

Meeting No. 4
February 28, 2005
Hamburg Town Board Meeting
S-6100 South Park Avenue
Hamburg, New York 14075

Roll Call:	Patrick H. Hoak D. Mark Cavalcoli Kathleen C. Hochul Thomas Quatroche, Jr.	Supervisor Councilman Councilwoman Councilman
Absent:	Joan A. Kesner	Councilwoman
Also Present:	Catherine Rybczynski James Spute Drew Reilly Richard Boehm Gerard Kapsiak Joseph Coggins Robert Hutchison Martin Denecke Tim Ellis Kurt Allen	Town Clerk Finance Director Planning Consultant Deputy Town Attorney Town Engineer Police Chief Town Assessor Director of Recreation Traffic Safety Coordinator Supervising Building Inspector

The Pledge of Allegiance was recited.

Information on Fire Exits was provided.

Supervisor Hoak asks that they have a moment of silence for the former Mayor of the Village of Hamburg, who was also a teacher and a coach and had a lasting impression on so many in the community, that is Mayor Richard Hansen. Also a moment of silence for Don Hull, who was very active in the Knights of Columbus, he was a Captain in the Navy in World War II and his son is the Director of the Hamburg Community Development Department and he also passed away last week.

7:00 p.m. Public Hearing for proposed local law #1, 2005 for modifications to the Code of the Town of Hamburg.

Catherine Rybczynski, Town Clerk, reads the following Legal Notice as published by the Hamburg Sun and the Front Page:

**LEGAL NOTICE
TOWN OF HAMBURG
NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE that there has been presented to the Town Board on February 7, 2005, pursuant to the Municipal Home Rule Law, a proposed local law, to be known as proposed local law #1, 2005; said local law provides for modifications to the Code of the Town of Hamburg, which are in accordance with recommendations of the Town of Hamburg 2010 Comprehensive Plan and the Town's proposed updated Local Waterfront Revitalization Plan (LWRP.) The modifications can be described as follows:

- A new Waterfront Commercial (WC) Zoning District
- A new Route 5 Zoning Overlay District
- An update to Chapter 76, Building Code
- An update to Chapter 109, Fair Housing

A detailed copy of the proposed modifications will be available, for public review, during regular business hours at the following locations:

HAMBURG TOWN HALL (Town Clerk's Office)
DEPARTMENT
6100 South Park Avenue
Hamburg, New York 14075

HAMBURG PLANNING
6122 South Park Avenue
Hamburg, New York 14075

And may also be found at the Town's website: www.townofhamburgny.com
Click on Legal Notices & Bid

THEREFORE, pursuant to the statutes and the provisions of the Municipal Home Rule Law, the Town Board of the Town of Hamburg will hold a public hearing on February 28, 2005, at 7:00 p.m. (local time), at which time all interested persons may be heard.

Dated: February 7, 2005

Catherine Rybczynski
Town Clerk
Town of Hamburg

The following are the proposed modifications:

Article XVB
WC – Waterfront Commercial District

§ 280 – Intent

In accordance with the recommendations and policies of the Town of Hamburg 2010 Comprehensive Plan and its Local Waterfront Revitalization Program (LWRP), this district is intended to:

- A. Restrict some areas of the waterfront region of the Town to mostly water dependent and water related or enhanced uses.
 - 1. Provide areas for uses that can take advantage of the waterfront assets and to complement the nature of these areas.
 - 2. Only allow certain non-water dependent uses by Special Use Permit.
- A. Create a transition zone between lakeshore residential areas and the more intensive commercial and industrial districts.
- B. Provide connections to and complement the tourism and recreational features of the waterfront region, and take advantage of the designation of Route 5 as a National Scenic Byway and part of the Seaway Trail System.

§ 280 – Permitted Uses

- A. Uses and structures permitted in the WC district are as follows:
 - 1. Marinas, docks and boatyards.
 - 2. Visitor and conference centers, maritime museums.
 - 3. Hotels and motels.
 - 4. Restaurants.
 - 5. Fishing support facilities.
 - 6. Boat launch facilities; boat rental, sales and services; and boating and diving instruction schools.
 - 7. Other tourism related uses.
 - 8. The following uses by Special Use Permit authorized by the Planning Board (see Article XXXIV):
 - a.) Neighborhood commercial establishments as listed in the NC - Neighborhood Commercial Zoning District (excluding all residential uses).
 - b.) Business and professional offices.
 - c.) Commercial / residential uses (a building consisting of at least 50% of an approved commercial use and the remainder of the building, a residential use).
 - d.) Water Dependent Light Industrial Uses (for consideration: allowable uses in the M-1 Zoning District and those in the M-2 Zoning District except

- truck terminals / dispatch and transfer facilities.
- e.) Nursery schools and day-care facilities.

A. Accessory Uses and Structures

- 1. Unless otherwise specified, accessory uses and structures customarily incidental to permitted principle uses.

§ 280 – Minimum Lot

Unless otherwise provided, the minimum lot size in the WC District shall be as specified in this section:

- A. Lot Area: Lot area will be based on the size of the building, parking requirements and landscaping.
- B. Lot width at the building line: 75 feet.

§ 280 – Lot Coverage

- A. Maximum: 75%.

§ 280 – Maximum Height of Buildings

- B. Unless otherwise provided, the maximum height of principle buildings in the WC District shall be 30 feet.
- C. Accessory buildings shall be limited to 2 stories and 30 feet.

§ 280 – Required Yards

Unless otherwise provided, the minimum required yards and other open spaces in the WC District shall be as specified in this section.

- A. Front yard: 30 feet.
- B. Side yards:
 - 1. Principle buildings: none required, except that:
 - a. Where a side yard is provided, it shall be no less than five feet.
 - b. Where a side yard abuts any R District boundary, it shall be not less than 20 feet or the height of the principle buildings, whichever is greater.
 - c. Where a side yard is used for either vehicular ingress or egress, it shall be at least 12 feet.
 - d. Where a side yard is used for vehicular ingress or egress, it shall not be less than 25 feet.
- A. Rear yard:
 - 1. Minimum: 30 feet.

§ 280-86.8 - Off-street Parking and Signs

For applicable off-street parking regulations, see Article XX. For applicable sign regulations, see Article XXIV.

§ 280-86.9 – Supplemental Regulations

For applicable supplemental regulations pertaining to height, area or open space, see Articles XXV through XXVII.

§ 280-86.10 – Landscaping Requirements

Landscaping treatments shall be undertaken as directed by the Planning Board to retain the aesthetically enhanced look and waterfront character of the area.

§ 280-86.11 – Architectural Requirements

Buildings shall not be constructed so as to alter or eliminate significant views of the lake. Building elevation plans must be submitted to the Planning Board which reflect designs that accomplish the aesthetically enhanced look described in the objectives section of this Code, and any applicable zoning overlay requirements.

ARTICLE _____
Route 5 Overlay District

§ 280-____. Intent.

In accordance with the recommendations and policies of the Town of Hamburg 2010 Comprehensive Plan and Local Waterfront Revitalization Program (LWRP), the purpose of this zoning overlay is to establish measures to improve the quality of development and aesthetics along the Route 5 corridor. Such measures are designed to improve business conditions and enhance economic development opportunities, while at the same time to restore and continue the traditional community character for this area of the Town. These regulations will also help to alleviate traffic congestion and highway safety concerns along this section of the Town’s highway system to create a more pedestrian-friendly environment. This overlay will allow the Town to better manage development and the expansion of commercial uses along Route 5 and enrich the overall visual quality and quality of life of the area.

