory standards of state or federal permitting agencies.
  - (f) Outdoor storage of junk, refuse, trash, secondhand materials or abandoned automobiles.
  - (g) Any industrial wind energy conversion system as defined by § 205-11BB. **[Added 1-29-2018 by L.L. No. 1-2018]**

**§ 205-56. Application and procedures. [Amended 5-14-2013 by L.L. No. 2-2013]**

- A. Preapplication conference. Each proposal for the rezoning of an area to PUD or the potential development of an existing PUD (that does not have an approved plan or has requested a modification to an approved plan) shall be scheduled with the Code Enforcement Officer and other Town officials as appropriate.
- B. Sketch plan.
  - (1) The applicant shall prepare and submit a sketch of the conceptual development of the site and the primary components to be included in the development.
  - (2) The sketch shall be prepared on a survey of the property(ies) involved and of sufficient scale to demonstrate the major natural features, roads, proposed circulation, development elements and the conceptual areas proposed for the project.
  - (3) The sketch shall be submitted to the Code Enforcement Officer as a preliminary indication of intention to develop and the initiation of the development review process.
  - (4) The Code Enforcement Officer, upon receipt of the conceptual development sketch, shall immediately notify the Town Board and Planning Board of such plan in writing. Preliminary consideration of such sketch shall take place at the next meeting of each of the Boards.
  - (5) Based on input by the Planning Board and others, the Town Board will decide whether the PUD rezoning request would be entertained (authorized to move forward in the process). If entertained, the

- § 205-56 applicant can proceed to the next steps. Entertainment of the application by the Town Board does not bind the Town Board to approve the PUD. § 205-56
- C. Development plan. Upon successful consideration of the sketch concept plan, and if the applicant chooses to proceed, a development plan shall be submitted to identify proposed uses on the site in accordance with the following (this development plan, if approved, would represent the zoning of the site):
- (1) One map at a scale of one inch equals 200 feet or greater identifying the property boundaries, existing structures, adjacent uses and road systems, topography at five-foot intervals, existing natural features, drainage features, wetlands, floodplains, and coastal and other environmental features.
- D. Proposed land uses, acreage of each and estimated development densities (dwelling units, approximate square footage of buildings, etc.). In addition to the development plan, the applicant shall submit the following information to assist with the review of the PUD designation:
- (1) Proposed access and circulation and their connection to the highway system; primary pedestrian and bicycle circulation.
  - (2) Existing and proposed water and sewer systems to serve site development, their connections to the municipal system and the adequacy of that system to accommodate proposed flows.
  - (3) Preliminary grading implication for proposed development, stormwater management drainage and erosion and any development impact on floodplains, floodways and wetlands.
  - (4) Preparation of a State Environmental Quality Review Act environmental assessment form (Part 1) for the proposed development and any necessary backup/supplemental information needed.
  - (5) Treatment of major open space areas and primary landscape forms.
  - (6) Sketches of typical structures and development elements to identify the basic concepts and the architectural approach to be used.
  - (7) Any additional information requested by the Planning Board or Town Board.
- E. Planning Board review. A development plan and other information received by the Town Code Enforcement Officer shall be sent to the Town Engineer, Highway Superintendent and such other agencies or Town officials as appropriate for review and recommendation. The Code Enforcement Officer shall forward all documents and comments to the Planning Board for its review. Within 62 days of submission of complete documentation to the Planning Board, the Planning Board shall review and make a finding that the application complies fully with the applicable regulations and standards prescribed by this chapter or, absent compliance, is recommended for approval with modifications, returned to the applicant for amendments to the development plan or disapproved. The Town Board and the applicant shall be notified of the Planning Board's determination and any basis for its findings.
- F. Town Board determination. Upon receiving a recommendation for approval from the Planning Board or upon receipt of any application to the Town Clerk following a Planning Board recommendation other than approval, the Town Board shall schedule a public hearing in accordance with its procedures (rezoning of property) to consider the development plan submitted. The Town Board shall make a determination and decision on the development plan within 62 days of the public hearing (this time period does not begin unless the SEQRA process is completed), considering the regulations and the objectives of the PUD contained therein; the report of the Planning Board in its deliberations; the comments from the public hearing; the SEQRA process and any pertinent documentation; and the protection of the public health, safety and welfare. A decision by the Town Board on the approval or amendment of a PUD or the approval of a development plan shall constitute a zoning determination (a rezoning of the property—local law revision) and include the same rights and obligations of a zoning matter. The development plan shall become an amendment to the zoning classification for the designated properties and thereby modify the Town Zoning Map and the eligible

§ 205-56 uses appropriately. The modification of the development plan, once approved by the Town Board, is through the same process in which it was originally approved. § 205-56

- G. Development plan implementation. Upon approval of a development plan (rezoning to PUD) by the Town Board, specific site development approval may then proceed in accordance with the approved PUD plan, and the standard review requirements of the Somerset Zoning Ordinance. (Applications can be made to the Town for site plan and, if necessary, subdivision approval.) The applicant can proceed with approval and development of the entire PUD, or the applicant can apply for any portion of the development area designated by the approved development plan. These applications shall be submitted consistent with the regulations and procedures of Town site plan review and, if applicable (creating subdivision lots), Chapter 171, Subdivision of Land.
- H. Proposed development shall be generally consistent with the approved PUD plan as determined by the Planning Board.

ARTICLE XVA  
**Site Plan Review**  
**[Added 6-13-2000 by L.L. No. 2-2000]**

**§ 205-57. Purpose and intent. [Amended 5-14-2013 by L.L. No. 2-2013]**

It is the intention of this article to ensure the efficient use of land, consideration of potential impacts on the environment and their avoidance, wherever possible, and the promotion of high standards in the design, layout, landscaping and construction of development, and to ensure development conforms to the provisions of this chapter.

**§ 205-57.1. Applicability; site plan required.**

- A. No development shall occur within the Town of Somerset unless in accordance with the provisions of this article. No building permit, variance, special use permit or certificate of occupancy shall be issued until all requirements of this article have been satisfied and the site plan has been approved by the Planning Board.
- B. A site plan shall be submitted and required for the following:
- (1) Any development in a B, PUD, GI or I District that involves construction or addition requiring a building permit or the addition or improvement of parking spaces, utilities/roads or stormwater management.
  - (2) Churches, private schools, institutional uses and recreational development where parking, landscaping or structures are involved.
- C. Exemptions. **[Added 5-14-2013 by L.L. No. 2-2013]**
- (1) The following actions/projects have been deemed to be minor in nature, and if they are shown to meet the criteria in this section, will not require site plan approval as outlined in this article. The first criterion needed to be met to obtain this exemption from site plan approval is that an approved site plan representing the project site must be on file at the Town (valid site plan or building plan from previous construction on the site). If the project meets this criterion, requires no variances, and, in general, meets one or more of the following criteria, the project may not require site plan approval:
    - (a) Additions to existing structures, new accessory structures or additions to accessory structures, of less than 1,000 square feet or which represent less than 10% of the existing structure as shown on the approved filed site plan, whichever is less.
    - (b) Modifications to the exterior of the building.
    - (c) Interior changes to a building or structure not requiring additional parking (as determined by the Code Enforcement Officer).
  - (2) To obtain this exemption, the following process shall be followed. Upon application for a building permit, the Town's Code Enforcement Officer, utilizing a form created by the Town, will review the application and make a preliminary determination as to whether site plan review is required. This form, and the Code Enforcement Officer's determination, will be reviewed by the Town Engineer (or another person designated by the Town Board) and if both agree that the project does not site plan review, sign the form. This signed form will allow the applicant to proceed with acquiring a building permit. If it is determined that the project does not meet the criteria for an exemption, the project must be processed through the requirements of site plan approval outlined in this article.

**§ 205-57.2. Site plan application.**

- A. Sketch plan.



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- (1) Presubmittal meeting. Prospective applicants for site plan review shall schedule a meeting with the Code Enforcement Officer and other appropriate individual(s) for identification of critical development issues and the appropriate information to accompany the application. Appropriate review agencies and Town officials will be identified for coordination and the SEQRA responsibilities will be provided. The Code Enforcement Officer may waive sketch plan requirements for small projects and institutional projects that would not benefit from sketch plan review.
- (2) Sketch plan.
  - (a) All applicants for site plan review shall submit 10 copies of a sketch plan of the proposed development, an application with supportive information and a State Environmental Quality Review Act environmental assessment form (Part I) to the Code Enforcement Officer for review by the Planning Board. The submission will be reviewed for completeness and scheduled for Planning Board review by the Code Enforcement Officer.
  - (b) The Planning Board will review the overall design concepts, development layout, infrastructure, natural features, neighborhood implications and prospective environmental issues to guide the site plan development. The Planning Board will also initiate the SEQRA process, if appropriate, and advise the applicant on the likely preparation of an environmental impact statement and a SEQRA hearing.
  - (c) The Planning Board will assess the sketch plan and accept; accept with conditions; or reject the submission. Any conditions recommended by the Planning Board must be included in the formal application and shall be reflected in the site plan. Such conditions may include a variance or other zoning approval, which must be authorized prior to the submission of the formal site plan. Any reasons for disapproval of the sketch plan will be provided in writing to the applicant and would offer the minimum response for any reconsideration of a new sketch plan.
- (3) Sketch plan requirements. The sketch plan shall include the following minimum elements for consideration:
  - (a) A boundary survey of the property certified by a licensed surveyor or engineer, including overall dimensions, acreage, owner(s), adjacent owner(s), rights-of-way and easements.
  - (b) A location map of the property identifying the general area and adjacent roads.
  - (c) Identification of major landforms, streams, steep slopes and natural features.
  - (d) Approximate location of existing and proposed structures, parking and loading spaces, site access and circulation, utility connections, buffers for adjacent development, easements and other planned development at a scale of one inch equals 200 feet or greater.
  - (e) Anticipated changes to the site with respect to topography/grading, flood hazard areas, drainage/stormwater management, vegetation/landscape and physical features of the site.
  - (f) The zoning of the site, including any proffers of conditions thereto, and the zoning designation of properties surrounding the site.
  - (g) Any other information as may be required by the Code Enforcement Office or Town Engineer to clarify the proposed development and/or aid the Planning Board in the evaluation of the application.

#### B. Site plan.

- (1) Upon approval or approval with conditions of a sketch plan by the Planning Board, an applicant may prepare a formal site plan in accordance with this section and submit it to the Code Enforcement Officer

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for scheduling of a public hearing and formal consideration. Any conditions requested by the Planning Board in the sketch plan review must be addressed by the site plan and included, where appropriate. The site plan shall be prepared by an architect, landscape architect, engineer or surveyor licensed in New York State and certified with his or her original signature and seal.

- (2) The Code Enforcement Officer shall determine the completeness of the application for consideration by the Planning Board based on the following minimal information:
  - (a) The location of the tract or parcel by means of an inset map at a scale not less than one inch equals 2,000 feet, indicating the names of adjoining roads, streams, bodies of water, railroads, subdivisions and landmarks sufficient to identify the location of the property.
  - (b) A boundary survey of the property, plotted to scale, including the acreage and legal description thereof and the location of survey datum.
  - (c) A certificate bearing the original signature of the surveyor or engineer, setting forth the source of title and the place of record of the last instrument in the chain of title.
  - (d) Title of drawing, including the name and address of the applicant, the developer and person(s) responsible for preparation of the drawing.
  - (e) Existing structures, roads, easements, utility lines, streams and drainageways, floodplain and wetland designations, natural features and landforms.
  - (f) Existing topography at a maximum of two-foot intervals.
  - (g) Zoning and present use of the property and surrounding properties; setback of existing development to the nearest property line.
  - (h) A plan of the proposed site development at a scale of one inch equals 50 feet or larger that includes the following elements:
    - [1] North arrow, scale and date.
    - [2] Proposed streets and easements.
    - [3] Location, type and size of vehicle entrances, including fire lanes. Any project located on a state highway, requiring a new or modified entrance, shall have a plan also depicting all existing driveways and roadways adjacent to and opposite from the proposed development. The plan shall also include driveway details showing driveway dimensions and curb radii, pavement markings and any necessary signage.
    - [4] All off-street parking, loading and stacking, indicating surfacing, size and angle of stalls, width of aisles and the schedule of spaces to serve the proposed development.
    - [5] Location of proposed structures, including number of floors, floor area, height, gross density (building square footage per total acres) and net density (building square footage per net acres, i.e., total acres minus setback and required conservation area), setback and proposed use of each structure.
    - [6] Layout of proposed structures, including number of floors, floor area and height.
    - [7] Proposed grading matched to existing contours and supplemented by finished floor, building and spot elevations, where appropriate.
    - [8] Location, type and height of lighting, fencing, retaining walls and screen planting, where required, and signage.

