


Appendix 24-1

Town of Burke Zoning Law



TOWN OF BURKE ZONING LAW

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~
~~City~~ of Burke
Town
~~Village~~

Local Law No. 1 of the year 19 91...

A local law Town of Burke Zoning Law
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of Burke as follows:
Town
~~Village~~

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PREAMBLE

DECLARATION OF POLICY AND OBJECTIVES OF THE TOWN OF BURKE ZONING COMMISSION

The Town of Burke Zoning Commission, having been duly appointed by the Town Board of said Town, do herein declare the following to be the policy and objectives of said zoning commission in their task of preparing a zoning plan for the Town.

1. To consider all land within the unincorporated portion of the Town of Burke for inclusion into a plan for the orderly development and future growth of the Town of Burke.
2. To provide broad consideration in plan formulation to public health, safety, and welfare.
3. To attain such objectives and establish such policies as required in a fair unbiased and impartial manner.
4. To promote the creation and retention of employment opportunities.
5. To encourage agricultural development and activities, and conservation practices and uses throughout the community.
6. To assure privacy for residences and to encourage the appropriate use of land within the town in order to conserve and enhance the value of property.
7. To protect the community against unsightly, obtrusive and noisome land uses and activities.
8. To protect the community's critical or sensitive areas by restraining incompatible development.
9. To provide housing opportunity for all persons, including the elderly and persons of low and moderate income.
10. To maintain and enhance the tranquil character and natural beauty of the Town of Burke.

GENERAL PROVISIONS

ARTICLE 1: GENERAL PROVISIONS

Section 1.1 Title

This law shall be known as the "Town of Burke Zoning Law"

Section 1.2 Purposes Of The Zoning Law

The purposes of this Law are to provide for orderly growth in accordance with a comprehensive plan, and to promote the health, safety, and general welfare of existing and future residents of the Town of Burke.

Section 1.3 Applicability

The provisions of this law shall apply to any of the following:

- A. Construction of a new building or structure over 100 square feet in ground area.
- B. Change in the use of a building or land.
- C. Addition to a building or structure.
- D. Certain expansions of the area used in the conduct of a business or other non-residential use (See Section 6.5)
- E. Continuing operation of a previously existing junkyard.

Section 1.4 Development Begun Prior To This Zoning Law

The development of property which started prior to the effective date of this local law, and which complied with all applicable laws and permits in effect at the time it was begun, may be completed provided that such completion takes place no later than one (1) year from the effective date of this local law. If not completed within one year, such development shall comply with the provisions of this local law.

Section 1.5 Conflict With Other Laws

Whenever the requirements of this Local Law are at variance with the requirements of any lawfully adopted rules, regulations or ordinances, the most restrictive or those imposing the higher standards shall govern.

Section 1.6 Fees

Permit fees shall be collected and paid according to the fee structure in effect at the time of application. The fee schedule shall be established by the Town Board pursuant to a Resolution and shall include fees for permits, certificates of occupancy, and variances. The fee schedule is available at the Town Clerk's office.

Section 1.7 Violations And Penalties

Any person, firm or corporation who violates, disobeys, neglects or refuses to comply with any provision of this Local Law, shall be guilty of an offense, and upon conviction thereof shall be subject to a fine of not more than \$250.00 or imprisonment for a period not more than six (6) months or both. Each week a violation is continued shall be deemed a separate offense.

Section 1.8 Actions For Injunction

The Town may institute an action to restrain by injunction any violation of this law or any failure to comply with any of the provisions of this Law.

Section 1.9 Removal Of Violations

Any building or structure erected, or any use conducted without a zoning permit or certificate of conformity, where required, or not in conformity with the provisions of this law may be removed, closed or halted at once by the Zoning Enforcement Officer with issuance of a stop order, with the assistance, if deemed necessary, of any appropriate Town Officer or employee.

ARTICLE 2: Definitions

Accessory Structure. A detached building or structure which is of secondary importance to the principal structure of the parcel and which is not used for human occupancy.

Agricultural Structure. Barns, storage buildings, equipment sheds, and other structures customarily used for agricultural purposes.

Agriculture. The raising of crops, animals or animal products, limited forestry, the selling of products grown on premises, and any other commonly accepted agricultural operations. Incidental mechanical processing and sale of products grown on the premises are included in the definition.

Building. Shelter having a roof supported by columns of walls and intended for the shelter or enclosure of persons, animals, or property.

Building, Principal. A building in which is conducted the principal use of the lot on which it is located.

Campground. Any area of land or water on which are located two or more cabins, tents, shelters, or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes.

Certificate of Occupancy. A written certificate indicating that following examination the building, dwelling unit, mobile home park, or travel trailer park and the lot or site upon which the same is to be placed, is approved as complying with all the provisions of this law.

Commercial Use. Any use involving the sale, rental, or distribution of goods or services, either retail or wholesale.

Conservation. The protection or management of open land in a natural state. The definition may include management practices such as supplementary clearing and replanting, stream channel maintenance, and erosion control.

Dwelling. A building designed as living quarters for one (1) or more families.

Enforcement Officer. An individual designated by the Town Board to represent them in matters pertaining to this Local Law.

Essential Services. Electrical and gas substations, telephone exchanges and centers, sewage and water pump stations, and the like.

Family. One (1) or more persons occupying a dwelling unit and living as a single housekeeping unit.

Home Occupation. A use of which: (1) in no way changes the outside appearance of the dwelling. (2) does not create noise, dust, undesirable odors, glare, electrical interference, fire hazard, safety hazard, or any other hazard or nuisance in excess of that created by a residence. (3) does not require outside display or storage of goods or materials not in keeping with the residential character of the property, and (4) does not generate significant amounts of traffic or on-site parking.