§ 280-____. Boundary.

This zoning overlay district shall encompass the corridor of New York State Route 5, also known as Lake Shore Road, in the Town of Hamburg, extending southwest from the municipal boundary with the City of Lackawanna to the intersection with Old Lake Shore Road.

§ 280-____. Objectives.

The special regulations and requirements contained herein, which govern all potential development and redevelopment within the boundaries of the Route 5 Overlay District, are founded upon the following objectives.

- (1) Establish design regulations that encourage compatible building arrangements, size and form, character and landscaping to provide for a more livable, harmonious and diverse community environment.
- (2) Development and redevelopment should be designed to create a sense of identity and redefine the character of the commercial areas along Route 5 as “destinations” rather than “drive throughs.” Development and redevelopment in this area should re-establish, continue and preserve the character of these hamlet areas to revitalize the community environment.
- (2) Ensure that new structures and structural modifications are designed at a scale that is conducive to the area and invites human interaction. Building designs, site improvements and amenities should be pedestrian-friendly to lend a feeling of hospitality and well being to the area. Public gathering places, such as parks, promenades and plazas, should be an essential component of site design wherever possible.
- (3) Development and redevelopment in the commercial hamlets should allow for diversity and include a mix of uses and services that generate activity and interest throughout the day, benefiting persons of all age groups and income levels.

- (4) Landscaping and other such amenities should be included in site design to improve community aesthetics, protect views of Lake Erie, screen existing parking areas and other adverse views, provide shelter from the elements, and enhance public atmosphere and, where applicable, patron experience.
- (5) Whenever possible, natural vegetation and open space should be preserved to the greatest extent possible, to provide a natural buffer between residential and business uses situated along Route 5 and to maintain and improve the aesthetic quality of the community.
- (6) Property maintenance and safety shall be promoted throughout the area to provide a prosperous and inviting area for the public.
- (7) Development and redevelopment shall be undertaken in a manner that lends protection to structures and properties of historic significance in the area. Demolition of existing structures that possess significant historic value or other elements that contribute to community character shall be discouraged. Building designs should emphasize styles that emulate existing historic character and nautical appeal.
- (8) The needs of pedestrians and shoppers, and the overall character of the area, should be placed above the needs of motorists through the appropriate placement and design of parking areas, points of ingress and egress, alleys and walkways. Site designs should avoid expansive areas of pavement and excessive curb cuts, unless deemed necessary for the general safety and welfare of the community.
- (9) Maintain and improve traffic conditions and the walkability and pedestrian circulation of the area as development and redevelopment take place.
- (10) Establish minimum requirements that recognize the need for safe and efficient traffic operations, which often appear to conflict with the objectives of developers. Reduce the number of conflict points along Route 5 to better manage highway access.

§ 280-____. Effect upon zoning.

These overlay district regulations shall be superimposed over, and supplement, the underlying zoning restrictions. Each use must conform to the development standards required by the underlying zoning district and other provisions of this Chapter, as well as this overlay district, and the more stringent standards shall prevail.

§ 280-____. Affect upon uses.

Within the boundaries of the Highland Commercial Overlay District, the underlying allowable uses and accessory uses in the underlying zoning districts shall be as specified in this Chapter.

§ 280-____. Site design provisions.

(1) Aesthetic and architectural features.

- (a) The intent of the following design standards and provisions is to enhance the appearance of the built environment. By adding design detail, you can improve the character and appeal of the community and better define pedestrian linkages and areas for human activity. These improvements, in turn, can result in increased investment in the commercial districts, enhancement of property values, and overall enrichment of the quality of life in the area.

1. All new buildings shall be set back not less than 15 feet or more than 50 feet from the property line. This setback area shall be landscaped with grass, trees and shrubs. Parking areas may be allowed within this area at the discretion of the Planning Board.
2. A yard area measuring a minimum of five feet wide shall separate proposed parking areas from parking areas located on adjoining parcels.
3. Windows shall cover a minimum of 35 percent of any façade facing a roadway, but not exceed 75 percent of this area.

4. Refuse dumpsters or containers should be located at the rear of the property and must be properly gated and screened from view with wooden or another style of fencing acceptable to the Planning Board. These structures shall not be located less than 20 feet from adjoining residential properties.
 5. Loading areas shall not face the road.
 6. Flat roofed structures are discouraged. Flat roofs shall be prohibited on buildings measuring less than 10,000 square feet.
 7. Roof top mechanics shall be screened from public view by the use of architecturally compatible materials and components.
 8. Ground level mechanical equipment shall be fully screened from public view through the use of landscaping, fencing or other design treatments compatible with the buildings.
 9. Site design shall demonstrate architectural compatibility of buildings on the site, with consideration given to the appearance and style of surrounding uses. Building designs should emphasize a nautical theme.
 10. Buildings identified to be of historic or distinctive character shall be preserved. The removal or disruption of historic, traditional or significant structures or architectural elements shall be discouraged.
 11. All building facades that would be visible from roadways, parking areas or adjacent sites shall be architecturally designed to enhance aesthetic appearance.
 12. Buildings shall be designed to eliminate long expanses of blank walls of a single color or texture.
 13. The front façade of any building shall be constructed of brick, split block, stone, stucco or wood frame with cedar or lap siding or other materials acceptable to the Planning Board. The use of concrete block, cast in place concrete or cinder block is discouraged.
 14. Buildings designed to advertise or promote a uniform corporate image shall be subject to the review and approval of the Planning Board.
 15. Multi-user structures must be designed in such a way as to avoid the appearance of strip plaza development.
 16. Elevations (minimum front and sides) and an architectural rendering with detailed drawings of façade treatments and selected building materials, specific to the proposed site, shall be submitted to the Planning Board for review and approval.
 16. Outdoor storage areas are subject to the approval of the Planning Board.
 17. Sidewalks measuring no less than five (5) feet in width shall be installed within the right-of-way frontage of the property to allow for adequate pedestrian activity.
 18. Sidewalks or paths should be included as a part of site design to assist with walkability. Where sites are adjacent to municipal sidewalks, they shall be connected with them.
 19. Pedestrian walkways shall be provided between buildings on a single site. Walkways shall also be incorporated into cross access points.
 20. Pedestrian walkways shall be constructed of concrete or decorative brick or similar materials. The use of black top is discouraged.
 21. Walkways located within parking areas shall be properly striped or otherwise delineated.
- (1) Off-street parking. Off-street parking, loading and stacking areas or structures shall be designed as required by §200-27 of this Chapter.

(2) Landscaping.