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- [9] Drainage channels and their direction of flow and stormwater management facilities.
- [10] Proposed utility connections and location, size and grade of sewer and water lines.
- [11] Refuse collection and removal areas and their screening from adjacent streets and properties.
- [12] Water and sanitary sewer profiles identifying the vertical and horizontal alignments, connection details to existing facilities, invert and rim elevations, pump stations and force mains, hydrants, valves, blowoffs, etc.
- [13] Pavement profile and details, including a typical cross-section of parking and drive areas, vertical and horizontal curves (where appropriate), entry and curb radii, handicapped parking designation and handicapped ramps and curbs.
- [14] Grading and drainage plan which incorporates stormwater management for the proposed development, including location, type and size of facilities and the identification of easements to accommodate existing and proposed drainage and management facilities; calculations of stormwater management and drainage shall be prepared by a professional engineer, in accordance with generally accepted engineering practices.
- [15] General landscape plan and planting schedule.
- [16] Summary of the proposed development, including uses, acreage, descriptions of the utility plans, projected traffic impact and circulation, site soils and zoning conditions that apply to the development. Any separate permits (state or federal) required for the development must be obtained prior to finalization of site plan approval. Proposed easement or right-of-way dedications must be provided on a separate plot map for recording.

### § 205-57.3. Site plan review procedures.

- A. Staff evaluation. An application for site plan review must be complete as specified in this section and submitted to the Code Enforcement Officer at least 30 days prior to the Planning Board meeting to provide adequate opportunity for review, distribution of notices and advertisement of necessary meetings. The Code Enforcement Officer is responsible for coordination of the review and may include the Town Engineer, Highway Superintendent and such other agencies in the review process, as appropriate, to advise the Planning Board. The application must be accompanied by the application form, application fees (as established by the Town Board), the plan as specified herein, supportive documentation, SEQRA environmental assessment form (Part 1) and any additional information as may be requested by the Code Enforcement Officer or the Town Engineer for consideration of the site plan. The evaluation shall include compliance with the Zoning Ordinance and this article, consistency with Town maps and plans for development review, compatibility with neighborhood development and conformance with general principles of site planning and engineering. **[Amended 5-14-2013 by L.L. No. 2-2013]**
- B. Environmental review. Any application for site plan review must be accompanied by a completed environmental assessment form (Part 1) identifying the prospective impact resulting from the proposed development and demonstrating the opportunities or mitigation or planned revisions to avoid such impacts. It is assumed that the Planning Board will be lead agency for all applications, subject to SEQRA determination, and be responsible for the conduct of review procedures as required by SEQRA. Any obligations for fulfillment of the SEQRA regulations, including the satisfaction of procedures and the preparation and review of an environmental impact statement, if required, shall be borne by the applicant. A SEQRA (EIS) public hearing, if required, shall be coordinated with the site plan hearing and conducted simultaneously, where practical.
- C. Planning Board Review.

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- (1) An applicant shall provide 10 copies, clearly legible, of the complete application to the Code Enforcement Officer for review by the Planning Board. The Planning Board shall review the site plan and make a determination based on the provisions of this article within 62 days of the public hearing, unless extended by the applicant. (This time period does not begin unless the SEQRA process is completed.) The determination shall be in the form of a written record of approval, approval with conditions or disapproval of the site plan and shall be filed with the Town Clerk.
- (2) The Planning Board may impose special conditions or modifications limiting the use or occupancy of the proposed land and development consistent with the intent and purposes of this chapter. Any conditions so imposed shall become a part of the site plan approval and must be satisfied prior to the issuance of any permits for development. No building or other development permit shall be issued for property that is subject to the site plan review process except in conformity with the approved plan for that site.
- (3) The Planning Board approval or denial and any conditions thereto shall be guided by the following general standards for site development:
  - (a) Conformance with this chapter, adopted Town development plans, an approved development plan that includes the subject site, if one exists, and all other applicable laws.
  - (b) Compatibility of the proposed development with the natural features of the land, the topography and the environmental attributes of the site.
  - (c) The general layout and design of buildings, light, signage, open space and development features consistent with reasonable planning principals.
  - (d) The location and design of vehicular entrances/exits, including emergency access and fire lanes, in relation to the street system, traffic circulation and control within the site; and coordination of access points and circulation with adjoining properties.
  - (e) The provision and protection of pedestrian movement on the site and their coordination with adjoining properties and the street system (handicapped accessibility as required).
  - (f) The location and adequacy of parking, loading and stacking areas, including the provision of opportunities for handicapped parking.
  - (g) Provisions of landscape, screening and buffers to complement development and protect adjacent uses from unsightliness, noise, glare and other nuisances. Such elements shall also be used to promote the availability of green space in nonresidential development and recreation space in residential development to avoid a continuous pavement or building environment.
  - (h) Adequate provision for drainage and stormwater management facilities.
  - (i) Adequacy of sewer and water facilities, fire protection and conformance with Town regulations for the provision and construction of those services.
  - (j) The concurrence of Town agencies, New York State Department of Transportation, New York State Department of Environmental Conservation and other county or state agencies, as appropriate.

#### § 205-57.4. Required improvements.

In furtherance of the purposes of this chapter and to assure the public safety and general welfare, the Planning Board may require the following improvements:

- A. The designation of pedestrian walkways or sidewalks for the safe, convenient movement of patron(s) from

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building to building within the site and to adjoining sites.

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- B. The dedication of rights-of-way and easements for all facilities which may become publicly maintained for full frontage of the lot or parcel prior to the issuance of any certificate of occupancy.
- C. The construction of off-site curbs, gutters, sidewalks and road widening or construction as shown in the Town of Somerset Highway Construction Standards,<sup>57</sup> and any amendments thereto.
- D. The construction of curbs, gutters and drives which will permit vehicular travel on the site, and their connection to and from adjacent parking areas and properties.
- E. Screening, fencing, walls, berms and plantings adequate to screen views in accordance with requirements of this chapter for adjacent subdivisions, contrasting development of less intensity and state highways of limited access. Designated plantings and landscaping shall be in accordance with the approved schedule and annually maintained by the property owner.
- F. Adequate sewer, water and stormwater drainage facilities in accordance with Town regulations, including lines, connections, retention facilities, valves, hydrants and other facilities.

#### § 205-57.5. Performance bond.

Prior to the issuance of any building permit or authorization for development of any portion of the site, there shall be executed by the owner or developer an agreement to construct the required physical improvements located within public rights-of-way and easements together with a bond securing the estimated cost of said improvements and necessary legal and engineering fees as determined by the Code Enforcement Officer. The agreement and bond shall be adequate to provide for the completion of all work covered therein plus an additional 20% for administration and services should execution of the bond be necessary. The reservation of performance offered by the bond may be released in phases by the Code Enforcement Officer as entire components of the work are concluded, inspected and approved as complete.

#### § 205-57.6. Site plan revisions; extension.

- A. No change, revision or modification to any approved plan may be made without the authorization of the Planning Board after due consideration of a written request. Minor changes which do not affect the site facilities or the intent of the site plan may be authorized by the Code Enforcement Officer. Any site plan may be formally revised in the same manner and utilizing the same process as originally approved by the Planning Board, including fees and hearings as required.
- B. Approval of a site plan authorized under this article shall expire within one year from the date of approval unless building permits have been obtained for the proposed development. A single extension of six months may be granted after consideration by the Planning Board prior to the expiration of the site plan.
- C. Any application which has been inactive, incomplete or which has not had a building permit application for a period of six months shall be subject to termination by the Code Enforcement Officer, and the applicant must reapply to be considered further.

#### § 205-57.7. Inspections; certificate of occupancy.

- A. Upon satisfactory completion of all required improvements shown on the approved site plan, an "as-built" plan shall be submitted for the review and approval of the Code Enforcement Officer at least two weeks prior to the occupancy of the building. Such plan shall include the record of all progress and final inspections for the installation of all on-site and off-site improvements as approved by the Code Enforcement Officer or certified by a licensed engineer. The completion of "as-built" plans and the successful inspection reports shall

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57. Editor's Note: See Ch. 114, Highway Construction Standards.

§ 205-57.7 be the basis for releases of any performance bond or portion thereof as it relates to the public improvement(s) and excluding any private improvements that may be part of the project. § 205-57.7

- B. A final occupancy permit may be issued for any appropriately completed building, or portion thereof, located on a part of any approved site plan, provided that:
- (1) "As-built" plans have been submitted and approved for the required improvements on the site plan that relate to and provide services to the requested building for occupancy;
  - (2) All inspections and conditions that are required for the service and support of the building requested for occupancy have been successfully completed and are certified for use by the proposed use(s) being requested;
  - (3) Any off-site improvements related to and necessary to service the requested building for occupancy have been completed and successfully inspected; and
  - (4) Any remaining on-site construction will not adversely affect the occupants or the intended use of the building requested for occupancy.



ARTICLE XVI  
**Miscellaneous Provisions**

**§ 205-58. Garage and yard sales.**

Garage sales may be conducted under the following regulations:

- A. A garage or yard sale shall consist of the public offering of goods for sale of more than five items in number from private property of up to four consecutive days in duration. **[Amended 4-13-1993]**
- B. A garage or yard sale, as defined herein, may be held five times during any calendar year from an occupied residence within the Town of Somerset outside the Village of Barker. The holding of more than five such sales from any property in the Town in any one calendar year shall constitute a business and is not permitted by this regulation. **[Amended 4-13-1993]**
- C. No permit shall be required for conducting up to five yard or garage sales in any one year.
- D. All garage sales shall be conducted during daylight hours.
- E. A sign not greater than two by two feet by two feet may be installed on the property where the sale is being conducted, which sign shall be removed within 24 hours after completion of the sale.
- F. The person/persons conducting the sale shall be responsible for the maintenance of good order and decorum on the premises during all hours of the sale or activity. No such person shall permit any loud or boisterous conduct on said premises or permit vehicles to impede the passage of traffic on any roads or streets in the area of such premises. **[Amended 4-13-1993]**
- G. Persons and sales exempted shall be as follows:
  - (1) Persons selling goods pursuant to an order of process of a court of competent jurisdiction.
  - (2) Persons acting in accordance with their powers and duties as public officials.
  - (3) Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five in number.

**§ 205-59. Political signs.**

- A. Political signs announcing the candidacy of a candidate for public office may not be posted in the Town of Somerset before four weeks prior to Election Day and Primary Day.
- B. All political signs posted in the Town of Somerset must be removed no later than one week after Election Day and Primary Day.

**§ 205-60. Farm ponds and excavations. [Amended 6-10-1980; 9-10-1996 by L.L. No. 2-1996; 8-8-2000 by L.L. No. 3-2000]**

- A. All ponds (farm and other types) and similar excavation work carried out in the Town of Somerset not covered in § 205-46 will require a special use permit to be issued by the Zoning Board of Appeals. Said permits shall run with the property and be unlimited in duration unless the Zoning Board of Appeals, in its discretion, limits the transfer or duration of said permit.
- B. All ponds existing under current special use permits issued by the Planning Board shall forthwith be deemed to be unlimited in duration and run with the property unless the Zoning Board of Appeals, by December 31, 2000, and after a public hearing; issues a decision limiting the transfer or duration.
- C. Boundaries. All ponds and excavations must be a minimum of 200 feet from all street rights-of-way and 100



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feet from property lines and shall not be excavated on a lot of less than 10 acres.

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- D. Owners of property upon which ponds, excavations, quarries and gravel pits exist, excavated or formed by natural causes, shall be responsible for the posting of no-trespassing signs.

ARTICLE XVII  
**Administration and Enforcement**  
**[Amended 10-3-2011 by L.L. No. 4-2011]**

**§ 205-61. Purpose and intent.**

This article provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code), the State Energy Conservation Construction Code (the Energy Code), and other provisions of this chapter in the Town of Somerset. This article is adopted pursuant to § 10 of the Municipal Home Rule Law and Article 18 of the Executive Law and rules and regulations promulgated pursuant thereto. Except as otherwise provided in the Uniform Code, other state law, or other section of this article, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this article.

**§ 205-61.1. Definitions.**

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

**BUILDING PERMIT** — A permit issued pursuant to § 205-62 of this article. The term "building permit" shall also include a building permit which is renewed, amended or extended pursuant to any provision of this article.

**CERTIFICATE OF COMPLIANCE** — A certificate issued pursuant to Subsection B of § 205-63 of this article for a building or structure not intended to be occupied.

**CERTIFICATE OF OCCUPANCY** — A certificate issued pursuant to Subsection B of § 205-63 of this article for a building or structure intended to be occupied.

**CODE ENFORCEMENT OFFICER** — The Code Enforcement Officer appointed pursuant to Subdivision B of § 205-61.2 of this article and shall include the designation "Building Inspector." The terms "Code Enforcement Officer" and "Building Inspector" shall be used interchangeably in the Code of the Town of Somerset.

**COMPLIANCE ORDER** — An order issued by the Code Enforcement Officer pursuant to Subdivision A of § 205-67.3 of this article.

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

**OPERATING PERMIT** — A permit issued pursuant to § 205-65 of this article. The term "operating permit" shall also include an operating permit which is renewed, amended or extended pursuant to any provision of this article.