The following shall be considered to be home occupations provided they do not violate any provisions of the previous paragraph; dressmaking, tailoring, and sewing; painting, sculpturing or writing; telephone answering; home crafts including model making, rug weaving, lapidary work, cabinet making, ceramics and similar crafts.

The following are prohibited as home occupations: animal hospitals, dance studios or exercise facilities, mortuaries, private clubs, restaurants, stables or kennels, and motels.

For any proposed home occupation which is not listed specifically in either of the above paragraphs, the Board of Appeals shall make a determination as to whether it shall be considered a home occupation or a commercial use.

Industrial Use. Any use involving the act of storing, preparing for treatment, manufacturing or assembling any article, substance or commodity.

Junk. The outdoor storage or deposit of any of the following:

- (a) Two (2) or more junk vehicles.
- (b) One (1) or more abandoned mobile homes or travel trailers.
- (c) Two (2) or more appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, and televisions.
- (d) Any combination of the above that totals two (2) items.

Junkyard. The outdoor storage or deposit of any of the following:

- (a) Five (5) or more junk vehicles.
- (b) Two (2) or more abandoned mobile homes.
- (c) Five (5) or more junk appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, and televisions.
- (d) Any combination of the above that totals five (5) items.

Junk Vehicle. Any vehicle whether automobile, bus, trailer, truck, tractor, motor home, motorcycle, snowmobile or any other device originally intended for travel on public highways which (a) is unlicensed, wrecked, stored, discarded or dismantled or partly dismantled; which is not intended or is in any condition for legal use upon the public highway, and (b) is in such condition as to cost more to repair and place in operating condition than its reasonable market value at that time before repair. With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more than six (6) months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk vehicle. An auto in the state of restoration or refurbishing (antique/classic) will not be deemed a junk vehicle upon presentation of satisfactory evidence of intent to restore and capability of accomplishment within a prescribed time frame. Special permit required.

Lot. A defined parcel of land considered as a unit, occupied or capable of being occupied by a building or buildings and for accessory buildings and/or uses.

Lot of Record. A lot which is a parcel of land or which is part of a subdivision approved and recorded in the office of the County Clerk.

Lot Width. The horizontal distance between the side lot lines measured at right angles to the depth, measured at a depth equal to the minimum required front yard (building set back).

Mobile Home. Manufactured housing built on a chassis (metal frame) which meets any or all of the following characteristics:

1. It is a manufactured as a relocatable dwelling unit intended for year-around occupancy and for installation on site with or without a basement or permanent foundation;
2. It is designed to be transported, after manufacture, on its own chassis (metal frame) and connected to utilities after placement on a mobile home pad;
3. It is designed to be installed as a complete single-wide or double-wide unit with only incidental unpacking and assembling operations;
4. It is designed and manufactured as the type of unit which would require, after January 15, 1974, a seal provided by the U.S. Department of Housing and Urban Development.
5. It is a motor home, truck camper, camping trailer, travel trailer, or pop-up trailer occupied on an overnight basis for more than six (6) consecutive months.

A mobile home shall be deemed to remain a mobile home, subject to all regulations applying thereto, whether or not wheels, axles, hitch, or other appurtenances of mobility are removed and regardless of the nature of the foundation provided.

This definition shall not be construed to include factory manufactured homes known as "modular homes" bearing an insignia issued by the State Fire Prevention and Building Code Council as required by 9 NYCRR 1212.

Mobile Home Park. Any plot of ground which has been planned or improved for placement of mobile homes for non-transient use and upon which two (2) or more mobile homes, occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodations.

Modular Home. A prefabricated dwelling unit delivered to the site in two (2) or more structural units and permanently assembled.

Multi-Family Dwelling. A building designed or altered for use as a permanent dwelling for three (3) or more families.

Non-Conforming Lot. A tract of land lawfully existing at the time of enactment or amendment of this Local Law which does not conform to the dimensional regulations of this law.

Person. Any individual, corporation, partnership, association, trustee, or other legal non-government entity.

Permit. Written authorization issued by the Enforcement Officer for the establishment of any land use or structure.

Public and Semi-Public Buildings and Grounds. As used in this law, "public and semi-public buildings and grounds" is intended to designate, but is not limited to, the following uses, including accessory buildings and grounds necessary for their use.

- A. Churches, places of worship, parish houses and convents.
- B. Public parks, playgrounds and recreational areas when authorized or operated by a government body.

- C. Nursery schools, elementary schools, high schools, colleges or universities.
- D. Golf courses and country clubs, not including clubs whose activities include the maintenance, storage, takeoffs or landings of aircraft.
- E. Public libraries and museums.
- F. Not-for-profit fire, ambulance and public safety buildings.
- G. Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes, homes for adults, homes for the aged as the same are defined under the Public Health Law or the Social Services Law of the State of New York, provided they are duly licensed by the State of New York.
- H. Not-for-profit membership corporation established for cultural, social, or recreational purposes.
- I. Recreational facilities, either for profit or not-for-profit, such as swimming, tennis, platform tennis, bowling, hockey, ice skating or other indoor or outdoor sports.

Residential. Area reserved for one or multi-family dwellings and associated accessory buildings (i.e., garage, sheds, swimming pool and such).

Road Line. Right-of-way line of a road as dedicated by a deed of record. Where the width of a road is not established, the road line shall be considered to be twenty-five (25) feet from the center line of the road pavement.

Rural/Residential. Commercial enterprises permitted with minimum requirement of thirty (30) foot green space around perimeter of commercial facility, when adjoining to vacant space or residential lot.

Setback. The distance from lot lines to the nearest outside wall of the principal and secondary structures.