- (a) General. Landscaping and the preservation of natural vegetation facilitates the creation of an attractive and harmonious community. The intent of these standards and provisions is to preserve and create a healthful and pleasant setting that relieves the stark, blighted appearance of paved surfaces, provides shade, enhances views of Lake Erie, and improves the general appearance of the built environment. Discouraging the unnecessary clearing and disturbance of land, and encouraging the aesthetic improvement of site development through the use of trees and plantings and the preservation of natural areas, can result in the overall improvement of scenic quality and the stabilization and enhancement of property values and the business environment.
1. A minimum ground area of not less than fifteen percent (15%) of the total lot area shall be preserved as open space and landscaping.
 2. Not less than five percent (5%) of the interior of a parking area designed for twenty (20) cars or more shall be devoted to the required landscaping area and shall be distributed so as to prevent unsightliness and monotony of parked cars.
 3. The interior dimensions of any area or median shall be a minimum of seven (7) feet wide to ensure the proper growth of materials planted therein.
 4. All existing trees larger than 8 inches in diameter, as measured three feet above grade, shall not be removed without prior Planning Board approval. All groups of trees and other natural vegetation shall be incorporated onto the landscaping plan where feasible. Efforts shall be made to preserve these features, particularly along rear lot lines.
 5. A minimum of one tree per 30 feet of frontage shall be planted in the required front yard setback area. Additional trees shall be planted throughout the developed area at a ratio of one tree per 30 feet of side yard and rear yard dimensions. Trees along the side and rear lot lines may be evenly spaced or clustered together to break up the monotony of the design.
 6. On all lots that do not have an existing vegetated buffer along the rear lot line, the applicant shall vegetate this area with new shrubs and trees, and natural berming or screen fencing at the discretion of the Planning Board.
 7. Landscape treatments shall be designed as an integral part of the entire development. Existing natural features and vegetation shall be preserved and incorporated into the landscaped areas wherever possible.
 8. All trees planted shall have a minimum caliper of two and one-half inches (2.5) as measured six (6) inches above the ground.
 9. Plastic or other types of artificial plantings or vegetation shall not be permitted.
 10. The primary emphasis of the landscape treatment shall be on trees and efforts shall be made to preserve existing trees. Shrubbery, hedges, grass and other vegetation should be used to compliment the use of trees but shall not be the sole contribution to the landscape treatment.
 11. Parking, loading and stacking areas and driveways located adjacent to residential districts shall be landscaped by screening and/or buffering. Such screening or buffering shall be so designed that a person standing on the adjacent residential parcel on the minimum setback line, five (5) feet above the average finished grade, would not be able to perceive by eye any uses, activities or automobile lights originating from these areas or driveways. This may be accomplished through the use of various measures such as fencing, planted materials, earthen berms or any combination thereof. Such measures shall be applied within the required side and rear yards.

12. All landscaped areas required or permitted by this section shall be maintained and preserved according to the plan as originally approved or amended by the Planning Board. Flora that dies shall be replaced within the next planting season with plantings of a similar nature.
13. The Planning Board, as a part of site plan review, may reduce the minimum number of off-street parking spaces required by this Chapter by not more than ten percent (10%), provided that the land areas so removed is not used to meet the landscaped area herein required and is used exclusively for additional landscaping or open space in accordance with the standards and criteria outlined herein. If at any time thereafter the Planning Board determines that the land area so removed is needed to provide necessary off-street parking, it may order the installation thereof. Any certificate of occupancy issued for any parking area and the building serviced thereby shall be deemed conditional upon the possible requirement for the future installation of additional parking, upon such order by the Planning Board. Failure to comply with such an order within the time fixed thereby shall constitute a violation of this Chapter.

(1) Signage.

1. General. By lending attention to signage and the visual appearance of signs you can provide for a more enjoyable and scenic community. The intent of the following standards and provisions is to protect and improve property values, create a more attractive economic and business environment and reduce distractions and obstructions that can disrupt the visual appeal of a commercial district. These provisions are aimed at creating a more pleasant and uniform visual setting and eliminating the chaotic and haphazard design, orientation and placement of signage that can result in scenic blight. Signage should be designed at a human scale and in relation to a walkable commercial district.
 1. No sign shall be placed on public property or in the public right-of-way unless specifically authorized.
 2. No freestanding sign shall be erected on any property with less than 30 feet of frontage.
 3. No sign shall be erected in such a manner as to obstruct free egress from a window, door or fire escape or so as to become a menace to life, health or property.
 4. No sign shall be erected in such manner as to prevent the driver of any vehicle from having a clear and unobstructed view of any official sign(s), any entrance or exit roadway, any intersection, or approaching or merging traffic.
 5. Proposed signage shall be considered in conjunction with existing signage in the vicinity to insure compatibility with existing conditions and adherence to the intent of this district.
 6. No signs, except such directional devices as may be required by the Federal Aeronautical Authorities, shall be placed, inscribed or supported on the roof or above the highest part of the roofline.
 7. Electronic signboards, when permitted by the Planning Board, shall be used to report the time and temperature only.
 8. Signs shall be internally lit; no neon lighting or back lit canopies shall be permitted.
 9. Ground level/monument signage is recommended. In no case shall such signage exceed 4 feet above grade level or be greater than 60 square feet in area.
 10. Poles signs shall not exceed twelve (12) feet in height, with the lowest member (excluding the pole) not less than six (6) feet above finished grade.
 11. Street address numbers shall be posted on all buildings.
 12. Awning and unlit canopy signs shall contain only the name, logo and street number of the enterprise.

13. Walls signs shall not exceed more than fifty (50) square feet in area or cover more than 20 percent of the wall.
14. The appearance and placement of signage shall be subject to Planning Board discretion as part of the site plan review process.
15. In addition to the above noted provisions, all signage shall comply with the standards outline in Article XXIV, Sign Regulations, of this Chapter.

(2) Site lighting.

1. General. It is the intent of these standards and provisions to prevent, reduce or eliminate the problems created by improperly designed and installed outdoor lighting. These provisions are intended to eliminate problems of glare, minimize light trespass and help to reduce energy usage and the financial costs of outdoor lighting by establishing standards that limit the area that certain kinds of outdoor lighting fixtures can illuminate and by limiting the total allowable illumination of properties located in the overlay district. The purpose of these standards is to ensure that outdoor lighting does not interfere with the reasonable use and enjoyment of property, and to encourage lighting practices that will prevent light pollution by reducing uplight, glare and overlighting. These regulations are also intended to provide for the safe movement of traffic, for satisfactory vision for pedestrians and for the guidance of both vehicles and pedestrians.
 1. Lighting design shall not create a nuisance to adjacent residences.
 2. Pole mounted lighting shall not exceed a total height of 15 feet from finished grade to the top of the fixture.
 3. Lighting illumination levels shall not exceed six (6) lux / 0.6 foot candles.
 4. All external lighting sources shall be designed and shielded to avoid hazardous interference and direct glare onto adjacent streets and properties.
 5. The lenses in pole and wall-mounted lighting shall be recessed to control the adverse impacts of light spill out and glare.
 6. A mixture of lamp types on the same site shall be avoided.
 7. To provide optimum color rendition, lamps are preferred in the following order: high pressure sodium, metal halide, low pressure sodium.
 8. Parking area lighting fixtures shall not be illuminated after 11:00 p.m., unless otherwise approved by the Planning Board, and shall be designed to illuminate the parking area only.
 9. Security lighting and other building lighting will be allowed to operate as long as it does not create a nuisance to adjacent residences.
 10. The appearance and placement of lighting shall be subject to Planning Board discretion as part of the site plan approval process. Lighting plans shall be submitted and must include illumination footprints for review by the Planning Board.