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

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

**STOP-WORK ORDER** — An order issued pursuant to § 205-62.2 of this article.

**TEMPORARY CERTIFICATE** — A certificate issued pursuant to Subsection D of § 205-63 of this article.

**TOWN** — The Town of Somerset.

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

**§ 205-61.2. Code Enforcement Officer.**

A. In addition to the other powers and duties of the Code Enforcement Officer set forth in this chapter, the Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code and the Energy Code and shall have the following powers and duties:

- (1) To receive, review, and approve or disapprove applications for building permits, certificates of

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occupancy, temporary certificates and operating permits, and the plans, specifications and construction documents submitted with such applications;

- (2) Upon approval of such applications, to issue building permits, certificates of occupancy, temporary certificates and operating permits, and to include in building permits, certificates of occupancy, certificates of compliance, temporary certificates and operating permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;
- (3) To conduct construction inspections, inspections to be made prior to the issuance of certificates of occupancy, certificates of compliance, temporary certificates and operating permits, firesafety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this article;
- (4) To issue stop-work orders;
- (5) To review and investigate complaints;
- (6) To issue orders pursuant to Subsection A of § 205-67.3, Violations; penalties for offenses, of this article;
- (7) To maintain records;
- (8) To collect fees as set by the Town Board of this Town;
- (9) To pursue administrative enforcement actions and proceedings;
- (10) To pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this article, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this article; and
- (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this article.

B. The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this article.

D. One or more inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this article. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

**§ 205-62. Building permits.**

A. Building permits required. Except as otherwise provided in Subsection B of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including,

§ 205-62 but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Code Enforcement Officer. § 205-62

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

- (1) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (2) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely aboveground;
- (3) Installation of fences which are not part of an enclosure surrounding a swimming pool;
- (4) Construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;
- (5) Construction of temporary motion picture, television and theater stage sets and scenery;
- (6) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
- (7) Installation of partitions or movable cases less than five feet nine inches in height;
- (8) Painting, wallpapering, tiling, carpeting, or other similar finish work;
- (9) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
- (10) Replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
- (11) Repairs, provided that such repairs do not involve:
  - (a) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;
  - (b) The removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
  - (c) The enlargement, alteration, replacement or relocation of any building system; or
  - (d) The removal from service of all or part of a fire-protection system for any period of time.

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

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

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- (1) The full name and address of the owner and the authorized agent, if any.
  - (2) A description of the proposed work;
  - (3) The Tax Map number and the street address of the premises where the work is to be performed;
  - (4) The occupancy classification of any affected building or structure;
  - (5) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
  - (6) At least two sets of construction documents (drawings and/or specifications) which:
    - (a) Define the scope of the proposed work;
    - (b) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
    - (c) Indicate with sufficient clarity and detail the nature and extent of the work proposed;
    - (d) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and
    - (e) Where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.
- E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection D(6) of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.
- F. Issuance of building permits. An application for a building permit or an amendment thereto shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.
- I. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.

§ 205-62 Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Zoning Code or any other general or local law, ordinance, rule or regulation, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that:

- (1) All work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code; and
  - (2) All work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- K. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4 of this article must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

**§ 205-62.1. Construction inspections.**

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subdivision B of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
- (1) Work site prior to the issuance of a building permit;
  - (2) Footing and foundation;
  - (3) Preparation for concrete slab;
  - (4) Framing;
  - (5) Building systems, including underground and rough-in;
  - (6) Fire-resistant construction;
  - (7) Fire-resistant penetrations;
  - (8) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
  - (9) Energy Code compliance; and
  - (10) A final inspection after all work authorized by the building permit has been completed.
- C. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid prior to or at the time of each inspection performed pursuant to this section.

**§ 205-62.2. Stop-work orders.**

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:

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- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, the Zoning Code or any other general or local laws, ordinances, rules or regulations without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work;
  - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
  - (3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall:
- (1) Be in writing;
  - (2) Be dated and signed by the Code Enforcement Officer;
  - (3) State the reason or reasons for issuance; and
  - (4) If applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property and, if the owner is not the permit holder, on the permit holder personally or by registered mail or certified mail. Service by registered or certified mail shall be sufficient if addressed to the address set forth in the building permit application. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any new applicant, owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.
- D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-work order.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subdivision A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § 205-67.3, Violations; penalties for offenses, of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

**§ 205-63. Certificates of occupancy; certificates of compliance.**

- A. Certificates required. A certificate of occupancy or a certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy or a certificate of compliance.
- (1) No person shall use or occupy a building or structure, or portion thereof, for which a building permit was required until a certificate of occupancy or certificate of compliance therefore has been issued.

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- B. Issuance of certificates of occupancy or certificates of compliance. The Code Enforcement Officer shall issue a certificate of occupancy or a certificate of compliance if the building, structure or work has been inspected and it has been found that the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code, the Zoning Code and other general and local laws, ordinances, rules and regulations, and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an Inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy or a certificate of compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the certificate of occupancy or a certificate of compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy or a certificate of compliance:
- (1) A written statement of structural observations and/or a final report of special inspections prepared in accordance with the provisions of the Uniform Code and/or Energy Code; and
  - (2) Flood hazard certifications, where applicable.
- C. Contents of certificates of occupancy. A certificate of occupancy or certificate of compliance shall contain the following information:
- (1) The building permit number, if any;
  - (2) The date of issuance of the building permit, if any;
  - (3) The name, address and Tax Map number of the property;
  - (4) If the certificate of occupancy is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy is issued;
  - (5) The use and occupancy classification of the structure;
  - (6) The type of construction of the structure;
  - (7) The assembly occupant load of the structure, if any;
  - (8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
  - (9) Any special conditions imposed in connection with the issuance of the building permit; and
  - (10) The signature of the Code Enforcement Officer issuing the certificate of occupancy and the date of issuance.
- D. Temporary certificate. The Code Enforcement Officer shall be permitted to issue a temporary certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit. However, in no event shall the Code Enforcement Officer issue a temporary certificate unless the Code Enforcement Officer determines that the building or structure, or the portion thereof covered by the temporary certificate, may be occupied safely, that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a temporary certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A temporary certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate. During the specified period of effectiveness of the temporary certificate, the permit holder shall undertake to bring the building or structure into full compliance with all applicable



§ 205-63 provisions of the Uniform Code and the Energy Code.

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- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy or a temporary certificate was issued in error for any reason, including, but not limited to, because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid at the time of submission of an application for a certificate of occupancy or for temporary certificate.

**§ 205-64. Notification regarding fire or explosion.**

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

**§ 205-64.1. Unsafe buildings, equipment and structures.**

Unsafe buildings, structures and equipment in this Town shall be identified and addressed in accordance with the procedures established by Chapter 78 of the Code of the Town of Somerset, as now in effect or as hereafter amended from time to time.

**§ 205-65. Operating permits.**

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

- § 205-65 Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant. § 205-66
- C. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit.
  - D. Multiple activities. In any circumstance in which more than one activity listed in Subsection A of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single operating permit to apply to all such activities.
  - E. Duration of operating permits. Operating permits shall be issued for such period of time, not to exceed one year in the case of any operating permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each operating permit shall be specified in the operating permit. An operating permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
  - F. Revocation or suspension of operating permits. If the Code Enforcement Officer determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code, such operating permit shall be revoked or suspended.
  - G. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid at the time of submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

**§ 205-66. Firesafety and property maintenance inspections.**

- A. Inspections required. Firesafety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an Inspector designated by the Code Enforcement Officer at the following intervals:
  - (1) Firesafety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every 12 months.
  - (2) Firesafety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every 12 months.
  - (3) Firesafety and property maintenance inspections of all multiple dwellings not included in Subsection A(1) or (2), and all nonresidential occupancies not included in Subsection A(1) or (2) shall be performed at least once every 36 months.
- B. Inspections permitted. In addition to the inspections required by Subsection A of this section, a firesafety and/or property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer at any time upon the request of the owner of the property to be inspected or an authorized agent of such owner; receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subsection shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.
- C. Other inspections. Nothing in this section or in any other provision of this article shall supersede, limit or

§ 205-66 § 205-67.1  
impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control (OFPC) and the New York State Fire Administrator under Executive Law § 156-e and Education Law § 807-b.

D. Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, of this article must be paid prior to or at the time each inspection performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

**§ 205-67. Complaints.**

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

- A. Making an initial determination of the basis of the complaint and whether further investigation is merited;
- B. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- C. If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in § 205-67.3, Violations; penalties for offenses, of this article;
- D. If appropriate, issuing a stop-work order;
- E. If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

**§ 205-67.1. Recordkeeping.**

- A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all code enforcement personnel, including records of:
  - (1) All applications received, reviewed and approved or denied;
  - (2) All plans, specifications and construction documents approved;
  - (3) All building permits, certificates of occupancy, certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;
  - (4) All inspections and tests performed;
  - (5) All statements and reports issued;
  - (6) All complaints received;
  - (7) All investigations conducted;
  - (8) All other features and activities specified in or contemplated by § 205-62 through 205-67.5, inclusive, of this article; and
  - (9) All fees charged and collected.
- B. To the extent all such records shall be public records open for public inspection during normal business hours.

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All plans and records pertaining to buildings or structures, or appurtenances thereto shall be retained for at least the minimum time period so required by state law and regulation.

**§ 205-67.2. Program review and reporting.**

- A. The Code Enforcement Officer shall annually submit to the Town Board a written report and summary of all business conducted by the Code Enforcement Officer, including a report and summary of all transactions and activities described in § 205-67.1, Recordkeeping, of this article and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of the Town of Somerset, on a form prescribed by the Secretary of State, a report of the activities of the Town relative to administration and enforcement of the Uniform Code.
- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to it, from the records and related materials the Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of the Town in connection with administration and enforcement of the Uniform Code.

**§ 205-67.3. Violations; penalties for offenses.**

- A. Compliance orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this chapter. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a compliance order. The compliance order shall be in writing; be dated and signed by the Code Enforcement Officer; specify the condition or activity that violates the Uniform Code, the Energy Code, or this chapter; specify the provision or provisions of the Uniform Code, the Energy Code, or this chapter which is/are violated by the specified condition or activity; specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; direct that compliance be achieved within the specified period of time; and state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the compliance order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail or certified mail. Service on the person listed as the owner on the current tax rolls shall be sufficient. The Code Enforcement Officer shall be permitted, but not required, to cause the compliance order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.
- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of this chapter.
- C. Violation; penalties for offenses. Any person who violates any provisions of this chapter, or any term or condition of any building permit, certificate of occupancy, certificate of compliance, special use permit, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter, shall be guilty of a violation punishable by a fine not exceeding \$250, or imprisonment for a period not to exceed 15 days, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. **[Amended 2-24-2016 by L.L. No. 1-2016]**
- D. Injunctive relief. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this chapter, or any term or condition of any building permit, certificate of

- § 205-67.3 occupancy, temporary certificate, stop-work order, operating permit, compliance order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this chapter. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this chapter, or any stop-work order, compliance order or other order obtained under the Uniform Code, the Energy Code or this chapter, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the authorization from the Town Board. § 205-67.5
- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 205-62.2, Stop-work orders, of this article, in any other section of this article, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § 205-62.2, Stop-work orders, of this article, or in any other applicable law. **[Amended 2-24-2016 by L.L. No. 1-2016]**
- F. Authority. The provisions of § 205-67.3C supersede Town Law § 135 and Town Law § 268(1) and are enacted pursuant to the New York State Constitution, Article X, § 2C(1) and Municipal Home Rule Law § 10(1)(ii)(d)(3). **[Amended 2-24-2016 by L.L. No. 1-2016]**

#### **§ 205-67.4. Fees.**

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

#### **§ 205-67.5. Intermunicipal agreements.**

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

ARTICLE XVIII  
Board of Appeals

**§ 205-68. Creation, appointment and organization.**

A Board of Appeals is hereby created. Said Board shall consist of five members appointed by the Town Board, which shall also designate a Chairman. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals. Of the members of the Board first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years and one for the term of five years from and after his appointment. Their successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term.

**§ 205-69. Powers and duties.**

A. The Board of Appeals shall have all the powers and duties prescribed by Chapter 62, §§ 267-a and 267-b, of the Town Law of the State of New York and by this chapter, which powers and duties are more particularly specified as follows: **[Amended 9-10-1996 by L.L. No. 2-1996]**

- (1) Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (2) Variances. To vary or adopt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved but in no other case. No variance in the strict application of this chapter shall be granted by the Board of Appeals unless it finds:
  - (a) That there are special circumstances or conditions, fully described in the findings of the Board, applying to such land or buildings and not applying generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or buildings.
  - (b) That, for reasons fully set forth in the findings of the Board, the granting of the variances is necessary for the reasonable use of the land or building and that the variance, as granted by the Board, is the minimum variance that will accomplish this purpose.
  - (c) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(3) Special permits. To issue special permits for ponds. **[Added 8-8-2000 by L.L. No. 3-2000]**

B. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.

**§ 205-70. Appeal procedure. [Amended 12-10-2002 by L.L. No. 6-2002]**

The Board of Appeals shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board and available from the Code Enforcement Officer. Every appeal or application shall refer to the specific provision of the chapter involved and shall exactly set forth the interpretation that is claimed or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.

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**§ 205-71. Board of Appeals office. [Amended 9-10-1996 by L.L. No. 2-1996]**

The office of the Town Clerk shall be the office of the Board of Appeals, and every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall be filed within five days in said office as required by § 267-a of the Town Law of the State of New York.