Structure. Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Waste Disposal Area. Any area for the disposal of garbage, refuse, sewage sludge, construction debris and other wastes, including sanitary landfills and dumps, and on-site disposal areas directly associated with an industrial use.

ARTICLE 3: ESTABLISHMENT OF ZONES

Section 3.1 Types of Zones

For the purpose of this law, the Town of Burke is hereby divided into the following zones:

- R Residential
- AG Agricultural
- M Mixed use (Residential, Commercial/Industrial and Agricultural)
- R/R Rural/Residential

Section 3.2 Zoning Map

Said districts are bounded as shown on the map entitled "Town of Burke Zoning Districts" (APPENDIX A), which with all explanatory matter is hereby made part of this law.

Section 3.3

Interpretation of Zone Boundaries on Zoning Map

- A. Unless otherwise indicated on the Zoning Map, district boundary lines are intended generally to follow the center lines of roads, the center lines of railroad rights-of-way, the center lines of streams, and existing lot lines.
- B. Distances shown on the Zoning Map are perpendicular distances from road lines.
- C. Where a zone boundary line divides a prior existing lot of record, the zone requirements of the least restricted portion of such lot shall be understood as extending thirty (30) feet into the more restrictive portion.
- D. Questions concerning the precise location of zone boundary lines shall be resolved by the Board of Appeals under their powers of interpretation.

ARTICLE 4

SCHEDULE OF PERMITTED USE

- X Permitted use within the zone
- SP Permitted only after issuance of a special permit by the Board of Appeals
- O Not Permitted

Any use absent from the following list of uses is assumed to be not permitted in any zone.

RESIDENTIAL USES

LAND USE AREAS

	<u>R</u>	<u>R/R</u>	<u>AG</u>	<u>M</u>
Single Family Dwelling	X	X	X	X
Two-Family Dwelling	X	X	X	X
Multi-Family Dwelling	X	X	SP	SP
Mobile Home	X	X	X	X
Mobile Home Park	SP	SP	SP	SP

GENERAL USES

	<u>R</u>	<u>R/R</u>	<u>AG</u>	<u>M</u>
Public and semi-Public Buildings and Grounds	X	X	X	X
Clubs (VFW, Elks, etc.)	X	X	X	X
Essential Services	X	X	X	X
Agricultural Structures & Uses	SP	X	X	X

BUSINESS USES

	<u>R</u>	<u>R/R</u>	<u>AG</u>	<u>M</u>
Home Occupation	X	X	X	X
Campground, Travel Trailer Park	O	O	SP	O
Outdoor Recreation	SP	SP	SP	SP
Indoor Recreation (example: bowling, skating)	SP	SP	O	SP
Motel, Hotel, Cabins	SP	SP	O	SP
Restaurant	SP	Sp	O	X
Neighborhood Convenience Store(+ gas)	SP	SP	SP	SP
Antique Craft, Gift Shop	O	SP	SP	SP
Used Merchandise or Furniture	O	SP	O	SP
Personal Service Business (example: beauty shop, barber)	SP	SP	SP	SP
Nursery, Florist, Greenhouse	O	SP	X	SP
Tavern, Bar, Nightclub	O	SP	SP	SP
Professional or Business Offices	SP	SP	SP	SP
Funeral Homes	SP	SP	SP	SP
Veterinarian Animal Hospital	O	SP	SP	SP
Kennels	O	SP	SP	SP
Gasoline & Auto Service Station	O	SP	O	SP
Motor Vehicle Repair Shop	O	SP	O	SP
Gun, Fish Tackle Shop	O	SP	SP	SP
Retail Store	O	SP	O	SP
Shopping Center	O	SP	O	SP
Trucking	O	SP	SP	SP
Warehousing and Distribution	O	SP	SP	SP
Construction Business	O	SP	SP	SP
Excavation (sand, gravel, heavy equip.)	O	O	SP	SP
Junkyard	O	O	SP	O
Waste Disposal Area	O	O	O	O
Race Track	O	O	O	SP
Slaughterhouse	O	O	SP	SP
Chicken/Pig Farm	O	O	SP	O

INDUSTRIAL USES

Sawmill	O	O	SP	SP
Manufacturing	O	SP	O	SP

ARTICLE 5: DIMENSIONAL REQUIREMENTS

Section 5.1

Except for the provisions found in Article 5.5, the minimum lot area for any use shall be forty thousand (40,000) sq. ft.

Section 5.2

Minimum lot width shall be one hundred fifty (150) feet.

Section 5.3

Minimum setbacks, side and rear for all principal buildings shall be:

- A. One hundred (100) feet on state roadways measured from center line of road.
- B. Seventy-five (75) feet from center line of road on county roadways.
- C. Seventy-five (75) feet from center of the roadway on town roads.
- D. From side lot lines - fifteen (15) feet.
- E. From rear lot lines - fifteen (15) feet, except residential accessory building and garages.
- F. Agricultural structures shall be exempt from the setback provisions.

Section 5.4

Minimum setback for an accessory building shall be fifteen (15) feet on each side and the rear except as herein provided.

Section 5.5 Minimum Lot Area Exception

The minimum lot area for a single family dwelling or a mobile home utilizing either a public or centralized water supply system, or a public or centralized sewage disposal system, shall be thirty thousand (30,000) square feet. For the purposes of this section, a centralized water or sewer system shall mean any such system servicing five (5) or more dwellings and approved by the New York State Department of Health.

Section 5.6 Enlargement of existing structures

Commercial and/or residential buildings, existing on undersized lots at time of enactment of this law, may be enlarged to the minimum side lot lines identified in Section 5.3. Existing setback line shall prevail to the extent that it is compatible with adjacent structures.

Agricultural structures shall be exempted from the above provisions.