G. Access management.

- (1) General. One of the most important objectives of access management is reducing the potential for conflicts, particularly along the most heavily traveled roads. The best methods for achieving a reduction in conflicts are by reducing the number of conflict points and separating through from local traffic. Land use development and transportation can be brought into balance, and conflicts can be reduced, through appropriate limitations on the number of driveways and the enforcement of driveway and corner clearance standards.
 - (a) The site layout, location and design of driveways and parking areas should be based on full build-out of the parcel. Future subdivision of the parcel or any future action that is contrary to an approved plan cannot occur without prior Planning Board approval.

- (b) Properties with frontage on two or more roads do not have the right to driveway access to all such roads.
- (c) Driveways may be required to be located so as to provide shared access and/or cross access with an abutting parcel or properties.
 - i. Shared driveways and/or cross access driveways shall be of sufficient width (minimum 20 feet) to accommodate two way travel for automobiles and for service and loading vehicles.
 - ii. Shared driveways, cross access driveways, interconnected parking, and private roads constructed to provide access to properties internal to a subdivision shall be recorded as an easement and shall constitute a covenant running with the land. Operating and maintenance agreements for these facilities shall also be recorded with the deed, where applicable.
- (b) Driveway spacing standards shall apply to driveways located on the same side of the road and shall be measured along the road from the centerline of the driveway pavement to the centerline of the next driveway.
- (c) Curb cuts and driveway spacing for new development or redevelopment will be evaluated by the Planning Board on a case-by-case basis to reduce conflicts and ensure traffic safety and efficiency. In certain cases, minimum spacing requirements, as deemed appropriate by the Planning Board and that comply with established State standards, shall be applied as follows:

Minimum Driveway Spacing Standards

Development Size in Peak Hour Trips (pht)

	Small 0-100 pht	Moderate 101-200 pht	Large > 201 pht
Major Arterial	330 feet	440 feet	660 feet
Collector Road	220 feet	330 feet	440 feet

- i. Peak Hour Trips (PHT) should be based on full build-out of the parcel.
 - ii. The larger of the minimum driveway spacing standards for the proposed development or for existing developments at abutting properties will apply. Driveways for in-fill development must meet the larger of the minimum driveway spacing standards for development abutting properties on both sides.
- (2) Corner clearance. Corner properties present special problems because they are extremely attractive to high volume peak-hour traffic businesses whose designs often create conflict areas that overlap with the conflict area of the intersection.

- (a) Corner clearance is to be measured along the road from the centerline of the driveway pavement to the closest edge of the road pavement. Where road widening is planned or anticipated in the future, corner clearance should be increased to provide for the width of the additional lane.
- (b) Driveways for corner properties shall meet or exceed the minimum corner clearance requirements as follows:

Minimum Corner Clearance Requirements

Minimum clearance for partial access, right turns in and/or out only – 100 feet
 Minimum clearance for full access, all directional movements – 220 feet

- (c) Driveways should be located outside of the functional area of the intersection or, if this is not possible, driveways should be placed as far as possible from the intersection.
- (d) Cross access to adjoining properties should be encouraged to the greatest extent possible.

(3) Driveway location.

- (a) Driveway location will be based on a site plan that has been approved by the Town Planning Board in consultation with the Town Engineer and, where appropriate, the Town Highway Superintendent.
- (b) Driveways shall be located so as to meet or exceed the minimum driveway spacing standards and the minimum corner clearance standards.
- (c) The Town Planning Board may allow the location of driveways at less than the minimum driveway spacing standards and corner clearance standards, if:
 - i. a dual-driveway system, cross access driveway system or shared driveway is proposed and this improves the safe and efficient movement of traffic between the parcel and the road,
 - ii. a driveway or driveways could be located so as to meet the minimum driveway spacing standards and corner clearance standards, but the characteristics of the parcel or the physical or operational characteristics of the road are such that a change of location will improve the safe and efficient movement of traffic between the parcel and the road; or
 - iii. conformance with the driveway spacing standards or corner clearance standards imposes undue and exceptional hardship on the property owner.
- (d) For properties unable to meet the minimum driveway spacing standards or corner clearance standards, a temporary driveway may be granted. The granting of a temporary driveway will be conditioned on obtaining a shared driveway, cross access driveway or unified parking and circulation with an adjoining parcel, and closure of the temporary driveway in the future.

§ 280-____. Definitions.

- (1) Access – A way or means of approach to provide vehicular or pedestrian entrance or exit to a property.
- (2) Access Connection – Any driveway, street, turnout or other means of providing for the movement of vehicles to or from the public road system.
- (3) Access Management – The process of providing and managing access to land development while preserving the flow of traffic in terms of safety, capacity and speed.
- (4) Awning – A roof-like covering of canvas or other flexible material that extends from the wall of a building.
- (5) Canopy – A roof-like covering of metal or other rigid material that extends from the wall of a building.
- (6) Corner Clearance – The distance from an intersection of a public or private road to the nearest access connection.
- (7) Driveway – Any entrance or exit used by vehicular traffic to or from land or buildings abutting a road.
- (8) Electronic Sign Board – An electronically-powered sign with continually changing presentations or moving text and characters that scroll across or flash on the sign fascia.
- (9) Functional Area (Intersection) – The area beyond the physical intersection of two roads that comprises decision and maneuver distance plus any required vehicle storage length.
- (10) Landscape Services – Any use or establishment that provides off-site landscaping services requiring the use of machinery, equipment, trucks and other appurtenances that must be stored on the premises.
- (11) Non-conforming Access – Features of the access system of a parcel that existed prior to the effective date of this ordinance and that do not conform with the requirements of this ordinance.

- (12) Parcel – A division of land comprised of one or more lots in contiguous ownership.
- (13) Reasonable Access – The minimum number of access connections, direct or indirect, necessary to provide safe access to and from a public road, as consistent with the purpose and intent of this ordinance and any other applicable plans and policies of the Town.
- (14) Road – A way for vehicular traffic, whether designated s a street, highway, thoroughfare, parkway, through-way, avenue or boulevard, lane, cul-de-sac, place, or otherwise designated, and includes the entire area within the right-of-way.
- (15) Service Road – (also Access Road) a public or private road, auxiliary to and normally located parallel to a controlled access facility, that maintains local road continuity and provides access to parcels adjacent to the controlled access facility.
- (16) Shared Driveway – A driveway connecting two or more contiguous parcels to the public road system.
- (17) Strip Plaza – A structure that houses three or more commercial businesses located along a highway or on a large site that may contain other commercial facilities.
- (18) Temporary Access – Provision of direct access to a road until that time when adjacent properties develop, in accordance with a joint access agreement or frontage road plan.

§ 280-____. Other Provisions.

- (1) The Planning Board may waive or modify any design requirements under this §280-____, as long as it does not diminish the intent and purpose of the district and does not infringe upon the authority of the Zoning Board of Appeals.
- (2) All projects requiring Planning Board approval must be referred to the Shoreline Revitalization Committee and the Traffic Safety Advisory Board.