**§ 205-72. Notice of Board hearings. [Amended 9-10-1996 by L.L. No. 2-1996]**

The Board shall fix reasonable time for the hearing of appeals and shall give due notice of the time set for the hearing to the applicant and to state and county agencies as may be required by § 267-a of the Town Law. Public notice shall be by the publication of a notice in the official newspaper of the Town, pursuant to law, and shall briefly describe the nature of the appeal and the time and place of the hearing. The Town Clerk will send notice of application for variance to owners of property adjacent to the affected property according to latest assessment roll on file with the Town. Failure of notification shall in no way affect the legality of these proceedings.

ARTICLE XIX  
**Adult Uses and Entertainment**  
**[Added 8-9-2005 by L.L. No. 4-2005]**

**§ 205-73. Purpose.**

- A. It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Town of Somerset, this article is intended to restrict adult uses to nonresidential and nonbusiness areas of the Town. The Town Board hereby finds that the operational characteristics of adult uses increase the detrimental impact on a community when such uses are concentrated. Incidents of crime may increase, property values may diminish and retail trade may be harmed. This article is intended to protect and preserve the quality of neighborhoods, commercial districts and quality of life. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny 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 market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials. All possible options and alternative to enactment of this article have been considered. It has been determined that the type of regulation imposed by this article is the least intrusive method.
- B. The Town Board recognizes that there are secondary impacts associated with adult entertainment establishments that are not appropriate within certain areas of the Town of Somerset. This conclusion was reached through the review of numerous comprehensive secondary impact studies that indicated an increase in crime, prostitution and violence and a decrease in residential property values when adult entertainment establishments are permitted within residential areas.

**§ 205-74. Definitions.**

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

**ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE** — An establishment having more than 15% of gross floor area devoted to or 15% of gross revenues derived from the sale or rental of books, magazines, periodicals and other printed matter, photographs, films, motion pictures, DVDs, compact discs, videos, computer software or other visual representations and viewing materials, for sale, lease, rental or viewing on the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities; or an establishment with a segment or section devoted to the sale, lease or display of such material.

**ADULT ENTERTAINMENT CABARET** — A public or private establishment which may or may not be licensed to serve food and/or alcoholic beverages, which regularly features persons who appear in a state of nudity, topless and/or bottomless dancers, strippers and/or films, motion pictures, videos, slides, compact discs or other photographic reproductions or other visual representations, including computer-generated, which are distinguished or characterized by their emphasis on matter depicting, describing or related to specific sexual activities or specific anatomical areas.

**ADULT ENTERTAINMENT ESTABLISHMENT** — A public or private establishment which regularly presents any of the following entertainments, exhibitions or services: topless and/or bottomless dancers, strippers, topless waitressing, busing or service, topless hair care or massages, service or entertainment where the servers or entertainment are wearing only pasties or G-strings or both, or other adult uses as defined herein.



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**ADULT MASSAGE PARLOR** — A public or private establishment which is used for the provision of the service of stroking, kneading, tapping or vibrating the human body with the hands or other devices, except by those licensed to perform such activities by Title VIII of the New York State Education Law.

**ADULT MOTEL** — A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, compact discs, computer software or other photographic reproductions or other visual representations which depict, describe or relate to specific sexual activities of specific anatomical areas and which has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions; or offers a sleeping room for rent for a period of time of 10 hours or less; or allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is 10 hours or less.

**ADULT MOTION-PICTURE THEATER** — An enclosed building or drive-in theater which is used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified anatomical areas or specified sexual activities for observation by patrons therein.

**ADULT THEATER** — A theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**ADULT USE** — Any establishment or business which disseminates material, any performance or entertainment or any exhibition or the provision of services distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities and/or specified anatomical areas, including but not limited to adult bookstores, adult entertainment cabarets, adult entertainment establishments, adult mini motion-picture theaters, adult motion-picture theaters, adult motels, adult theaters, escort agencies, nude model studios and sexual encounter centers.

**AUDIENCE** — One or more persons who are permitted to view a performance for any valuable consideration, in or from a public place.

**BUSINESS** — Any commercial enterprise, association or arrangement for profit.

**DISSEMINATION** — The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**ESCORT** — A person who, for consideration, agrees or offers to act as a companion, guide or date for any person or who agrees or offers to privately model lingerie or to privately perform a strip tease for another person.

**ESCORT AGENCY** — A person or business who or which furnishes, offers to furnish or advertises to furnish escorts as one of its primary businesses for a fee, tip or other consideration.

**ESTABLISHMENT** — Means and includes any of the following:

- (1) The opening or commencement of any business as a new business;
- (2) The conversion of an existing business, whether or not an adult use to any of the adult use businesses defined in this article;
- (3) The addition of any of the adult use businesses defined in this article to any other existing adult use business; or
- (4) The relocation of any adult use business.

**PERFORMANCE** — Any live or reproduced exhibition, including but not limited to any play, motion-picture film, dance or appearance or other visual representation presented to or performed before an audience.

§ 205-74 PERSON — Any person, firm, partnership, corporation, association or legal representative, acting individually or jointly. § 205-76

PUBLIC PARK OR RECREATION AREA — Public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis courts, athletic courts, pedestrian/bicycle paths, open space, wilderness area or similar public land within the Town which is under the control, operation or management of the Town, a religious institution, a school or other governmental entity.

RELIGIOUS INSTITUTION — Any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities, including education and instruction.

RESIDENTIAL DISTRICT OR USE — A single-family dwelling, two-family dwelling, row dwelling, multifamily dwelling or mobile home park use or district as defined or designated in the Code of the Town of Somerset.

SCHOOL — Any public or private educational facility, including but not limited to child day-care facilities, nursery school, preschool, kindergarten, elementary school, primary school, intermediate school, junior high school, middle school, high school, vocational school, secondary school, continuation school, special education school, junior college, and university. "School" includes the school grounds but does not include the facilities used primarily for another purpose or incidentally as a school.

SIGNAGE — As permitted under § 205-40F(9) of the Code of the Town of Somerset.

SPECIFIED ANATOMICAL AREAS —

- (1) Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
- (2) Human male genital in a discernibly turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES —

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

#### § 205-75. Permitted locations.

Adult entertainment establishments, including but not limited to adult bookstores, adult entertainment cabarets, adult massage parlors and adult motion-picture theaters, shall be permitted only in Industrial [Zoning] Districts, subject to the following restrictions:

- A. No adult entertainment establishment shall be allowed within 1,000 feet of the nearest property line of a residential district, or zoned as a planned unit development (PUD) as defined by Chapter 205 of the Code of the Town of Somerset.
- B. No adult entertainment establishment shall be allowed within 1,000 feet of the nearest property line of any school, library, church, synagogue or other place of religious worship, child day-center, park, playground or playing field.
- C. No adult entertainment establishment shall be located within 750 feet of the nearest property line of another existing adult entertainment establishment.
- D. No more than one adult entertainment use shall be located on any lot.
- E. No adult entertainment establishment shall violate any federal, state, county or local law or regulation.

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**§ 205-76. Prohibitions regarding minors and adult uses.**

A person violates this article if such person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for said business under this article, and knowingly or with reasonable cause to know permits, suffers or allows:

- A. Admittance of a person under 18 years of age to the business premises unless accompanied by a parent or guardian;
- B. A person under 18 years of age to remain at the business premises unless accompanied by a parent or guardian;
- C. A person under 18 years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian.

**§ 205-77. Advertising and lighting.**

- A. It shall be a violation of this article if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this article, and advertises the presentation of any activity prohibited by any applicable federal, state, or local statute, law, rule or regulation.
- B. It shall be a violation of this article if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this article, and displays or otherwise exhibits the materials and/or performances at such adult use in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such adult use.
- C. It is a violation of this article if the owner and/or person in control of any property registered as an adult use allows, causes or permits any portions of the interior premises to be visible from outside the premises.
- D. All off-street parking areas and premises entries of the adult use will be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one footcandle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the business for personal safety of patrons and employees and to reduce the incidents of vandalism and criminal conduct.

**§ 205-78. Hours of operation.**

- A. It shall be a violation of this article if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this article, and allows such business to remain open for business or to permit any employee to engage in any solicited performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 12:00 midnight and 9:00 a.m. local time of any particular day.
- B. It shall be a violation of this article if a person working as an employee of an adult use business, regardless of whether or not a certificate of registration has been issued for such business under this article, engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service or solicits a service between the hours of 12:00 midnight and 9:00 a.m. local time of any particular day.

**§ 205-79. Special use permit issued by Planning Board.**

- A. The owner, manager or agent of a building or premises, any part of which contains an adult entertainment establishment, shall file a site plan with the Planning Board in accordance with § 205-65 and Article XVA showing the following information:

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- (1) The address of the premises.
- (2) The name and address of the owner of the premises.
- (3) The name of the business or the establishment subject to the provisions of this article.
- (4) The names and addresses of the owners, beneficial owners or the major stockholders of the business or the establishment subject to the provisions of this article.
- (5) The date of initiation of the adult entertainment establishment.
- (6) The nature of the adult entertainment.

B. It is a violation of this article for the owner, manager or agent of any property to establish or operate thereon or to permit any person to establish or operate thereon an adult entertainment establishment without having obtained a special use permit from the Planning Board.

**§ 205-80. Penalties for offenses.**

A violation of this article shall be punishable as provided in § 205-61 of this chapter.



ARTICLE XX  
**Special Use Permits**  
[Added 10-3-2011 by L.L. No. 5-2011]

**§ 205-81. Purpose and applicability.**

The Town of Somerset allows a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment, or the character of the Town and its neighborhoods. Many of the uses listed in this chapter are therefore permitted only upon issuance of a special permit by the Planning Board in order to ensure that these uses are appropriate to their surroundings and satisfy performance criteria. Accessory uses or structures used in connection with a special permit use shall be subject to the same special permit approval requirements as the principal structure or use. Special permits are found to be necessary for those uses which, though intended to be allowed when certain criteria are met, are not allowed as a matter of right. It is the intent of this article to determine whether such uses are compatible, desirable, and allowable on a case-by-case basis. Special uses are only allowed where the Planning Board makes findings that they meet the criteria of this article. The burden of establishing that the criteria set forth in this article have been met shall in all cases be on the applicant.

**§ 205-82. Procedure.**

- A. Whenever a use is permitted in a zoning district by special permit only, or in the case of a use described in Article XIII of this chapter, an application for a special use permit may be made to the Code Enforcement Officer, which application shall include a site plan in accordance with Article XVA. The Code Enforcement Officer, after determining if the application is in the proper form and after receiving the appropriate fee therefor, shall transmit copies of the application and supporting documents to the Planning Board members.
- B. Each application for a building permit or special use permit shall be made in triplicate and with an accompanying site plan. The materials to be submitted with each application shall clearly show the conditions on the site at the time of the application, the features of the site which are to be incorporated into the proposed use or building and the appearance and function of the proposed use of building. As a minimum, the application shall include the following information and plans for both before and after conditions:
- (1) The location, use, design and dimensions and height of each use and building.
  - (2) The location and arrangement of vehicular accessways and the location, size and capacity of all areas used for off-street parking, loading and unloading.
  - (3) The location and dimensions of sidewalks, walkways and other areas established for pedestrian use.
  - (4) The design and treatment of open areas, buffer areas and screening devices maintained, including dimensions of all areas devoted to lawns, trees and other landscaping devices.
  - (5) Provision for water supply, sewage disposal and storm drainage.
  - (6) Such other data and plans as the Code Enforcement Officer or the Planning Board may require to properly take action on the application.
- C. The Planning Board shall conduct a public hearing on application referred to it by the Code Enforcement Officer in accordance with Town Law § 274-b, Subdivision 6, within 62 days after receipt of such application by the Code Enforcement Officer. Within 62 days from the date of such public hearing, the Planning Board shall by resolution either approve or disapprove the application so heard. The Planning Board may approve a special use permit application, may approve a special use permit application in part, and disapprove in part, approve a special use permit application with conditions as set forth in its decision, or may deny a special use permit application. In approving an application, the Board may impose any modifications or conditions it deems necessary to carry out the intent of this chapter or to protect the health, safety or general welfare of the public.

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- D. Any application under Article XIII of this chapter shall also include the information and/or documentation required under any applicable section of such article. At any state of consideration, whenever the Planning Board determines that supplemental materials, analyses or studies are necessary to thoroughly evaluate an application, it shall notify the applicant, which shall provide such materials, analyses or studies in a timely fashion.
- E. If an application is for a parcel or parcels on which more than one use requiring a special permit is proposed, the applicant may submit a single application for all such uses. The Planning Board may grant the application with respect to some proposed uses and not others.
- F. The applicant shall reimburse costs actually expended by the Town to obtain consultants chosen by the Planning Board, to evaluate, review, supplement or redo any studies or analysis or material required under this article, other than initial review of the application and materials for processing purposes, provided such fees shall be reasonable, and audited by the Town Board, after preliminary audit by the Planning Board, which shall reject any excessive or unnecessary charges. The applicant shall be entitled to inspect all vouchers upon request. The fees shall be paid upon presentation to the applicant. Further review may be suspended until payment of fees, or, if a project is approved, permits shall not be issued until payment of all such fees.