ARTICLE 6: EXISTING UNDERSIZED LOTS OF RECORD

Section 6.1 Existing Undersized Lots of Record

Any lot of record existing prior to the adoption of this law shall be exempt from the minimum lot size and minimum lot frontage requirements stated in Article 5 herein if used for residential purposes, provided that:

- A. Such lot does not adjoin any other lot or lots held by the same owner such that the owner might combine two or more lots in order to meet minimum requirements.
- B. Minimum setback requirements and all other remaining requirements of this law are met.

Section 6.2 One Residential Structure Per Lot

For lots used for residential purposes, there shall be only one principal building per lot.

Section 6.3 Fences

This section shall apply to fences constructed of solid material such that it might obstruct one's vision. That portion of such fence which is constructed forward of the front setback requirement of Section 5.3 shall be no higher than 3.5 feet. In any event a fence shall not block the view of a street from the front of a neighboring residence and shall not create a traffic hazard.

Section 6.4 Line of Sight for Traffic Safety

No accessory structure, fence, wall or hedge shall be erected in such manner as to confuse or obstruct the views of any traffic sign or obstruct the visibility for motor vehicles entering or exiting highways.

Section 6.5 Non-Conforming Uses, Lots and Structures

It is the intent of this section to allow non-conforming uses to continue until they are discontinued, but not to encourage their survival.

Lots, structures, and uses of land or structures which lawfully existed at the time these regulations were enacted, and which would be prohibited or restricted by these regulations, may be continued subject to the following conditions:

- A. **Enlargement.** Buildings containing a non-conforming use or buildings on an undersized lot may be enlarged by an amount not to exceed one-third the size of the building without the issuance of a variance by the Zoning Board of Appeals, provided that minimum building set backs and maximum lot coverage requirements are met. If only a portion of a building contains a non-conforming use, then that square footage may be increased by one-third, either by using additional space within the structure or by constructing an addition.

The area of a lot occupied by a non-conforming use, which does not involve a building, such as a non-conforming automobile sales lot, shall not be expanded unless a variance has been issued by the Zoning Board of Appeals.

- B. **Unsafe Structures.** Any structure or portion thereof declared unsafe by proper authorities may be restored to a safe condition.
- C. **Restoration.** If a building is destroyed by fire, then it may be rebuilt or restored to house the specific use that existed at the time of the fire, but it shall not be rebuilt for any other non-conforming use. It may be enlarged by the amount permitted in part A. above.
- D. **Discontinuance.** Whenever a non-conforming use has been discontinued for a period of one year, the use shall not thereafter be re-established and all future uses shall be in conformity with this Local Law.
- E. **Changes.** Once changed to a conforming use, no structure or land so changed shall be permitted to revert to a non-conforming use.

Section 6.6 Mobile Homes on Individual Lots

A. Any mobile home located in the Town of Burke shall:

1. Be at least twelve (12) feet wide.
2. Have a storage shed or accessory building located on the lot to provide necessary storage space in order to compensate for the unit's lack of basement or attic.
3. Be enclosed at the bottom with a skirt or enclosure made of non-transparent building material, such as metal, cement or building board. The appearance of the skirt or enclosure shall be in keeping with the appearance of a residential neighborhood.

Section 6.7 Mobile Home Parks

Parks shall be divided and marked-off into individual mobile home sites.

A. Minimum area for each site shall be:

- (1) 20,000 square feet if individual in-lot water supply and sewage disposal facilities are employed, or
- (2) 7,000 square feet if both water supply and sewage disposal are provided by parkwide systems which have been approved by NYS Department of Health and/or the NYS Department of Environmental Conservation.

B. Minimum setbacks for each mobile home shall be:

- (a) 100 feet from the centerline of any public road.
- (b) 30 feet from the centerline of any internal road.
- (c) 10 feet from all boundaries of the site.

C. Each mobile home site shall have at least 50 feet frontage on an internal road.

D. No mobile home site shall have access directly onto a public road. All driveways shall enter onto internal roads.

E. Each site shall contain at least two (2) spaces for off the road parking. Spaces shall be at least 9 feet by 20 feet in size. Driveways are considered to be parking space.

F. No mobile home site, parking lot, recreation area or storage facility for fuels, supplies or equipment shall be located within thirty (30) feet of the external boundaries of the park.

G. The Zoning Board of Appeals may require that vegetation has to be planted around the edge of the park in order to provide screening from public roads and neighboring properties.

- H. (a) Internal roads shall be privately owned and maintained.
- (b) Internal roads must have a minimum thirty (30) foot right-of-way, sixteen (16) feet of which must be a durable surface.
- (c) Internal roads shall be maintained and plowed such that they are passable by emergency vehicles at all times.
- (d) Entrances to public roads shall be at right angles, and shall be located so as to allow safe line-of-sight distances along the public road.

I. **Recreation Area.** The Board of Appeals Board may require that up to 20 percent of the gross land area of the park be reserved and maintained as a recreation area for residents of the park.

J. **Water Supply and Sewage Disposal**

Systems shall be designed and constructed in compliance with all New York State Health Department and Department of Environmental Conservation requirements.

K. **New York State Uniform Building and Fire Code**

Mobile homes or similar type units used as a domicile, shall be constructed in compliance to New York State Uniform Building and Fire Code.