Chapter 76

Building Construction & Fire Prevention

Local Law for the Administration and Enforcement of the State and Town Building Codes

General References

Article I General Provisions

- 76-1 Title.** This chapter shall be known and cited hereafter as the “ Town of Hamburg Building Construction and Fire Prevention Code”.
- 76-2. Intent and Purpose.** It is the intent of this chapter to provide for the administration and enforcement of the provisions of all laws, codes, ordinances, regulations and orders applicable to:
- A. The location, design, materials construction, alteration, repair, equipment, maintenance, use, occupancy removal and demolition of buildings, structures and appurtenances within the Town.
 - B. Fire prevention and fire safety regulations consistent with nationally recognized good practices for safeguarding of life and property from the dangers of fire and explosions arising from hazardous conditions in the use or occupancy of buildings or premises and from the storage and use of hazardous substances, materials and devices.
- 76-3 Provisions for Administration and Enforcement.**
- A. The Town Board of the Town of Hamburg does hereby establish and maintain a functional entity hereafter referred to as the Department of Code Enforcement.
 - B. It shall be the purpose of this Department to execute and enforce the provisions of both state (as promulgated by 19 (NYCRR), Chapter XXXII, Part 1203) and all applicable local laws listed herein.
 - C. The Town Board shall appoint qualified personnel (namely Code Enforcement Officials and Fire Inspectors, duly certified by the Department of State Codes Division under the provisions of Title 19(NYCRR), Chapter XII, Part 435, who are responsible for the administration and enforcement in compliance with the applicable regulations of both state and local laws.
- 76-4 Duties and Powers of the Code Enforcement Department**
- A. Except as otherwise specifically provided by law, ordinance, rule or regulation, or except as herein otherwise provided, the Department of Code Enforcement shall administer and enforce all provisions of laws, ordinances, rules and regulations applicable to the plans, specifications or permits for the construction, alteration and repair of buildings and structures regulated hereunder, the installation and use of materials and equipment therein, the location, use occupancy, conditions and maintenance thereof.
 - B. The Code Enforcement Officers shall promulgate rules and regulations subject to the approval of the Town Board to secure the intent and purpose of this local law and a proper administration and enforcement of the laws, ordinances, rules and regulations governing the plans, specifications, construction, alteration, repairs, conditions or maintenance pertaining to buildings, equipment and other structures regulated hereunder.
 - C. He shall receive applications, approve plans and specifications and issue permits for the erection, alteration and repairs of buildings, other structures and equipment regulated hereunder and shall examine the premises for which such applications have been received, approved plans or such permits have been issued for the purpose of insuring compliance with the laws, ordinances, rules and regulations governing same.

- D. He shall issue in writing all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during construction and to insure compliance during the entire course of construction with the approved plans and specifications, the conditions of the building permit and the requirements of the applicable laws, ordinances, rules and regulations.
- E. Whenever the same may be appropriate to determine compliance with the provisions of the applicable laws, ordinances, rules and regulations covering the construction, alteration, repair or occupancy, he may, at his discretion, accept and rely upon written reports of tests in the field by experienced, professional persons or by accredited and authoritative testing laboratories or service inspection bureaus or agencies.
- F. He shall issue a certificate of occupancy where appropriate for a building or structure constructed, altered or occupied in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code and all other applicable laws, ordinances, rules and regulations.
- G. Code Enforcement Officers and/or Fire Inspectors shall have the authority to make fire prevention inspections in accordance with the Fire Prevention and Property Maintenance Code of New York, and may assist where practical, in determining the cause and origin of any fire occurring within the Town.
- H. Code Enforcement Officers and/or Fire Inspectors shall have authority and be accountable to inspect all structures afflicted by fire to assess damage and ascertain the appropriate measures to insure safety to the occupants and to safeguard the public from associated hazards created by the fire. These measures shall not be limited to implementing the removal of such hazards, ordering the immediate closing of the building, condemnation of the premises, securing the structure or put through necessary means to abate potential endangerments to life or safety.

76-5 Referenced Codes. The Town Board shall empower the designated personnel within the Department of Code Enforcement including all appointed Code Enforcement Officials, and Fire Inspectors to administer, enforce and otherwise perform all duties in respect to the State and Local Laws as follows:

- A. Under Title 19 NYCRR , Chapter XXXII, Part 1203 and in accordance with Subdivision 2 of Section 381 of the Executive Law with regard to the administration and enforcement of the Uniform Fire prevention and Building Code (hereafter referred to as “the Uniform Code”), the following adopted New York State codes listed and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.
 1. Building Code of New York State
 2. Residential Code of New York State
 3. Electrical Code of New York State
 4. Fuel Gas Code of New York State
 5. Mechanical Code of New York State
 6. Plumbing Code of New York State
 7. Property Maintenance Code of New York State
 8. Fire Prevention Code of New York State
 9. Energy Conservation Code New York State
 10. Factory Manufactured Buildings (the provisions of 19 NYCRR in regard to factory manufactured structures installed in New York state shall apply).

- B. In accordance with Subdivision 3 of Section 20 of the Municipal Home Rule Law with regard to the administration and enforcement of the all applicable legislation adopted by the Town of Hamburg (hereafter referred to as “Local Law”), the following Local Laws listed and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

1.	L.L. No. 11-1994	Alarm Systems
2.	L.L. No. 9-1974	Brush, Grass and Weeds
3.	L.L. No. 5-1972	Buildings Unsafe
4.	L.L. No. 3-1993	Coastal Erosion Hazard Area
5.	L.L. No. 4-1968	Dead Trees
6.	L.L. No. 13-1979	Removal of Topsoil
7.	L.L. No. 10-1994	Flood Damage Prevention
8.	L.L. No. 6-1994	Junk Vehicles
9.	L.L. No. 5-1995	Lighting Nuisances
10.	L.L. No. 1-1991	Mobile Homes
11.	L.L. No. 1-1992	Transient Retail Merchants
12.	L.L. No. 22-1968	Sanitary Sewer Code
13.	L.L. No. 3-1969	Refuse Disposal
14.	L.L. No. 2-1995	Storage Trailers
15.	Chapter 232, Adopted 9-12-1966	Swimming Pool Code
16.	L.L. No.10-1986	Zoning

76-6 Applicability.

Where, in any specific case, different sections of this code specify different methods of construction or other requirements, the most restrictive shall govern.

76-7 Records and Reports

The Department of Code Enforcement shall keep permanent official records of all transactions and activities conducted by the Department, including all applications received, approved plans, permits and certificates issued, inspection reports, all rules and regulations under his jurisdiction and the notices and orders issued. Where applicable such records shall be considered public record and may be obtained through the Town Clerk under a freedom of information request procedure. In some cases depending on the magnitude of record, report or information requested, all cost associated with the retrieval, processing and reproduction of such records will be assessed. Once the costs have been determined they must be paid in full prior to dispersal of the request.

76-8 Penalties for Violations

- A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move equip, use or occupy any building or other structure regulated hereunder, or portion thereof, or to store , handle, or use hazardous substances, materials or devices in violation of the New York State Uniform Fire Prevention and Building Code, this local law or other applicable ordinance or any regulation or rule promulgated by the Department of Code Enforcement in accordance with the applicable laws, or fail in any manner to comply with a notice, directive or order of the designated Code Enforcement Official or his representative issued pursuant to the New York Executive Law, the New York State Uniform Fire Prevention and Building Code, or this local law, or to construct, alter, use or occupy any building, structure, or premises regulated hereunder, or part thereof, or to store, handle or use hazardous substances, materials or devices in a manner not permitted by an approved building permit, fire prevention permit or certificate of occupancy or in strict accordance with the approved plans and specifications.
- B. It shall be unlawful for any person, firm or corporation to install, or cause to be installed, or to alter or repair electrical wiring on properties for light, cooling, heat or power in an manner not permitted by an approved electrical permit.