**§ 205-83. Findings required.**

- A. In granting or denying special permits, the Planning Board shall take into consideration the purposes of this article, the scale of the proposed project, the possible impact of the proposed project on the nearby properties and neighborhoods, architectural aesthetics of the area, and measures that will mitigate potential adverse impacts and preserve or enhance the character of the Town, and the welfare of its citizens, and shall make specific written findings with respect to whether the proposed project:
- (1) Will be in harmony with the purposes of the land use district in which it is located and with the general intent and purposes of this chapter.
  - (2) Will be detrimental to adjacent uses.
  - (3) Will cause undue traffic congestion, unduly impair pedestrian safety, or overload existing roads considering their current width, surfacing, and condition and will have appropriate parking and be accessible to fire, police and other emergency vehicles.
  - (4) Will overload any public water, drainage, or sewer system, or any other municipal facility, or degrade any natural resource or ecosystem.
  - (5) Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads, and its existing and proposed use.
  - (6) Will result in excessive noise, dust, odors, solid waste, or glare, or create any other nuisances, and will satisfy the general land use performance standards of this chapter.
  - (7) Will adversely affect the aesthetics of the premises and adjacent properties and the neighborhoods.
  - (8) Will cause the site to be unduly congested, dangerous, unattractive to visitors, or unfriendly to pedestrians.
- B. The Board shall further find whether the adverse impacts of the proposed special use can be mitigated to such an extent that the special use permit should be granted and, if so, what conditions need be required to achieve such mitigation.

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**§ 205-84. Issuance; denial.**

If an application is approved in whole or in part by the Planning Board, said Board shall issue the special use permit as approved and transmit copies to the applicant, Code Enforcement Officer and Town Clerk. If an application is disapproved by the Planning Board, the reasons for such denial shall be set forth in the Board resolution, and a copy of such resolution shall be transmitted to the applicant, the Code Enforcement Officer and Town Clerk.

**§ 205-85. Amendments.**

The terms and conditions of any special permit may be amended in the same manner as required for the issuance of a special permit, following the criteria and procedures in this chapter. Any enlargement, alteration, or construction of accessory structures not previously approved shall require a special permit amendment.

**§ 205-86. Expiration/annual review; change of use; revocation; and enforcement.**

- A. A special permit shall expire if the special permit use or uses cease for more than 24 consecutive months for any reason, or if the applicant fails to obtain the necessary building permit within 12 months of the granting of a special use permit, or fails to comply with the conditions of the special permit within 12 months of its issuance, or if its time limit, if any, expires without renewal.
- B. Each special use permit shall be reviewed annually by the Planning Board at its March meeting, beginning with the first such meeting that is one year or more after the date of issuance of the permit, to determine if all conditions of such permit are being met.
- C. Upon notice and hearing by the Planning Board, a special permit may be revoked by the Planning Board if the permittee violates the conditions of the special permit and fails to terminate such violation within 30 days of notice or engages in any construction or alteration not authorized by special permit.
- D. Any violation of the conditions of a special permit shall be deemed a violation of this chapter, and shall be subject to enforcement action as provided in § 205-67.3 hereof.

**§ 205-87. District requirements.**

The granting of a special permit shall not supersede the requirements of the underlying district in which the premises is located.

**§ 205-88. Site plan review.**

Any consideration of a special use permit application shall be in addition to, and not in lieu of, site plan review, where required. Where appropriate, the two procedures may be conducted simultaneously, and public hearings may be held simultaneously.

**§ 205-89. Conflict with Town Law.**

This article shall be governed by the provisions of Town Law § 274-b, except that as to any provision of this chapter which is in conflict with said law, this chapter shall supersede said law pursuant to § 10, Subdivision 1(ii)a(1) and 1(ii)d(3), of the Municipal Home Rule Law.

**§ 205-90. Fees.**

Fees for special use permit applications shall be established, from time to time, by the Town Board.





ARTICLE XXI  
**Cluster Residential Developments**  
**[Added 5-14-2013 by L.L. No. 2-2013]**

**§ 205-91. Statement of intent and purpose.**

The purpose of a cluster development shall be to enable and encourage flexibility of design and development of lands in such a manner as to enhance and preserve the natural and scenic qualities of open lands and to thereby maintain the rural quality of the community. This includes the preservation of unique or significant features of the site, including, but not limited to, a vegetative feature (i.e., important woods, etc.), wildlife habitat, endangered species area, unusual land formation, agricultural land, waterfront or other significant features. It may also include an important view or aesthetic/scenic component of the Town, or help to preserve the rural character of the community. In some instances, the cluster development concept may be utilized to create an important recreational or scenic component for the community. It is not the intent of cluster development to create useless open space such as standard lawned areas or vacant field.

**§ 205-92. Statutory authority.**

Pursuant to the provisions of Town Law § 278, the Town Board of the Town of Somerset does hereby authorize the Planning Board of the Town of Somerset to approve a cluster residential development simultaneously with the approval of a plat or plats. Approval of cluster developments shall be subject to the conditions set forth in this article and in Town Law § 278, and the subdivision approval process set forth in the Code of the Town of Somerset, Chapter 171.

**§ 205-93. Preemption.**

In addition to provisions of Town Law § 278, the provisions set forth in this chapter shall be followed in reviewing applications for cluster development. Whenever the provisions of this chapter are more restrictive than, or contain additional requirements to, § 278, the provisions of this chapter shall prevail.

**§ 205-94. Definitions; where allowed; discretion.**

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

CLUSTER RESIDENTIAL DEVELOPMENT — A subdivision plat or plats, approved pursuant to this article, in which the applicable Zoning Ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands where allowed, while maintaining the same density of use within such plat as would otherwise be allowed in the relevant district(s).

B. Cluster residential developments may be allowed in the following districts: A, RLS, R-1, R-2 and PUD.

C. Cluster residential development shall not be a use allowed by right. It may be allowed at the discretion of the Planning Board. The procedure set forth herein and the authorization of cluster development may be followed and allowed at the discretion of the Planning Board if, and in the Planning Board's judgment, its application would benefit the Town, meet the Town's goals, and the objectives and the purposes of this article.

**§ 205-95. Density.**

A cluster residential development shall result in a permitted number of building lots or dwelling units, which shall in no case exceed the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming with the minimum lot size and density requirements of the Zoning Law of the Town of Somerset applicable to the district or districts in which such land is situated and conforming to all

§ 205-95 other applicable requirements. Where the plat falls within two or more contiguous districts, the Planning Board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more such districts. § 205-99

**§ 205-96. Maintenance.**

The Planning Board, as a condition of plat approval, shall establish such conditions on the ownership, use and maintenance of such open lands shown on the plat as it deems necessary to assure and preserve the natural and scenic qualities of such open lands, such as deed restrictions on development, conservation easements, or the like. The filed plat shall clearly indicate that no further development shall be permitted in the open lands.

**§ 205-97. Plat requirements.**

The plat showing such cluster residential development shall depict the areas within which structures may be located with building footprints, the height and spacing of buildings, open spaces, and their landscaping, off-street open and enclosed parking spaces, streets, driveways, and any other features required by the Planning Board.

**§ 205-98. Dual plats required.**

At the time of submission of the sketch or concept plan, or in the event that the developer elects to submit a preliminary plan, at the same time of such submission, two plans shall be submitted, with one layout designating the layout of a standard subdivision in the underlying district and the second layout showing the proposed cluster residential development. Each lot in the standard subdivision layout shall meet the minimal lot size and lot width requirements of the Zoning Law of the Town of Somerset for the district in which the property is located. The standard subdivision layout shall be utilized by the Planning Board to determine the maximum density for the cluster residential development.

- A. The standard subdivision layout required to determine the proper density for a cluster development shall be in all respects consistent with federal, state and Town laws, including, but not limited to, laws regulating:
  - (1) Construction in floodways.
  - (2) Wetland protection.
  - (3) Subdivision regulations.
  - (4) Zoning.
- B. A specification sheet shall be attached showing all calculations used to arrive at density and open space.
- C. Based on this submission and other required information and information requested by the Planning Board, the Planning Board shall determine whether to allow the applicant to proceed with a cluster development or deny its usage.

**§ 205-99. Layout limitations.**

Areas which would not be available for construction on standard layout, in the judgment of the Planning Board, must be preserved as open space on the standard subdivision plan, including but not limited to:

- A. Portions required or set aside for drainage basins or drainage purposes;
- B. All streets and rights-of-way (public or private);
- C. Major utility easements; and
- D. Portions of the developed area which are not available for building because of slopes, soil conditions, or other

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conditions rendering the area not suitable for development.

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**§ 205-100. Additional requirements.**

In addition to the above, cluster residential developments shall meet the following criteria:

- A. Streets, private driveways and rights-of-way providing access to individual residences shall be shown and shall be of sufficient design and construction to permit access by emergency vehicles;
- B. If any dwelling unit is not to have access by way of a street or highway (i.e., by way of private driveway, right-of-way, or easement), designation of the cluster residential development as an open development area by resolution of the Town Board pursuant to Town Law § 280-a shall be required;
- C. No structure in a cluster development shall be closer to a preexisting street or highway than a structure in a standard subdivision;
- D. All structures shall be set back sufficiently from the street or highway to accommodate all necessary public and private utilities and easements; and
- E. Individual lot size shall not be less than 6,000 square feet if public sewer is available or, where public sewer is not available, lot size shall not be less than 20,000 square feet or the minimum size required by the Niagara County Health Department for septic system design approval, whichever is greater.

**§ 205-101. Open space.**

- A. In reviewing proposed cluster developments, the Planning Board shall evaluate subdivision layout with respect to scenic views, natural landscape features, topography of the site, woodlands, wetlands, other features of the site, and other adjacent areas, and shall require development in a fashion or manner which it finds will enhance and preserve such features, including but not limited to:
  - (1) Lands adjacent to or linking with existing parks and publicly accessible open spaces along the waterfront and important creeks within the Town;
  - (2) Lands adjacent to other dedicated open space areas on adjacent parcels;
  - (3) Buffer lands between adjacent active agricultural uses and residential development;
  - (4) Trail networks which meet Town of Somerset open space goals.
- B. In addition, the Planning Board may require additional amenities, enhancement of, changes to configuration of, and location of open space, to enhance the benefits to the residents and/or the Town derived from the cluster residential development. Failure or refusal to include such requirements shall result in disapproval of the proposed plan.

**§ 205-102. Further restrictions; effect.**

- A. The provisions of this article shall not be deemed to authorize a change in the permissible use of such lands as provided elsewhere in the Zoning Law of the Town of Somerset applicable to such lands.
- B. Nothing herein shall supersede any requirements of the subdivision regulations in effect, which may impose additional requirements for approval of the proposed subdivision.
- C. Further subdivision of an approved cluster residential development shall not be allowed. This shall be indicated on the final subdivision plat.

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**§ 205-103. Reference to guidelines.**

Applicants for cluster residential development approval are referred to the Rural Development Guidelines published by the Dutchess County Department of Planning and Development, dated October 1994, copies of which may be obtained from the Town of Somerset Town Clerk.

ARTICLE XXII  
**Solar Energy Systems**  
**[Added 1-26-2022 by L.L. No. 3-2022<sup>58</sup>]**

**§ 205-104. Authority.**

- A. This solar energy local law is adopted pursuant to Sections 261 to 263 of the Town Law for the State of New York, which authorizes the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, "to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore."
- B. The Town Board of the Town of Somerset enacts this solar energy system article under the authority granted by:
- (1) Article IX of the New York State Constitution, § 2(c)(6) and (10).
  - (2) New York Statute of Local Governments, § 10, Subdivisions 1, 6 and 7.
  - (3) New York Municipal Home Rule Law, § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii)a(6), (11), (12) and (14).
  - (4) The supersession authority of New York Municipal Home Rule Law, § 10, Subdivision 1(ii)d(3), specifically as it relates to determining which body shall have power to grant variances under this article, and what variances may be granted to the extent such grant of power is different than under Town Law § 267 and § 274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this article differ from the authority granted to the Town by Article 16 of the Town Law.
  - (5) New York Town Law, Article 16 (Zoning).
  - (6) New York Town Law § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
  - (7) New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests), and Subdivision 23 (General powers).§ 1.
  - (8) New York Real Property Tax Law § 487.
  - (9) Police powers of the Town of Somerset; and the laws of the State of New York.

**§ 205-105. Findings/statement of purpose.**

- A. The Town Board of the Town of Somerset recognizes that solar energy conversion systems are a readily available and renewable energy source, and the Town of Somerset intends to accommodate the use of solar energy conversion systems.
- B. However, the Town Board finds a growing need to properly site all types of solar energy systems within the boundaries of the Town of Somerset to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Somerset, to promote the effective and efficient use of

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**58. Editor's Note: This local law also provided for the repeal of former Art. XXII, Solar Energy Systems, adopted 12-21-2016 by L.L. No. 5-2016, which local law repealed former Art. XXII, Small-Scale Solar Energy Systems, adopted 10-8-2013 by L.L. No. 7-2013.**

§ 205-105 solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Somerset. § 205-105

C. This Solar Energy System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Somerset by creating regulations for the installation and use of solar energy systems, and to be consistent with the Town's Comprehensive Plan, Local Waterfront Revitalization Program (LWRP), and other local and regional plans with the following objectives:

- (1) To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of solar energy systems.
- (2) To ensure that solar energy systems are compatible with land uses in the vicinity of any proposed solar energy system.
- (3) To ensure that the installation of solar energy systems is in conformance with the Town's Comprehensive Plan. The Comprehensive Plan sets basic Town policies for protecting the Town's important drainage features, agricultural lands and environmentally sensitive areas, the large forested areas of the Town, the creeks, the floodplains and the wetlands and watershed. To mitigate the impacts and damage of solar energy systems on environmental resources such as important agricultural lands and important soils, forests, wildlife and other protected resources, and to minimize the adverse impacts on the Town's character and environment and economy, health and safety of the Town's residents, and property values; to minimize negative impacts on the unique resources, including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways and the residential and farming communities of the Town. These features add natural beauty to the Town and provide important habitats for wildlife. Maps of the Town defining the features listed are available in the Town of Somerset Comprehensive Plan and other local and regional documents.
- (4) To protect the health and economic well-being of residents, farms and businesses of the Town in emergency situations.
- (5) Solar energy systems need to be regulated from permitting through construction and ultimately for their removal when no longer utilized.