ARTICLE 7 STANDARDS FOR APPROVAL OF JUNKYARDS

Section 7.1 Standards for Approval of Junkyards

The Zoning Board of Appeals shall not approve a Special Permit for a junkyard, as defined herein, unless the following minimum conditions are met:

- A. Minimum lot size shall be 5 acres.
- B. Minimum setback from any adjoining property line (except that belonging to the owner of the junkyard) and from any stream, lake, wetland or other body of water, shall be 200 feet.
- C. Minimum setback from the center line of any public road shall be 125 feet.
- D. There must be erected and maintained an eight (8) foot high fence adequate to prohibit the entrance of children and others into the area of the activity or business and to contain within such fence the materials dealt with by the operator of the junkyard. All the materials dealt with by the operator of the junkyard shall be kept within such fence at all times. The Board of Appeals may waive the requirement of fencing where topography or other conditions effectively prohibit the entrance of children and others.
- E. Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence shall be of wood or other materials approved by the Board of Appeals sufficient to totally screen the junkyard from view and not present in itself an adverse visual impact upon neighboring properties. As an alternative, the Board of Appeals may permit such screening by evergreen trees or shrubbery.
- F. The junkyard shall not be used as a dump area by the public, and there will be no burning of automobiles or other materials except in connection with the periodic crushing and removal of automobiles or other materials from such yards in compliance with the New York State Outdoor Burning Law. (see 6 NYCRR 215).

Section 7.2 Junk/Junk Vehicle/Prior Existing Junkyards

Existing junkyards, as defined herein, shall comply with the Provisions of Section 7.1 above. Compliance with this law shall be accomplished within 120 days from date of enactment. The Enforcement Officer shall have authority to grant such extension of time as may be necessary based on reasonable cause for not complying within the time prescribed. In no case shall the total time permitted be more than 180 days from date of enactment of this law.

Section 7.3 Waste Disposal

All waste, rubbish, garbage or other excess material generated by residents, non-residents or by any operations within the Town, shall be disposed of in a manner consistent with prevailing law(s). Disposal by incineration is prohibited by force of this Law.

No waste, rubbish, garbage or other excess material shall be trucked, carried or brought into the Town for purposes of disposal unless such action is approved by the Town Board and conforms with laws and regulations established for such disposal.

ARTICLE 8 SPECIAL PERMITS

Section 8.1 Purpose

The intent of this article is to ensure that certain uses are compatible with surrounding properties and community character, do not harm the health or safety of community residents or the environment, and do not place an undue burden upon community facilities and services.

Section 8.2 Applicability

All uses listed in Article 4 as requiring a special permit shall have a special permit approved by the Zoning Board of Appeals before a zoning permit may be issued by the Enforcement Officer.

Section 8.3 The Board of Appeals

Is empowered to approve, approve with modifications and/or conditions, or disapprove special permits.

Section 8.4 Conditional Approval

In situations where it is impossible to approve an application due to failure to obtain endorsements, certifications or required approvals at the proper time, or other circumstances, the Board of Appeals may conditionally approve the application. Such conditions shall be in writing. Upon completion of the conditions to the satisfaction of the Zoning Enforcement Officer, a Zoning Permit shall be issued.

Section 8.5 Special Permit Review Procedure

- A. As soon as practical, but no later than 45 calendar days after the receipt of a complete application, the Board of Appeals shall approve, approve with modification and/or conditions, or disapprove the application, or hold a public hearing on the application. If a public hearing is held the Board of Appeals shall render a decision within 45 days after the hearing. The aforementioned 45 day periods may be extended by mutual consent of the applicant and the Board of Appeals.
- B. In reviewing Special Permits, the Board of Appeals shall apply the standards of Section 8.11.

- C. The Board of Appeals shall make an environmental assessment and acting in accordance with the State Environmental Quality Review Act (SEQR) shall either (1) determine that no further action is necessary to fulfill the requirements of said act, (2) issue a negative declaration, or (3) require that the applicant submit an Environmental Assessment Form (EAF) to the Board of Appeals for its review. If an EAF is required, the Board of Appeals shall review the EAF and may require the submission of an Environmental Impact Statement prior to acting on the application.
- D. Board of Appeals' decisions shall be in writing and may include conditions as described in Section 8.1 herein. Reasons for disapproval shall be stated.
- E. The decision of the Board of Appeals shall be filed with the Town Clerk and a copy thereof provided to the applicant.

Section 8.6 Presubmission Conference

In many situations it is advisable for the Board of Appeals to hold a presubmission conference with the applicant, prior to formal submission of a Site Plan, in order to save time and expense in preparing the application.

If requested by the applicant, a presubmission conference shall be scheduled at the next regular meeting of the Board of Appeals. The Board of Appeals shall review any preliminary site plans for compliance with this law and shall indicate to the applicant what information should be included for a complete application.

Section 8.7 Public Hearing

The Board of Appeals may, at its discretion, hold a public hearing prior to rendering a decision on an application. In determining whether or not to conduct a public hearing the Board of Appeals shall consider (a) the size and complexity of the project and (b) the level of public interest or controversy concerning the application.

Section 8.8 Hearing Notice and Conduct

Any public hearing held pursuant to this local law shall be advertised by a Notice of Public Hearing, to be published once in the official newspaper of the Town at least ten (10) days prior to the date of the hearing.

Any hearing may be recessed by the Board of Appeals in order to obtain additional information or to serve further notice upon other property owners, or to persons it decides may be interested in the application being considered. Upon recessing, the time and date when the hearing is to be resumed shall be announced. No further notice or publication shall be necessary.

Conduct of public hearings shall be within the respective discretion of the Board of Appeals and in conformance with any rules and regulations which may be adopted by the Board. Conduct of hearings shall conform with generally accepted standards and principles for the conduct of administrative hearings.