- C. Any person having been served with an order pursuant to the provisions of 19 NYCRR Chapter XXXIII, Subchapter A or B, or this local law who shall fail to comply with it within 30 days after such service or within the time frame fixed by Code Enforcement Department for compliance, and any owner, builder, engineer, architect, tenant, contractor, construction superintendent, or other agencies or any other person taking part or assisting in the construction, repair, alteration or use of any building, other structure or equipment regulated by 19 NYCRR Chapter XXXIII, Subchapter A or B or this local law, or any person storing, handling or using hazardous substances, materials or devices.

76-9 Permit Regulations

No work shall be undertaken which involves erecting, placing, altering, repairing or demolishing of any structure or part thereof, nor installation of electrical, plumbing mechanical systems including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto, except pursuant to a permit issued as provided by this article and unless such permit at the time of the doing of such work shall be in full force and effect.

A. Exceptions:

Exceptions to the requirement of a building permit are permitted under the following circumstances:

Necessary repairs of a minor nature that have no material effect to the structural features or alterations to existing buildings provided that they:

- 1.) Do not materially effect structural features; and
- 2.) do not affect fire safety features such as smoke detectors, sprinklers, required fire separations and exits; and
- 3.) do not involve the installation or extension of electrical systems; and
- 4.) do not include the installation of solid fuel burning heating appliances and associated chimneys or flues.

- B. Parties who intend to undertake work subject to the provisions of this code shall be required to apply and obtain any required building permit prior to the commencement of the work. An application for a building permit shall provide sufficient information to enable the code enforcement official to determine if the proposed work conforms with all applicable codes and regulations. The following is the minimum information and documentation required upon submission of a building permit application, in order that it can be considered subject for approval:

- 1.) An identification and description of the proposed work; and
- 2.) a description of the premises including tax map number and street address; and
- 3.) the occupancy classification of the affected building or structure; and
- 4.) construction documents (drawings and specifications) that define the scope of the proposed work; and
- 5.) a copy of a contract or similar document which substantiates the total cost of the proposed work.

- C. Construction Documents shall not be accepted as part of the application for a building permit unless such documents:

- 1.) meet the provisions of New York State Education law including Section 7302, as amended, of Article 147 which stipulate that any new building construction, alteration or addition to any building or structure costing in excess of \$10,000 or which involves changes affecting the structural safety or public safety thereof, that a registered design professional including registered architect or licensed professional engineer certified in the State of New York State be employed also in connection with the construction of buildings or additions in excess of 1500 square feet, but not including uninhabitable structures. In such cases and to serve evidence of this requirement, all documents must have the original seal affixed to each sheet or page submitted.
- 2.) indicate with sufficient clarity the nature and extent of the work proposed including but not limited to a projected total cost estimate of work and/or material list itemized to the satisfaction of the Code Enforcement Official.

- 3.) substantiate that the proposed work will comply with the Uniform Code and applicable Hamburg Zoning law; and
- 4.) include a current site plan that shows any existing structures on the site, including the location of any existing utility easement or septic system, and indicate the location of the intended work as well as the distances between the structures and the lot lines.

D. Proof of Insurance

- (1) The permit applicant must show adequate general liability coverage in the amount and form acceptable to the Town of Hamburg.
- (2.) To assure compliance to Section 57 of the Workers' Compensation Law and Section 220, Subtitle 8 of the Disability Benefits Law of the State of New York, All applicants (prior to permit issuance) must submit proof that he or she has obtained workers' compensation and disability benefits coverage, or that he or she is not required to provide coverage under these laws.
- (3.) Only forms acceptable to the New York Worker's Compensation Board will satisfy the requirement of certifying that worker's compensation insurance has been properly secured.

E. Licensing of Plumbing and Site Utility Contractors

In all cases where there is to be installation of new plumbing or alteration of existing plumbing, or sewer work, a plumbing/sewer permit must first be obtained by a licensed plumber or site utility contractor.

- F. Application for a permit shall be made by the owner or lessee, or the agent of either, or by the architect, engineer or builder employed in connection with the proposed work. When such an application is made by a person other than the property owner, it is the applicant's responsibility to obtain the owner's authorization and permission to conduct the proposed work. The Code Enforcement Official may require an affidavit, signed by the property owner, indicating such approval and authorization.

Amendments to the application or to the plans and specifications may be filed at any time prior to completion of the work. Such amendments shall likewise be subject to the approval of the Code Enforcement Department and after approval, shall be filed with and be deemed a part of the original permit application.

76-10 Action on Application.

- A. Applications for building permits shall be examined within a reasonable time after filing and if, after examination, it appears that the proposed work will be in compliance with the provisions of this chapter and other laws applicable thereto and that the proposed construction or work will be safe, the application will be approved. If the examination reveals otherwise, the application will be returned as rejected, causing the applicant to make the necessary adjustments to bring the plans and specifications into compliance with the code.

Upon payment of the required fee and upon satisfactory proof being given that the applicant is in compliance with applicable provisions, rules and regulations of this chapter, a permit may be issued by and bear the name and signature of the Code Enforcement Official and applicants having proper authorization.

Any permit granted hereunder shall be limited only to the activity authorized on said permit, and its continued validity shall be subject to the conditions set forth on said permit.

The permit shall not be transferable and any change in the activity, size, extent or type of operation, location, ownership or use shall nullify the original permit as to require issuance of a new permit.

Each and every permit issued by the Code Enforcement Department under the provisions of this chapter shall expire and become null and void at the expiration of one (1) year from the date of issuance, unless within such period, an extension of such permit has been obtained from the Code Enforcement Department. The provisions of this section shall apply to any such extension.

- B. Permits shall continue until revoked or finalized as provided for herein or expire after a period of one (1) year. An extension of the permit time period may be granted, provided that satisfactory reason can be shown for failure to complete the work or activity authorized within the prescribed time period. For good cause shown, an application may be made for a six month period for an extension of said period upon payment of a renewal fee of one half ($\frac{1}{2}$) the original building permit fee. Permits can only be renewed twice or (one year beyond the original permit expiration date) and upon such expiration the work shall continue only if a new permit is granted at the discretion of the Code Enforcement Department.
- C. The acceptance of any permit issued pursuant to this chapter constitutes agreement and consent by the person to allow the Code Enforcement Official to enter the premises at any reasonable time to conduct inspections as required by this chapter. Refusal to allow the Code Enforcement Official or Fire Inspector to conduct said inspections of the premises and their records shall constitute justification for the revocation or suspension of said permit. In addition, should the Building Inspector or Fire Inspector deem it necessary, application may be made to any court of competent jurisdiction to obtain a warrant authorizing an inspection of the premises in question

76-11 Revocation.

The Code Enforcement Official and Fire Inspector shall have the authority to revoke permits issued by them in the following instances:

- A. The Code Enforcement Official may revoke any permit issued under the provisions of this code if it shall appear to them that there has been any false statement or misrepresentation as to a material fact in the application or any accompanying statement or plans upon which the permit was based.
- B. Where it is found that the permit as issued was in conflict with the requirements of any applicable code, ordinance, policy, procedure, rule or regulation and accordingly, should not have been issued.
- C. Where the person to whom a permit has been issued fails or refuses to comply with a stop-work order duly issued by the Code Enforcement Official in accordance with the provisions of this chapter.