D. Findings. The Town Board of the Town of Somerset makes the following findings:

- (1) Shortsighted planning has often resulted in creation of problem land uses which adversely affect public health and quality of life; examples are found in Somerset, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Commercial wind energy and solar energy facilities are not exempt from these problems, and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning, been primary protectors of their citizenry. This article will contribute to this effort. The existence of Article 10 of the Public Service Law and Section 94-c of the Executive Law does not negate this responsibility, and in fact recognizes it. This section is not unduly burdensome to the mandates or the process set forth in Article 10 and Section 94-c but is rather compatible with them.
- (2) The findings set forth in this section are cumulative and interactive and shall be liberally interpreted in conjunction, one with another.
  - (a) Commercial/industrial solar energy systems have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.
  - (b) The Town of Somerset is a rural community devoid of large hills and consists of mostly flat terrain.

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- (c) The Town of Somerset is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region.
- (d) The Town of Somerset has very few tall structures and large-scale land uses.
- (e) The Town of Somerset is bordered on the north by Lake Ontario and on the east, south and west by towns which share Somerset's agricultural and rural residential character and are similarly low, flat areas.
- (f) The only other municipality in the Town of Somerset is the Village of Barker, which is a small village bedroom community, and which is also part of the rural, residential community.
- (g) If not properly regulated, installation of large-scale solar energy system facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites and can harm farmland through improper construction methods.
- (h) Large-scale solar energy facilities, when improperly sited, are known to adversely affect the areas around these facilities which may lead to property value impacts and cause economic hardship to property owners.
- (i) The Town of Somerset contains clusters and stretches of homes, including along the Lake Ontario shoreline, in and around the Village of Barker and West Somerset, along Route 18 and Lake Road, as well as disbursed residences which residents have chosen as their homes, often because of a love for rural-pastoral lifestyle.
- (j) Large-scale solar energy system facilities may be significant sources of noise, that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and the health and quality of life of residents.
- (k) Construction of large-scale solar energy system facilities can create traffic problems and can cause damage to local roads and infrastructure during construction.
- (l) Large-scale solar energy system facilities have the potential to cause electromagnetic interference with various types of communications.
- (m) Solar energy system facilities need to be regulated for removal when no longer utilized. Funding and mechanisms for removal when the facilities are no longer operating need to be in place.
- (n) The Town of Somerset Local Waterfront Revitalization Program and Law have been considered and reviewed for compliance; the Town of Somerset Comprehensive Plan has been considered and complied with; and an ad hoc committee was appointed to review the need for this article and to make recommendations; and its conclusions and recommendations have been duly considered and given great weight.
- (o) When considering large-scale construction and maintenance, due weight should be given to the following:
  - [1] The relative distress caused to a community and its residents;
  - [2] The actual necessity for such facility given energy production in the area and region, including clean energy production;
  - [3] Past and present stresses and disruption imposed upon an area due to all types of energy production;
  - [4] Alternatives to facilities, including location in other areas, location in areas where demand is needed, and alternative methods of producing clean energy;



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- [5] Location in areas of highest consumption; and
- [6] The burden on a community and its residents versus reward to the community and its residents, with emphasis upon quality of life.

**§ 205-106. Definitions.**

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

**AGRICULTURAL LAND** — Land used for cultivated crops, hay, or pasture in the last five years.

**BUILDING-INTEGRATED SOLAR ENERGY SYSTEM** — A combination of solar panels and solar energy equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for on-site consumption.

**DWELLING UNIT** — Any residence/house/apartment that may be occupied or vacant.

**ENVIRONMENTALLY SENSITIVE AREA** — An area of the Town described and depicted in the Town of Somerset Comprehensive Plan.

**FARMLAND OF STATEWIDE IMPORTANCE** — Land, designated as "Farmland of Statewide Importance" in the United States Department of Agriculture Natural Resources Conservation Service (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of statewide importance may include tracts of land that have been designated for agriculture by state law.

**GLARE** — The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

**GLINT** — Giving out or reflecting small flashes of light.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM** — A solar energy system that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for on-site or off-site consumption.

**HOST COMMUNITY AGREEMENT** — A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

**NATIVE PERENNIAL VEGETATION** — Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

**NON-PARTICIPATING PROPERTY** — A property that is not affiliated with a solar energy system project in any way.

**PARCEL(S)** — A tract of land owned by an individual or entity leased or otherwise controlled by an applicant upon which a solar energy system is proposed to be constructed.

**PARTICIPATING PROPERTY** — A property that is being leased for solar usage, or a property that has an agreement or lease but is not having solar-related improvements constructed upon it.

**POLLINATOR** — Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

**PRIME FARMLAND** — Land, designated as "Prime Farmland" or "Prime Farmland where drained" in the United States Department of Agriculture Natural Resources Conservation Service (NRCS) Soil Survey Geographic (SSURGO) Database on Web Soagil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

**ROOF-MOUNTED SOLAR ENERGY SYSTEM** — A solar energy system located on the roof of any legally

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permitted building or structure that produces electricity for on-site or off-site consumption.

**SOLAR ACCESS** — Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive solar energy systems on individual properties.

**SOLAR ENERGY EQUIPMENT** — Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

**SOLAR ENERGY SYSTEM** — The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, solar panels and solar energy equipment. A solar energy system in the Town of Somerset is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 solar energy system as follows.

- A. Tier 1 solar energy systems include the following:
  - (1) Roof-mounted solar energy systems.
  - (2) Building-integrated solar energy systems.
- B. Tier 2 solar energy systems include ground-mounted solar energy systems up to 1,500 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months (or calculations provided for new builds).
- C. Tier 3 solar energy systems are systems that do not meet the definition of a Tier 1 or Tier 2 solar energy system and are 20 acres or less in size (defined as the fenced in area that encloses the panels and other related solar energy equipment) and do not meet the requirements of a Tier 4 solar energy system.
- D. Tier 4 solar energy systems meet the definition of a Tier 3 solar energy system and are over 20 acres in size (defined as the fenced in area that encloses the panels and other related solar energy equipment).

**SOLAR PANEL** — A photovoltaic device capable of collecting and converting solar energy into electricity.

**STORAGE BATTERY** — A device that stores energy and makes it available in an electrical form (see Town law on battery storage).<sup>59</sup>

**WETLANDS** — Any areas designated as such by the New York State Department of Environmental Conservation and the United States Army Corps of Engineers.

### § 205-106.1. Applicability.

- A. The requirements of this article shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this article, excluding general maintenance and repair.
- B. Solar energy systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- C. Modifications to an existing solar energy system that increase the solar energy system area by more than 5% of the original area of the solar energy system (exclusive of moving any fencing) shall be subject to this article.
- D. All solar energy systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the New York State Uniform Fire Prevention and Building Code ("Building Code"), the New York State Energy Conservation Code ("Energy Code"), and the Town Code.
- E. This article shall not apply to any lot owned by a municipality.

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<sup>59</sup> Editor's Note: See Ch. 67, Battery Energy Storage Systems.

F. This article shall not apply to any lot located within the Village of Barker.

### § 205-107. General requirements.

- A. A building permit shall be required for installation of all solar energy systems.
- B. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA").
- C. This article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Somerset.

### § 205-108. Permitting requirements for Tier 1 solar energy systems.

All Tier 1 solar energy systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of solar energy system:

- A. Roof-mounted solar energy systems.
  - (1) Roof-mounted solar energy systems shall incorporate, where appropriate, the following design requirements:
    - (a) Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface and the highest edge of the system.
    - (b) Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
    - (c) Height: Tier 1 solar energy systems shall have the following height restrictions for all zoning districts: two feet above roof of highest existing structure but shall not be higher than the allowed height in the underlying zoning district.
    - (d) Solar panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.
  - (2) Glare: All solar panels shall have antireflective coating(s) and proof of such must be provided with the building permit application.
  - (3) Fire safety: All roof-mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code standards.
- B. Building-integrated solar energy systems. Building-integrated solar energy systems shall be shown on the plans submitted for the building permit application for the building containing the system.

### § 205-109. Permitting requirements for Tier 2 solar energy systems.

All Tier 2 solar energy systems are permitted as accessory structures (with Planning Board site plan approval) in the following districts (unless restricted in any zoning overlay district): Agricultural District (A), Business District (B), Planned Unit Development District (PUD), Industrial District (I), Single-Family Residential District (R-1), Single- and Two-Family Residential District (R-2) or Lake Shore Residential District (RLS). The site plan application shall include a site plan and address the following requirements:

- A. Glare, glint and reflection and color. The design, construction, operation and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public spaces in excess of that which already exists. All solar panels shall have antireflective materials and/or coating(s) and proof of such must be provided with the building permit application. Panel and

§ 205-109 equipment color shall be consistent with industry standards; usually dark colors or shades of black, dark blue or grey. § 205-110

- B. Ground screw installations. Ground screw columns designed to properly support solar panels and equipment are required. Concrete pads or platforms shall not be permitted.
- C. Setbacks. Tier 2 solar energy systems shall be set back a minimum of 25 feet from any side or rear property line. All Tier 2 solar energy systems shall only be installed in the side or rear yards in all zoning districts except residential districts. In residential districts, only rear yard installations shall be allowed. Note, the front yard in the RLS District is on the lakeside. In all cases, the solar panels shall be located a minimum of 50 feet from any dwelling unit on an adjoining non-participating property.
- D. Height. The height of Tier 2 solar energy systems shall be no greater than 12 feet in any residential districts. Height shall be less than 15 feet for all remaining districts.
- E. Screening and visibility.
  - (1) All Tier 2 solar energy systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan process).
  - (2) Solar energy equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access. Tier 2 installations on lakeshore properties may create view issues for the neighbors and must be located in a manner that does not impact neighbor views.
- F. Site plan requirements. Site plans for Tier 2 solar energy systems shall be processed in accordance with the Town site plan regulations, and shall include the following minimal information:
  - (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any stormwater or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and
  - (2) Property lot lines and the location and dimensions of all existing structures and uses on site within 200 feet of the solar panels; and
  - (3) Any proposed fencing and/or screening for said project; and
  - (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Somerset Planning Board, Town Attorney, Building Inspector or other Town entity.
  - (5) Tier 2 solar energy systems are not permitted in front yards, or side yards in the R-1, R-2, and RLS Zoning Districts.

**§ 205-110. Permitting requirements for Tier 3 solar energy systems.**

- A. Tier 3 solar energy systems are primarily intended to collect energy for off-site distribution, consumption, and energy markets and by the Town's definition are large solar energy projects that can have a significant impact on the Town. Tier 3 solar energy systems shall not be installed in environmentally sensitive areas, such as floodplains, wetlands and watershed protection areas as designated by the Town, county or other agency, waterfront areas of the Town and wood lots or in areas of important farm soils and tourism-related facilities. Specifically, Tier 3 systems are not allowed in the waterfront protection, agriculture/agri-tourism and environmentally sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file at the Town).

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- (1) All Tier 3 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry Zoning Districts, and Planned Unit Development Districts (as restricted above), and subject to site plan application requirements set forth in this section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Somerset requires the applicant to enter into a solar energy system host community agreement with the Town of Somerset.
- (2) Notwithstanding Article XVA of Chapter 205 of the Town Code of the Town of Somerset, Tier 3 solar energy systems shall be permitted through the process set forth in this article. The requirements set forth in Article XV of Chapter 205 of the Town Code shall not be applicable to Tier 3 solar energy system within a Planned Unit Development District.

B. Applications (process) for the installation of Tier 3 solar energy system shall be:

- (1) Received by the Code Enforcement Officer (CEO) and checked to make sure the appropriate documents and fees have been submitted. The CEO will then forward to the Planning Board, by having it placed on the next available agenda, for them to determine completeness of the application. Applicants shall be advised within 10 business days of the first Planning Board meeting of the completeness of their application or any deficiencies that must be addressed prior to substantive review of the special use permit and site plan.
- (2) Once the application is deemed complete and while the Planning Board is completing their reviews, the project/application shall be referred to the Town Board to begin completion of the host community agreement; this agreement will need to be finalized before the Planning Board acts on the special use permit.
- (3) Subject to a public hearing to hear all comments for and against the application. The Town shall complete all public notice requirements in accordance with the special use requirements of the Town.
- (4) Referred to the Niagara County Planning Department pursuant to General Municipal Law § 239-m if required.
- (5) Acted upon by the Planning Board, once the required steps are completed and the Planning Board has completed the SEQR process.