Section 8.9 Application for Special Permit

All applications for special permit shall consist of the following:

- A. Two copies of the site plan map (one to be retained for Town records, the other to be returned to the applicant), to include as applicable:
 - 1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;

2. North arrow, scale and date;
3. Boundaries of the property plotted to scale;
4. Existing watercourse and bodies of water;
5. Location of any slopes of 5% or greater;
6. Proposed grading and drainage;
7. Location, proposed use and height of all buildings and site improvements including culverts, drains, retaining walls and fences;
8. Location, design and construction materials of all parking and truck loading areas showing points of entry and exit from the site;
9. Location of outdoor storage, if any;
10. Description of the method of sewage disposal and location of the facilities;
11. Identification of water source, and if well location of it;
12. Location, size, and design and construction materials of all proposed signs;
13. Location and proposed development of all buffer areas, including existing vegetative cover;
14. Location and design of outdoor lighting facilities;
15. General landscaping plan.

B. Accompanying data, to include the following as applicable:

1. Application form and fee.
2. Name and address of applicant and any professional advisors.
3. Authorization of owner if applicant is not the owner of the property in question.
4. An Environmental Assessment Form.
5. Any additional endorsements, certifications or approvals required by the Board of Appeals.
6. Other information as the Board of Appeals may reasonably require to assess the proposed project; such as the location of fire lanes and hydrants, provision for pedestrian access, or designation of the amount of building area proposed for use for retail sales or other commercial activity.

Section 8.10 Waiver of Submission Requirements

The Board of Appeals may waive certain submission requirements in the case of minor projects of an uncomplicated nature.

Section 8.11

Standards for Approval

In order to approve any special permit, the Board of Appeals must find that:

- A. The use complies with all requirements of this Zoning Law for the zoning district in which it is proposed to be located, except those which may be specifically waived by the Board by issuing a variance.
- B. If approved, the use would be in harmony with the general purpose and intent of this law taking into account the location, character and size of the proposed use, the description and purpose of the district in which such use is proposed, the nature and intensity of the activities involved, and the availability of public services and facilities.
- C. The establishment, maintenance or operation of the proposed use would not create public hazards from traffic, traffic congestion, or the parking of automobiles, or be otherwise detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use, or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- D. The following are adequate:
 - 1. Arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
 - 2. Arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
 - 3. Location, arrangement, appearance and quantity of off-street parking and loading.
 - 4. Location, arrangement, size, and design and general site compatibility of buildings, lighting and signs.
 - 5. Stormwater and drainage facilities.
 - 6. Water supply and sewage disposal facilities.
 - 7. Type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
 - 8. In the case of an apartment complex or other multiple dwelling, usable open space for play areas and informal recreation activities.
 - 9. Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.
 - 10. Protection of solar access on adjacent or neighboring properties.
 - 11. Fire lanes and other emergency zones and the provision of fire hydrants.
 - 12. Special problems of structures, roadways and landscaping in areas with susceptibility to ponding, flooding, and/or erosion.

Section 8.12 Consultant Review

The Board of Appeals may consult with the Town Building Inspector, Fire Commissioners, Highway Department, County Planning Department, and other local county officials, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.

Section 8.13 Conditions

In approving a Site Plan, the Board of Appeals may impose, in addition to those standards and requirements stated elsewhere in this law, any other conditions it considers necessary to protect the health, safety and general welfare of the community.

ARTICLE 9 VARIANCES AND APPEALS

Section 9.1 Board of Appeals

The Zoning Board of Appeals shall have the authority to review and approve requests for variances. They may hear appeals from a decision of the Zoning Enforcement Officer and decide any questions involving the interpretation of any provision of this law.

Section 9.2 Application

A property owner(s) or his agent(s) may initiate a request for a variance by filing an application with the Zoning Board of Appeals using forms supplied by the Board. The applicant shall include a legal description of the property, a map drawn to scale showing the property, plans and elevations necessary to show the proposed variance, and other necessary drawings or information as determined by the Board of Appeals.

Section 9.3 Variance Policy

The granting of variances shall be principally for those seeking an area variance. Use variances allow activities otherwise prohibited in the Zoning District and such requests should be carefully reviewed.

Section 9.4 Requirements for Area Variances

- A. Area variances may be granted where the dimensional requirements of this law, such as minimum lot size, minimum lot width, required front, side and rear yards, maximum lot coverage by buildings, minimum road frontage, maximum height of buildings, and the size or placement of signs cannot be reasonably met.
- B. The Board of Appeals, in its findings, must find that "practical difficulty" is present. The term "practical difficulty" shall be interpreted to mean a difficulty which relates primarily to the land or characteristics of the property and not to the personal or financial circumstances of the applicant.
- C. In determining "practical difficulty", the Board of Appeals shall consider the following:
 - 1. How substantial the variance is in relation to the requirements of this law.
 - 2. Whether a substantial change will be produced in the character of the neighborhood, or whether a substantial detriment to adjoining properties will be created.

3. Whether the difficulty can be eliminated by some method other than a variance, which is feasible for the applicant to pursue. In case of side yard variances in particular it is frequently feasible, proper and possible for the applicant to alter the plot plan to locate a proposed structuring or addition in a new location which does not require any variance.
4. Whether, in view of the manner in which the difficulty arose and in consideration of the above factors, the interests of justice will be served by allowing the variance.

D. The following shall not be a consideration in determining "practical difficulty".

1. The owner is merely inconvenienced.
2. The owner is prevented from building a second or subsequent structure.
3. The owner is prevented from building a structure as large as desired, provided one of reasonable size can be built.

Section 9.5 Requirements For Use Variances

- A. A use variance may be granted to allow a land use to be established which would otherwise not be permitted by this law.
- B. A use variance may be granted by the Board of Appeals only after a finding that "unnecessary hardship" exists. The term "unnecessary hardship" shall be interpreted to pertain to characteristics of the property, and not to the personal or financial circumstances of the applicant.
- C. In order to approve a use variance the Board of Appeals must establish each of the following:
 1. The land in question cannot yield a reasonable return if used for any purpose allowed in that district. A promise of greater yield by allowing a prohibited use is not to be considered.
 2. The use to be authorized by the variance will not alter the essential character of the neighborhood and is compatible with the area.