76-12 Stop- work orders.

- A. Whenever the Code Enforcement Official has reasonable grounds to believe that work on any building or structure is proceeding without a permit or is otherwise in violation of the provisions of any applicable law, code, ordinance or regulation or is not in conformity with any of the provisions of the application, plans or specifications on which a permit was issued or being continued in an unsafe and dangerous manner, he/she shall notify either the owner of the property or the owner's agent, or the person or corporation performing the work to immediately suspend all work. In such instance any and all persons shall immediately suspend all related activities until the stop-work has been duly rescinded.
- B. Such stop-work order shall be in writing on a form prescribed by the Code Enforcement Official and shall state the reason for the stop-work order, together with the date of issuance. The stop-work order shall bear the signature of the Code Enforcement Official and shall be prominently posted at the work site. The posting of a stop-work order on the job site shall be deemed sufficient notice to suspend all work.

76-13 Fees

All permit and licensing fees collected shall be as specified herein or on the building permit schedule as approved from time to time by Town Board resolution.

- A. The fee for a permit issued as a result of a person not obtaining such permit prior to the start of construction shall be triple the cost of the original permit.
- B. Reinspection fee:
 - 1. A reinspection fee will be imposed against the permit holder, builder or developer to cover the cost of a repeat inspection under the following circumstances.
 - 2. When it can be verified by the Code Enforcement Officer that the builder/developer has scheduled an inspection with the Code Enforcement Department with the full knowledge that the work (scheduled for inspection) was substantially incomplete or deficient creating the need for subsequent inspection.
 - 3. If the permit holder or builder has not provided safe and/or adequate access to the premises necessary for the Code Enforcement Official to conduct a proper inspection. The Code Enforcement Department will affix the cost of any reinspection fees on the building permit. A certificate of occupancy will not be issued until such time that the cost of these fees are reimbursed to the town by the builder/owner and the work has been satisfactory completed.

76-14 Certificates of occupancy and compliance.

- A. No newly constructed building or addition shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the Code Enforcement Official certifying that such building conforms substantially to the permit and requirements of laws, ordinances and rules applying to buildings of its class and kind. No other structure or construction issued a permit in accordance with the provisions of this chapter shall be used or otherwise put into service without issuance of a certificate of compliance by the Code Enforcement Department certifying that the work for which the permit was issued has been completed substantially in accordance with the provisions of laws, ordinances and rules applying to such construction.
- B. In addition to the certification as to the compliance with the permit and the provisions of law, certificates of occupancy shall state the purposes for which the building may be used, in whole or in several parts, and may contain such special stipulations as the circumstances of the case may require, consistent with the provisions of law and ordinance.
- C. A certificate of occupancy shall be issued within Ten (10) days after application thereto if the building, at the time of such an application, is not unlawful, which certificate may be endorsed upon the building permit.
- D. The owner or his/her agent must submit to the Code Enforcement Department an “as built” survey, executed by a duly licensed surveyor or professional engineer verifying the true location of the new building or additions in reference to all the property line and existing structures.

76-15 Conditional occupancy.

Upon the request, the Code Enforcement Official may issue a conditional certificate of occupancy for a building or structure, or parts thereof, before the entire work covered by the permit has been completed, provided that the building or structure, or portion or portions to the extent completed, may be occupied safely without jeopardizing life or public welfare. A conditional certificate of occupancy shall specify the conditions that must be met before a final certificate of occupancy can be issued and shall specify an expiration date. The expiration date may be extended at the discretion of the Code Enforcement Official Building.

Conditional certificates of occupancy criteria.

- A. A conditional certificate of occupancy may be issued for a building, provided that all laws, rules, ordinances and regulations of the State of New York and Town of Hamburg, together with the following, as applicable in sole judgement of the Code Enforcement Official, are complied with:
1. The conditional certificate of occupancy shall state a date upon which it shall automatically expire and become void.
 2. A list of all items remaining to be completed on the project site shall set forth on the temporary certificate of occupancy and a time limit stated by which date all items of work are to be completed.
 3. A cost estimate of the remaining work shall be submitted by the applicant in a form acceptable to the Code Enforcement Official, which cost estimate may be increased to reflect cost overruns or additional work necessary to complete required items.
 4. A letter of commitment shall be submitted with original signature affixed by the property owner and /or applicant and approved by Code Enforcement Department to the Town of Hamburg agreeing to complete the remaining work prior to the stipulated expiration date.

76-16. Existing buildings.

- A. Nothing in this code shall require the removal, alteration or abandonment of the lawful use and occupancy of a lawfully existing building except as may be necessary for the safety of life or property. Upon written request from the owner, the Code Enforcement Officer shall issue a certificate of occupancy for an existing building, certifying the occupancy or use of such building after a verification by inspection, provided that at the time of issuing such a certificate there exists no violation of law or noncompliance with an order of the Code Enforcement Officer. [Amended 4-9-1984 by L.L. No. 3-1984]
- B. In the case of an existing building or structure built of material heretofore approved but now not conforming to the provisions of this code, wherein it is proposed to make minor alteration or addition, the Code Enforcement Officer may, in his discretion and when in his judgment the requirements of this code inflict an undue hardship, permit the use of such nonconforming materials in the making of such minor alterations or addition. Nothing in this subsection shall permit the violation of any state law or requirement, nor permit any construction that is hazardous or not structurally sound in the judgment of the Code Enforcement Officer. [Amended 4-9-1984 by L.L. No. 3-1984]

76-17. Change of occupancy. [Amended 4-9-1984 by L.L. No. 3-1984; 8-12-1996 by L.L. No. 9-1996]

- A. No change of occupancy or use shall be made in a building heretofore erected or altered, or property thereon, that is not consistent with the last issued certificate of occupancy for such building, without prior review and compliance approval from the Code Enforcement Department.
- B. In case of an existing building, no change of occupancy shall be made unless the Code Enforcement Officer finds upon inspection that such building and property thereof conforms to the provisions of law and of the ordinances with respect to the proposed new occupancy and use. He may in his discretion require the filing of plans and specifications showing the structural strength and type of construction of such building or, if warranted, refer the owner of such property to the Planning Board for site plan review before issuing such certificate.