C. Design and application requirements. Applications for Tier 3 solar projects shall address and include the following:

- (1) Battery storage. The applicant must identify whether or not battery energy storage is part of the solar energy system project. Solar storage batteries, equipment and facilities are only permitted as prescribed in the Town of Somerset Battery Energy Storage Law.<sup>60</sup>
- (2) Drainage. Solar energy systems must comply with New York State stormwater regulations. Applicants must demonstrate that solar systems will not create adverse drainage, runoff or hydrology conditions that could impact adjoining and other non-participating properties. Applicants are required to submit drainage design plans to the Planning Board that may be forwarded to the Town Engineer for review.
- (3) Groundwater and wells. The applicant must identify the groundwater conditions in the area and all public and private wells within 1,000 feet of the site.
- (4) Vehicular paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.
- (5) Signage.

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60. Editor's Note: See Ch. 67, Battery Energy Storage Systems.

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- (a) No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.
- (b) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- (6) Glare/glint. All solar panels shall have antireflective coating(s) and proof of such submitted. All equipment and support structures should not produce glare or glint.
- (7) Lighting. Lighting of the solar energy systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.
- (8) Noise. The project shall be shown to not have adverse or unreasonable noise impacts on surrounding homes or other sensitive receptors. The one-hour average noise generated from the solar energy system's components and associated ancillary equipment shall not exceed a noise level, as measured at the outside wall of any non-participating residence or occupied community building, based on current (45dBA) or future recommendations from World Health Organization. Applicants may submit equipment and component manufacturers' noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the solar energy system to demonstrate compliance with this standard.
- (9) Tree cutting. Removal of existing trees larger than six inches in diameter should be minimized to the extent possible. The standard being no more than 10% of the existing trees larger than six inches in diameter should be removed.

D. Decommissioning.

- (1) Solar energy systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity of the system for a period of at least six months) for a period of one year shall be removed at the owner and/or operator's expense, which at the owner's option may come from any security made with the Town as set forth in this article. A yearly operational report will be required to be submitted to the Town documenting the system's performance.
- (2) A decommissioning plan signed by the owner and/or operator of the solar energy system shall be submitted by the applicant, addressing the following:
  - (a) The cost of removing the solar energy system (no allowance for recycle value).
  - (b) The time required to decommission and remove the solar system and any ancillary structures.
  - (c) The time required to repair any damage caused to the property by the installation and removal of the solar energy system.
  - (d) If on agricultural lands, the plan must include meeting the New York State agriculture and markets standards.
- (3) Security.
  - (a) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site

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subsequent to removal. The amount of the bond or security shall be 125% of the cost of removal of the Tier 3 solar energy system and restoration of the property with an escalator of 2% annually for the life of the solar energy system. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the solar energy system. This security amount shall be reviewed periodically and updated/renewed as necessary (determined at the time of the first security agreement). This "security" shall be in place prior to the start of construction.

- (b) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
  - (c) In the event of default or abandonment of the solar energy system, the system shall be decommissioned as set forth in this article.
- E. Maintenance plan. Applications shall include a maintenance plan for all leased and owned lands (including required setbacks/buffers). Maintenance includes equipment, roadways/access drives, plantings under the panels, landscaped areas, and all other areas of the site.
- F. Safety. Applications shall include a safety plan (including communication with emergency service providers).
- (1) Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
    - (a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe startup following cessation of emergency conditions.
    - (b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
    - (c) Procedures to be followed in response to notifications from the solar energy system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
    - (d) The property must be inspected after a National Weather Service designation of a Severe Weather Watch or Severe Weather Warning to ensure that the property did not sustain damage. Report to be filed with Town Planning Board.
    - (e) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and/or extinguishing the fire.
    - (f) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
    - (g) Procedures for dealing with solar energy system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged solar energy system equipment from the facility. System owner shall provide guaranteed nonemergency and emergency response times of a qualified subject matter expert to the Town Hall and local first responders.
    - (h) Other procedures as determined necessary by the Town to provide for the safety of occupants,

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neighboring properties, and emergency responders, that shall include but not be limited to a smoke plume test for evacuation purposes. All smoke plume test findings shall be made public.

- (i) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures. Training of local first responders shall be done biannually. Training in a classroom setting shall be done annually in the winter and an on-site training session shall be done annually in the spring. This training shall include local and mutual aid first responders.
- (j) The system owner shall notify the local fire department, County Emergency Management office and the Town Hall at least one week prior to any scheduled maintenance or battery swap out.
- (k) In the event of a fire, all contaminated soil must be removed and disposed of properly, in accordance with all applicable laws.

G. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Somerset) on the subject property and surrounding properties.

### § 205-111. Site plan requirements.

Site plan application. For any solar energy system requiring a special use permit, site plan approval shall be required. This required site plan application shall include a site plan and the following information:

- A. A plan illustrating property lines and physical features, including roads, for the project site.
- B. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- C. A one- or three-line electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- D. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- E. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the solar energy system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- F. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the solar energy system.
- G. Zoning district designation for the parcel(s) of land comprising the project site.
- H. Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep (especially the landscaped areas used for screening), such as mowing and trimming (or other methodologies).
- I. Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- J. Engineering documents must be signed and sealed by a New York State (NYS) licensed professional engineer or New York State registered architect.



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- K. A completed SEQR Full Environmental Assessment Form (if over 10 acres or requested by the Planning Board).
- L. A landscape plan in accordance with the special use permit requirements of this article.
- M. An overall project location map (illustrating surrounding properties within 1,000 feet) illustrating zoning (including any overlays), land use, environmental features and structures.
- N. Application fees. All applications for Tier 3 (and Tier 4) solar energy systems shall include the appropriate fees as set by the Somerset Town Board (see § 205-13).

**§ 205-112. Special use permit standards.**

- A. Specific standards.
- (1) Lot size. There are no lot size requirements; the project must be shown to meet all setback and other requirements of this article.
  - (2) Setbacks. All Tier 3 solar energy systems shall be set back a minimum of 200 feet from the fence surrounding the solar panels and equipment to all non-participating property lines and to the edge of any road ROW. This setback shall be a minimum of 50 feet from a participating property line. Additionally, the setback from the fence line shall be a minimum of 400 feet from a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet.
  - (3) Height. The Tier 3 solar energy systems shall be less than or equal to 20 feet. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.
  - (4) Fencing requirements. All solar panels and mechanical equipment, and any related structures, shall be enclosed by a fence (seven feet high), and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access. The type of fencing (including the need for barbed wire) will be determined by the Planning Board and shall fit into the character of the area. Fencing shall be of a good quality and have a typical lifespan of a minimum of 30 years.
  - (5) Screening and visibility.
    - (a) Solar energy systems smaller than five acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
    - (b) Solar energy systems larger than five acres shall be required to:
      - [1] Conduct a visual assessment of the visual impacts of the solar energy system on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.
      - [2] Submit a screening and landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of solar panels and solar energy equipment shall be minimized as reasonably practical, from public roadways and adjacent properties to the extent feasible at the start of activation. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
      - [3] The screening and landscaping plan shall specify the locations, elevations, height, plant

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species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of one evergreen tree, at least six feet high at time of planting, plus two supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the exterior of the fencing required by § 205-112A(4) above. Existing vegetation on the subject property may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species shall be provided by the applicant for the Town to review. This minimum screening requirement will be reduced if adjoining properties are participating properties. Every effort should be made to plant native trees and shrubs to preserve the character of the area and support local wildlife. The contractor in conjunction with a local nursery should recommend shrub screening for Planning Board approval. For all Tier 3 projects, the recommendations of a landscape professional are required. The Planning Board can require that Tier 3 systems involving complex or sensitive visual and/or aesthetic concerns be approved by a New York State registered landscape architect. All Tier 3 solar energy systems landscape plans must be approved by a New York State registered landscape architect.

- [4] For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, any buildings can be made to look like agricultural structures such as barns.

(6) Agricultural resources. For projects located on agricultural lands:

- (a) Any Tier 3 solar energy system shall not be permitted on any property, lot, parcel that contains 50% or more land classified as prime farmland soils or farmland soils of statewide importance. Prime farmland is determined and classified by the United States Department of Agriculture (USDA) and the percentage of prime farmland and farmland of statewide importance is calculated using USDA maps and online data tools, including any amendments made to those maps and data. It is the responsibility of the developer and/or landowner to provide written evaluation, data and mapping to the Planning Board that this 50% requirement is met. The evaluation must contain data and maps that are supported, approved and/or published by the USDA, New York State Agriculture and Markets and/or Niagara County Soil and Water Conservation District (NRCS). The Planning Board may require that this evaluation be reviewed by the Town Engineer, consultant, or local agricultural services agent, where the cost of this review will be the responsibility of the developer or landowner.
- (b) Tier 3 solar energy systems located on farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See New York State Agriculture and Markets Guidelines).
- (c) Tier 3 solar energy system owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged.
- (d) Agricultural restoration requirements. Once the system is decommissioned, the site shall be restored and remediated in accordance with the New York State Agriculture and Markets Guidelines (this will be a condition of the special use permit).

(7) Noise. The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (see earlier section of the law for specific requirements).

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- (8) Hazardous materials. The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium, lead or other hazardous substances such as PFAS substances used in coatings, etc.), MSD sheets for all materials considered hazardous shall be provided to the Barker Fire Department, Code Enforcement Officer and Town Hall.

B. Solar energy system liability insurance:

- (1) The holder of a special use permit for a solar energy system shall agree to secure and maintain for the duration of the permit public liability insurance as follows:
  - (a) Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence (\$10,000,000 aggregate) which shall specifically include the Town of Somerset and its officers, councils, employees, attorneys, agents and consultants as additional named insured.
  - (b) Umbrella coverage: \$10,000,000.
- (2) Insurance company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with at least a Best's rating of "A."
- (3) Insurance policy cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Somerset with at least 30 days' prior written notice in advance of cancellation.
- (4) Insurance policy renewal: Renewal or replacement policies shall be delivered to the Town of Somerset at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- (5) Copies of insurance policy: No more than 15 days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Somerset a copy of each of the policies or certificates representing the insurance in the required amounts.
- (6) Certificate of insurance: A certificate of insurance that states it is for informational purposes only and does not confer sufficient rights upon the Town of Somerset shall not be deemed to comply with this article.
- (7) Indemnification: Any application for a solar energy system within the Town of Somerset shall contain an indemnification provision. The provision shall require the applicant/owner/operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town of Somerset and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said solar energy system, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Somerset or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Somerset.

**§ 205-113. Permitting requirements for Tier 4 solar energy systems.**

- A. All Tier 4 solar energy systems are permitted through the issuance of a special use permit within the Industrial, General Industry, and Planned Unit Development Zoning Districts, and subject to site plan and special use permit requirements as set forth previously in this article and in addition to the Tier 3 requirements set forth above.
- B. Notwithstanding Article XVA of Chapter 205 of the Town Code of the Town of Somerset, Tier 4 solar energy

§ 205-113 systems shall be permitted through the process set forth in this article. The requirements set forth in Article XV of Chapter 205 of the Town Code shall not be applicable to Tier 4 solar energy systems within a Planned Unit Development District. § 205-115

- C. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Somerset shall require all Tier 4 applicants to enter into a solar energy system host community agreement.
- D. These Tier 4 systems are very large systems that have a potential to significantly impact on the Town of Somerset, its citizens, the character, and the economy of the community. Therefore, the Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements, or include revisions to Tier 3 requirements:
  - (1) Any Tier 4 solar energy system shall not be permitted on any agricultural property, lot or parcel that contains 25% or more land classified as prime farmland or farmland of statewide importance.
  - (2) Tier 4 systems shall not be allowed in the waterfront protection, agriculture/agritourism, land of statewide importance and environmentally sensitive areas of the Town as denoted on the Vision Map of the Town of Somerset Comprehensive Plan (on file with the Town Clerk). They also cannot be located within a one-half mile of any other Tier 3 or Tier 4 system.
  - (3) Submittal of an agricultural impact statement to determine the solar system's impact on agriculture in the Town. The Planning Board, on a project-by-project basis, can amend the scope and detail of information required from the applicant; and the applicant should consult with New York State Agriculture and Markets, USDA and the Natural Resources Conservation District (NRCS) representatives in preparation of this statement.
  - (4) Submittal of an economic impact analysis to determine the effect a solar energy project will have on the economy of the Town. This includes those outlined in the agricultural impact statement and other factors related to commerce, employment, housing, transportation, tourism, education, environmental protection, municipal services, revenues and taxation. The Planning Board, on a project-by-project basis, can further amend the scope and detail of information required from the applicant.

**§ 205-114. Ownership changes.**

If the owner or operator of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. The new owner/operator must also submit new "security/bonds" for approval by the Town attorney. A new owner or operator of the solar energy system shall notify the Zoning Enforcement Officer, Town Planning Board, Niagara County Planning Board and Town Attorney of such change in ownership or operator 30 days prior to ownership change.