Section 9.6 Procedures For Variance

- A. Upon receipt of an application for a variance or an appeal, the Zoning Board of Appeals shall determine whether the application is complete.
- B. Upon receipt of a complete application the Board of Appeals shall schedule a public hearing within 45 days and provide notice of such hearing as required by this law.
- C. The Board of Appeals shall conduct a public hearing on the matter.
- D. Within forty-five (45) days after the public hearing, the Board of Appeals shall render a decision.
- E. All decisions shall be in writing, and shall be filed with the Town Clerk and a copy thereof provided to the applicant.

ARTICLE 10 ADMINISTRATION AND ENFORCEMENT

Section 10.1 Zoning Permits

- A. Except for exempt actions listed in Section 10.1 B of this law, no building or structure shall be erected, altered, moved, or use instituted, until a zoning permit has been issued. The exterior structural area of a building or structure shall not be enlarged until a zoning permit has been issued.
- B. Exempt uses and Structures. A Zoning Permit shall not be required for:
1. Accessory buildings with less than 100 square feet of ground area.
 2. Interior structural alterations, and maintenance and improvements which do not expand the exterior dimensions of the building.
 3. Posts, sidewalks, driveways, flagpoles, playground equipment, handicapped ramps, and other similar accessory structures.
 4. Agricultural practices and structures, not including dwellings.
 5. Forestry practice.
 6. Conservation and open space use.
- C. Temporary Zoning Permits.
1. Temporary zoning permits may be issued by the Enforcement Officer for a period of six (6) months. Such permits are conditioned upon agreement by the owner or operator to remove any nonconforming structure or equipment upon expiration of the temporary zoning permit. Such permit may be renewed one (1) time for a period of six (6) months.
 2. Temporary zoning permits may be issued in the following circumstances:
 - (a) For one interim dwelling on an individual lot during the construction of a single-family dwelling on such lot.
 - (b) For one emergency dwelling on an individual lot, when the need for such dwelling resulted from the loss by flood, fire, or other disaster involving an existing dwelling within the town.
 3. All interim or emergency dwellings shall meet appropriate health standards.
- D. Parking lots for places of public assembly and commercial or business uses shall require a zoning permit for placement.
- E. When establishing measurements to meet required setbacks, the measurements shall be taken from the road centerline, lot line, or nearest high water elevation to the furthestmost protruding part of the use or structure. This shall include such projecting facilities as porches, carports, and attached garages.
- F. A zoning permit issued under this law shall expire one (1) year from the date of issue if construction is not substantially started.

- G. Any use that has been discontinued for a period of twelve (12) months or longer shall be considered abandoned and may not be reinstituted without applying for a new zoning permit.
- H. Applications for zoning permits shall be submitted to the Zoning Enforcement Officer or Town Clerk and shall include two (2) copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be used; the size and location on the lot of existing and proposed structures and accessory structures; the distance from the building line to all lot lines, road lines, waterfront property lines, streams, and any other features of the lot; and such other information as may be necessary to determine and provide for the enforcement of this law. This information, and other relevant application data, shall be provided on forms issued by the Town Clerk.
- I. Permit fees shall be determined by Town Board resolution.

Section 10.2 Certificate of Occupancy

No land shall be occupied or used and no building or structure hereafter used, or changes made in the use until a certificate of occupancy shall have been issued by the Zoning Enforcement Officer stating that the building, structure, or proposed use thereof complies with the provisions of this law.

Section 10.3 Zoning Enforcement Officer (ZEO)

- A. This law shall be enforced by the Zoning Enforcement Officer, who shall be appointed by the Town Board.
- B. The duties of the Zoning Enforcement Officer shall be to:
 - 1. Approve and/or deny zoning permits.
 - 2. Scale and interpret zone boundaries on Zoning Maps.
 - 3. Approve and/or deny certificates of occupancy.
 - 4. Refer appropriate matters to the Zoning Board of Appeals or Town Board.
 - 5. Revoke zoning permits where there is false, misleading or insufficient information. Revoke zoning permits and/or certificates of occupancy where the applicant has varied from the terms of the application.
 - 6. Investigate violations, issue stop work orders, and refer violations to the Town Board.
 - 7. Report at regular Town Board meetings the number of zoning permits and certificates of occupancy issued and fees collected.

Section 10.4 Zoning Board of Appeals

- A. **Creation.** A Zoning Board of Appeals is hereby created. Said Board shall consist of five (5) members. The Town Board shall appoint the members of the Board of Appeals on a staggered term basis in conformance with Town Law, and shall appoint a Chairman and Vice-Chairman. The Board of Appeals shall select a Secretary and shall prescribe rules for the conduct of its affairs.
- B. **Procedures.** Every decision of the Board of Appeals shall contain a full description of the reasons for granting or denying a permit which shall be set forth in the minutes of the Board of Appeals meeting at which the action was taken. A tally of each member's vote shall be recorded in the minutes of the meeting at which action is taken. All meetings and hearings of the Board shall be public.

Section 10.5 Violations and Penalties

- A.** Whenever a violation of this law occurs, the Zoning Enforcement Officer, the Town, or any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Zoning Enforcement Officer, who shall properly record and immediately investigate such complaint. If the complaint is found to be valid, the Zoning Enforcement Officer shall issue a stop work order requiring all work to cease until the violation is corrected. If the violation is not corrected within the specified time, the Town may take legal action to compel compliance.
- B.** Any person, firm, or corporation who commits an offense against, disobeys, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this law shall, upon conviction, be deemed guilty of a violation and subject to fine and/or imprisonment. Each week an offense is continued shall be deemed a separate violation of this law.
- C.** The Town Board may maintain an action or proceeding in the name of the Town in a Court of competent jurisdiction to compel compliance with or restrain by injunction the violation of this law.