**§ 205-115. Safety.**

- A. Solar energy systems and solar energy equipment shall be certified under the applicable electrical and/or building codes as required.
- B. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the solar energy system is located in an ambulance district, the local ambulance corps.
- C. If storage batteries are included as part of the solar energy system, they shall meet the requirements of any applicable local law (including the Town of Somerset's Battery Energy Storage Law<sup>61</sup>), fire prevention and

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61. Editor's Note: See Ch. 67, Battery Energy Storage Systems.

§ 205-115 building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations. § 205-116

**§ 205-116. Permit time frame, maintenance, abandonment and fees.**

- A. The special use permit and site plan approval for a solar energy system shall be valid for a period of 18 months, provided that construction has commenced. In the event construction is not completed in accordance with the final site plan as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for a one-time extension of six months. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.
- B. Inspections. Upon reasonable notice, the Town of Somerset Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or, at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- C. Construction inspections.
  - (1) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection C(2) of this section is ready for inspection.
  - (2) Elements of work to be inspected. The following minimal elements of the construction process shall be inspected, where applicable:
    - (a) Work site prior to the issuance of a building permit;
    - (b) Footing and foundation;
    - (c) Preparation for concrete slab;
    - (d) Framing;
    - (e) Building systems, including underground and rough-in;
    - (f) Fire-resistant construction;
    - (g) Fire-resistant penetrations;
    - (h) Solid-fuel-burning heating appliances, chimneys, flues or gas vents; and
    - (i) Energy Code compliance.
  - (3) Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector and Town Engineer.
  - (4) A final inspection by the fire marshal must be completed prior to activation.
  - (5) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all

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

- (6) Fee. The fee specified in or determined in accordance with the provisions set forth in § 205-67.4, Fees, required by this article must be paid prior to or at the time of each inspection performed pursuant to this section.
- D. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- E. Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
  - (1) Annual report. The owner and/or operator of a large-scale solar energy system must submit to the Town's Code Enforcement Officer a yearly report, due no later than February 15, which is certified as accurate and complete under penalty of perjury and contains the following information:
    - (a) The rated capacity of the system;
    - (b) The amount of electricity generated by the system in the most recent twelve-month period;
    - (c) The amount of electricity transmitted to the power grid in the most recent twelve-month period;
    - (d) Identifying any change of ownership of the large-scale solar energy system or the owner of the land upon which it is sited;
    - (e) Identifying any change in the party responsible for decommissioning and removal of the system upon its abandonment; and
    - (f) Evidence that the surety required for decommissioning remains in effect and is irrevocable for at least the next two years.
    - (g) Annual testing of groundwater and wells and a report of the findings provided to the Town.
- F. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Somerset Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel. All materials to be removed shall be disposed of in a proper manner and in accordance with Niagara County law, preferably recycled.
- G. Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Somerset Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing by certified mail his written determination, and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar

§ 205-116 energy system shall automatically expire. Removal of the system must be in accordance with the approved decommissioning plan. § 205-118

- H. If the owner and/or operator fails to comply with decommissioning upon any abandonment as outlined previously, the Town may, at its discretion, utilize the bond and/or security for the removal of the solar energy system and restoration of the site in accordance with the decommissioning plan.
- I. Application and annual fees. Application and annual fees shall be set by the Town Board and include the following:
- (1) Tier 3 and 4 solar energy systems. An applicant shall pay an initial application fee upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the owner shall pay an annual fee to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.
  - (2) Site plan application for a ground-mounted solar energy system. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
  - (3) The applicant shall pay the costs of the Town's engineers and attorneys for time spent reviewing and analyzing the application.
  - (4) The Town of Somerset reserves the right to, by local law, provide that no exemption pursuant to the provision of New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.
- J. The Town of Somerset requires that the applicant complete all the requirements of the Town Infrastructure Preservation Law.<sup>62</sup> Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- K. Upon cessation of electricity generation of a solar energy system on a continuous basis for 12 months, the Town may notify and instruct the owner and/operator of the solar energy system to implement the decommissioning plan.

**§ 205-117. Enforcement.**

- A. If the applicant violates any of the conditions of its special permit or site plan approval, or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Somerset Planning Board holds a hearing on same.
- B. Any violation of this Solar Energy Law shall also be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

**§ 205-118. Severability.**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

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62. Editor's Note: See Ch. 118, Infrastructure Preservation Law.

**Disposition List**  
**Chapter DL**  
**DISPOSITION LIST**





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**The following is a chronological listing of legislation of the Town of Somerset adopted since the 1996 publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Town Clerk. The last legislation reviewed for the original publication of the 1996 Code was adopted 3-12-1996.**

**§ DL-1. Disposition of legislation.**

<b>Enactment</b>	<b>Adoption Date</b>	<b>Subject</b>	<b>Disposition</b>
L.L. No. 2-1996	9-10-1996	Adoption of Code	Ch. 1, Art. I
	12-10-1996	Cemetery fees amendment	Repealed by L.L. No. 3-2013
L.L. No. 1-1997	1-14-1997	Unsafe buildings amendment	Ch. 78
L.L. No. 2-1997	2-11-1997	Zoning amendment	Ch. 205
L.L. No. 3-1997	3-11-1997	Excavations amendment	Ch. 96
L.L. No. 4-1997	8-22-1997	Terms of office: Highway Superintendent	Ch. 56, Art. I
L.L. No. 5-1997	8-22-1997	Terms of office: Town Clerk	Ch. 56, Art. II
L.L. No. 1-1998	1-13-1998	Alternative veterans tax exemption	Ch. 177, Art. V
L.L. No. 2-1998	1-13-1998	Cemeteries amendment; mobile/ manufactured homes amendment; zoning amendment	Ch. 82 (repealed by L.L. No. 3-2013); Chs. 125; 205
L.L. No. 3-1998	9-8-1998	Zoning amendment	Ch. 205
L.L. No. 4-1998	12-8-1998	Highway construction standards	Ch. 114
L.L. No. 1-1999	2-9-1999	Zoning amendment	Ch. 205
L.L. No. 1-2000	4-11-2000	Alternate members: Planning Board and Zoning Board of Appeals	Repealed by L.L. No. 3-2012
L.L. No. 2-2000	6-13-2000	Excavations amendment; zoning amendment	Chs. 96; 205
L.L. No. 3-2000	8-8-2000	Manufactured/ mobile homes amendment; zoning amendment	Chs. 125; 205
L.L. No. 1-2002	3-12-2002	Senior citizens tax exemption amendment	Ch. 177, Art. I
L.L. No. 2-2002	4-9-2002	Vehicles and traffic amendment	Ch. 191
L.L. No. 3-2002	4-9-2002	Zoning amendment	Ch. 205
L.L. No. 4-2002	6-11-2002	Cemeteries amendment	Repealed by L.L. No. 3-2013
L.L. No. 5-2002	6-11-2002	Mobile/ manufactured homes amendment	Ch. 125
L.L. No. 6-2002	12-10-2002	Zoning amendment	Ch. 205
L.L. No. 1-2003	1-14-2003	Zoning amendment	Ch. 205

§ DL-1 Enactment	Adoption Date	Subject	Disposition
L.L. No. 2-2003	3-11-2003	Water amendment	Ch. 195
L.L. No. 1-2004	3-9-2004	Animals: adoption of dogs	Ch. 65, Art. III
L.L. No. 2-2004	4-13-2004	Senior citizens tax exemption amendment	Ch. 177, Art. I
Res. 72-04	5-11-2004	Subdivision of land amendment	Ch. 171
L.L. No. 1-2005	2-8-2005	Waterfront consistency	Ch. 197
L.L. No. 2-2005	4-12-2005	Right to farm	Ch. 98, Art. I
L.L. No. 3-2005	7-12-2005	Recreational vehicles and camping units	Ch. 80, Art. II
L.L. No. 4-2005	8-9-2005	Zoning amendment	Ch. 205
L.L. No. 5-2005	8-9-2005	Cemeteries amendment	Repealed by L.L. No. 3-2013
L.L. No. 1-2006	7-11-2006	Zoning amendment	Ch. 205
L.L. No. 2-2006	7-11-2006	Zoning amendment	Ch. 205
L.L. No. 3-2006	8-8-2006	Property maintenance: brush grass and weeds	Ch. 142, Art. I
L.L. No. 4-2006	8-8-2006	Sex offenders	Ch. 154
L.L. No. 5-2006	10-10-2006	Zoning amendment	Ch. 205
L.L. No. 6-2006	12-12-2006	Zoning amendment	Ch. 205
L.L. No. 1-2007	7-10-2007	Records amendment; water amendment	Chs. 145; 195
L.L. No. 1-2008	7-8-2008	Outdoor heating devices	Ch. 136
L.L. No. 2-2008	11-5-2008	Zoning Map amendment	NCM
L.L. No. 1-2009	4-14-2009	Animals: dog control	Ch. 65, Art. I
L.L. No. 1-2010	5-11-2010	Sewer rules and regulations amendment	Ch. 152, Part 2
L.L. No. 2-2010	7-13-2010	Flood damage prevention	Repealed by L.L. No. 1-2021
L.L. No. 3-2010	7-13-2010	Subdivision of land	Ch. 171
L.L. No. 4-2010	10-19-2010	Zoning Map amendment	NCM
L.L. No. 5-2010	12-14-2010	Dog control amendment	Ch. 65, Art. I
L.L. No. 1-2011			Repealed
L.L. No. 2-2011			Repealed
L.L. No. 3-2011	9-13-2011	Noise	Ch. 131
L.L. No. 4-2011	10-3-2011	Zoning amendment	Ch. 205
L.L. No. 5-2011	10-3-2011	Zoning amendment	Ch. 205
L.L. No. 6-2011	10-11-2011	Sewers: connection, use, discharge and hauling amendment	Ch. 152, Part 1

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<b>Enactment</b>	<b>Adoption Date</b>	<b>Subject</b>	<b>Disposition</b>
L.L. No. 7-2011	11-7-2011	Zoning amendment	Ch. 205
L.L. No. 1-2012	2-8-2012	Police Department: powers and duties	Ch. 45, Art. I
L.L. No. 2-2012	11-13-2012	Planning Board: membership and terms	Ch. 44, Art. I
L.L. No. 3-2012	11-13-2012	Alternate members: Planning Board and Zoning Board of Appeals repealer	Ch. 3 (reference only)
L.L. No. 1-2013	5-14-2013	Environmental quality review repealer; freshwater wetlands repealer	Ch. 92 (reference only); Ch. 109 (reference only)
L.L. No. 2-2013	5-14-2013	Zoning amendment	Ch. 205
L.L. No. 3-2013	5-14-2013	Cemeteries	Repealed by L.L. No. 4-2018
L.L. No. 4-2013	7-9-2013	Senior citizens tax exemption amendment	Ch. 177, Art. I
L.L. No. 5-2013	9-17-2013	Zoning amendment	Ch. 205
L.L. No. 6-2013	10-8-2013	Zoning Map amendment	NCM
L.L. No. 7-2013	10-8-2013	Zoning amendment	Ch. 205
L.L. No. 1-2014	1-8-2014	Assessments: grievance day	Ch. 5, Art. I
L.L. No. 2-2014	7-9-2014	Peddling and soliciting	Ch. 139
L.L. No. 1-2015	5-13-2015	Zoning amendment	Ch. 205
L.L. No. 1-2016	2-24-2016	Zoning amendment	Ch. 205
L.L. No. 2-2016	2-24-2016	Infrastructure preservation	Ch. 118
L.L. No. 3-2016	2-24-2016	Zoning amendment	Ch. 205
L.L. No. 4-2016	6-8-2016	Energy system tax exemptions	Ch. 177, Art. VI
L.L. No. 5-2016	12-21-2016	Zoning amendment	Ch. 205
L.L. No. 1-2017	11-8-2017	Tax levy limit override 2018	NCM
L.L. No. 1-2018	1-29-2018	Zoning Amendment	Ch. 205
L.L. No. 2-2018	1-29-2018	Zoning Amendment	Ch. 205
L.L. No. 3-2018	1-29-2018	Zoning Amendment	Ch. 205
L.L. No. 4-2018	3-14-2018	Cemeteries	Ch. 82

<b>Enactment</b>	<b>Adoption Date</b>	<b>Subject</b>	<b>Disposition</b>	<b>Supp. No.</b>
L.L. No. 1-2020	11-6-2019	Water Amendment	Ch. 195	5
L.L. No. 1-2021	3-24-2021	Flood Damage Prevention	Ch. 104	6
L.L. No. 2-2021	3-24-2021	Moratorium on Solar Energy System Installations	NCM	6
L.L. No. 3-2021	6-9-2021	Moratorium on Battery Energy Storage Systems	NCM	6
L.L. No. 4-2021	7-27-2021	Zoning Map Amendment	NCM	6

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<b>Enactment</b>	<b>Adoption Date</b>	<b>Subject</b>	<b>Disposition</b>	<b>Supp. No.</b>
L.L. No. 5-2021	11-3-2021	Moratorium on Utility-Scale Solar Energy System Installations	NCM	6
L.L. No. 1-2022	12-8-2021	Cannabis: Retail Dispensaries and On-Site Consumption Establishments	Ch. 81, Art. I	6
L.L. No. 2-2022	1-5-2022	Battery Energy Storage Systems	Ch. 67	6
L.L. No. 3-2022	1-26-2022	Zoning Amendment	Ch. 205	6