Section 10.6 Amendments

The Town Board may amend, supplement, or repeal the any provisions of this law in accordance with procedures specified in Town Law pertaining to amendment of Local Laws. In addition, before acting on any proposed amendment, the Town Board shall receive a written recommendation from the Zoning Board of Appeals.

Section 10.7 Severability

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

Section 10.8 Effective Date

The provisions of this law shall take effect upon filing with the Secretary of State.

Section 10.9 Misrepresentation

Any permit or approval granted under this law, which is based upon or is granted in reliance upon any material misrepresentation or failure to make a material fact or circumstance known by or on behalf of an applicant, shall be void.

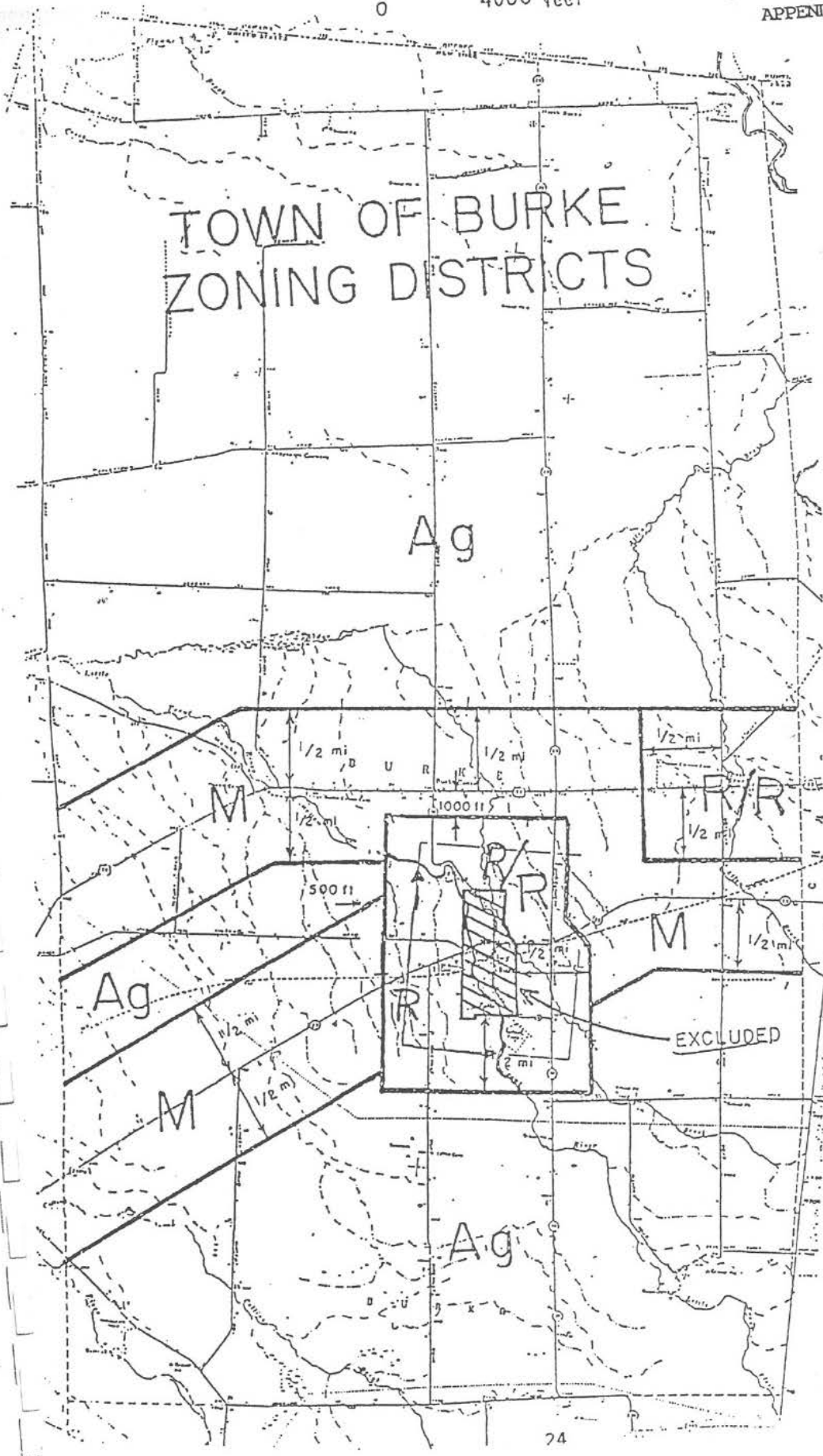
Section 10.10 New York State Uniform Building and Fire Code

No Zoning Permit or Special Use Permit shall affect the obligation of an applicant to obtain any necessary permit under the New York State Uniform Building and Fire Code, or other State or Local Law, Ordinance or Regulation.

0 4000 feet

APPENDIX A

TOWN OF BURKE ZONING DISTRICTS



(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 1990 of the ~~(County)(City)(Town)(Village)~~ of Burke was duly passed by the 12th on March 1990, in accordance with the applicable provisions of law.
(Name of Legislative Body)

~~2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after (Name of Legislative Body) disapproval) by the _____ and was deemed duly adopted on _____ 19____. (Elective Chief Executive Officer*) in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after (Name of Legislative Body) disapproval) by the _____ on _____ 19____. Such local law was (Elective Chief Executive Officer*) submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after (Name of Legislative Body) disapproval) by the _____ on _____ 19____. Such local law was subject to (Elective Chief Executive Officer*) permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____ in accordance with the applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