76-18. Unsafe buildings. [Amended 4-9-1984 by L.L. No. 3-1984]

- A. A building or structure, or part thereof, that may be or shall at any time become unsafe by reason of bad condition of walls, overloaded floors, defective construction, deterioration or lack of safeguards against fire or other causes shall, unless made safe and secure after notice is herein provided, be taken down and removed by the owner or by the Town of Hamburg, its agents or representatives, at the expense of the owner. [Amended 8-12-1996 by L.L. No. 9-1996]

- B. A building or structure declared structurally unsafe by the Code Enforcement Department or damaged by fire may be restored to safe condition, provided that if the damage or cost of reconstruction or restoration is in excess of 50% of said building or structure, exclusive of foundations, and if such work of reconstruction or restoration is not begun in six months' period of time of being damaged by fire, such building or structure, if reconstructed or restored, shall be made to conform to the requirements of new buildings as to materials and form of construction, but no change of use or occupancy shall be compelled by reason of such construction or restoration, except as provided in the Town Zoning Ordinance.
- C. Upon receipt of information that a building or structure or part thereof is unsafe or dangerous, the Code Enforcement Official shall make or cause to be made an inspection thereof, and if it is found that an unsafe condition exists or that the structure or part thereof has deteriorated to such an extent as to be dangerous, he shall serve or cause to be served on the owner, occupant or tenant a written notice requiring the same to be made safe and secure or to be removed from the premises. The Code Enforcement Official may, if he believes that the necessities of the cause so require, cause a notice to be attached to any such unsafe building or a building which has deteriorated to such an extent to be unsafe, stating that the same is dangerous, and no person shall deface, remove or in any manner place any obstruction to the view of such notice.
- D. In case there shall be, in the opinion of the Code Enforcement Official, actual and immediate danger of collapse of a building or structure, or any part thereof, so as to endanger public safety, life or property, he shall cause the necessary work to be done to render such building or structure, or part thereof, temporarily safe, or to demolish and remove the same, whether or not the procedure prescribed in the preceding sections shall have been commenced, and in such case, the Code Enforcement Official shall report the expense of such work to the Town Board, which shall order such expense to be assessed against the premises upon which such work was done.
- E. Prior to securing or demolishing such unsafe building or structure either by the town employees or pursuant to a contract, the Town Board shall notify the owner in writing of the actual cost of such work at the address of the property and at the address as indicated on the assessment roll of the Town of Hamburg by depositing a true copy of the same in a postpaid properly addressed wrapper in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York. Such notice shall state the date, time and place where the Town Board shall hold a public hearing on the amount of such cost and that the owner may appear before the Town Board to contest or object to such amount. Such hearing shall be held not less than five days after serving of such notice. After such hearing the Town Board may confirm such amount, reduce it or increase it; however, if it increases the amount, it shall hold another public hearing on like notice of the increased amount. After the Town Board shall determine the final amount of costs, it shall adopt a resolution levying the same upon the land on which the unsafe building or structure is located. [Added 8-12-1996 by L.L. No. 9-1996]

76-19. Notice of violations and penalties.

- A. Whenever the Code Enforcement Official is satisfied that a building or structure or any portion thereof or any work in connection therewith, which is regulated, permitted or forbidden by this code, is being erected, altered or repaired or has been erected, altered or repaired in violation of the provisions of this code or in violation of the plans and specifications pursuant to which a permit for such work has been issued, or where a building or structure or part thereof shall have become unsafe by reason of bad condition of walls, overloaded floors, defective construction, deterioration or lack of safeguards against fire or other causes, he may serve a written notice upon the person responsible therefor, directing discontinuance of such action or correction of the violation complained of and requiring compliance with the provisions contained in this code. Any person having been served with such notice or order shall comply with the requirements thereof within 10 days of service of said written notice. Service can be made personally or by registered or certified mail sent to the owner, or by substituted service in conformance with the Civil Practice Law and Rules, at the last address shown on the assessment roll covering said property. [Amended 9-12-1983 by L.L. No. 7-1983]

- B. Whenever, in the opinion of the Code Enforcement Official, the erection, alteration or repair of any building or structure is being carried on in violation of a provision or requirement of this code, he may order, orally or in writing, all further work to be stopped and may require suspension of work until such violation has been remedied.
- C. Any person, firm or corporation who shall violate a provision of this code or fail to comply with any of the requirements thereof or who shall erect, construct, alter, repair, place or demolish or has erected, constructed, altered, repaired, placed or demolished a building structure or part thereof or who has failed to remove a building or structure declared structurally unsafe by reason of bad condition of walls, overloaded floors defective construction, deterioration or lack of safeguards against fire or other causes in violation of a detailed statement or plan submitted and approved thereunder or of a permit or certificate issued thereunder shall be guilty of an offense which shall be punishable by a fine of not less than \$50 nor more than \$500, and each day such violation shall be permitted to exist shall constitute a separate offense; and a person, firm or corporation who shall own a building or structure or a part thereof that may be or shall at any time become unsafe because of the bad condition of walls, overloaded floors, defective construction, deterioration or lack of safeguards against fire shall be repaired forthwith, and the condition in violation of this code remedied forthwith or said building, structure or part thereof shall be directed to be removed and demolished.

76-20. Interpretations and variance provisions.

As stipulated within the context of this code, the Code Enforcement Official is duly responsible to interpret all relevant provisions to insure compliance. Upon application, any variance from strict compliance of the specifications relating to the state building code shall be referred to the New York State Board of Review Council pursuant to Title 19 NYCRR, Chapter XXXII Part 1205. The Code Enforcement Official is also authorized to make interpretations in regard to the Town Zoning code and pertinent Town Local Law. When deemed necessary the Code Enforcement Official may also refer such interpretations to the Zoning Board of Appeals. Any appeal for variance or any modification of provisions of the Town Zoning code shall be referred to the Zoning Board of Appeals whereby subject to their approval may grant a variance in accordance with Article XXXIII.

76-21. Restrictions on garage permits.

No permit will be issued for the construction of a private garage or other similar outbuilding on any lot unless it is in compliance with zoning regulations applicable thereto. It is the intent of this section to prevent the construction of a garage or other outbuilding to be used for residence until such time as the residence may be built.

76-22. Parking provisions.

Each plan filed for the construction of any structure except a one- or two-family residence, shall provide sufficient parking area off the public highway to provide for all normal parking requirements of the structure to be built, all in accordance with regulations applicable thereto.

76-23. Grading.

- A. Grading shall conform to grades of adjacent property unless, by mutual agreement of adjacent owners, a new grade is established which is satisfactory to the Town Engineer.
- B. Grading in subdivisions with an approved grading plan shall conform to said plans unless, by mutual agreement of adjacent owners, a new grade is established which is satisfactory to the Town Engineer. [Added 3-23-1981 by L.L. No. 2-1981]
- C. Grading in subdivisions with no approved grading plan or on lots with no approved grading plan shall be approved by the Town Engineer. [Added 3-23-1981 by L.L. No. 2-1981]

76-24. Plumbing and Site Utility Work administrative rules and regulations.

- A. All plumbing and site utility work conducted in the Town of Hamburg shall be performed only by duly licensed plumbers. [Amended 4-12-1976 by L.L. No. 6-1976; 11-22-1976 by L.L. No. 10-1976; 8-15-1994 by L.L. No. 7-1994]

Exception: Any owner, working exclusively on the premises of which he or she resides and has obtained the necessary plumbing permit.

- (1) A licensed master plumber or journeyman plumber employing plumbers shall be present at all times when work is being performed on any premises within the Town of Hamburg, exclusive of the Villages of Hamburg and Blasdell, involving the original installations, alterations or repair of plumbing as defined in § 76-24 of this article.
 - (2) Applicants must have:
 - (a) Four years of vocational school plus two years of practical experience under the supervision of a master plumber; or
 - (b) four years of practical plumbing experience; or
 - (c) an equivalent combination of training and experience indicated in Subsection A(2)(a) or (b) above.
- B. Method of application for license. Any person who shall desire a license to conduct a plumbing business within the Town of Hamburg, exclusive of the Villages of Blasdell or Hamburg, shall apply in person and register his or its name and address with the Code Enforcement Official upon the application form prescribed by the Code Enforcement Department.
- C. Issuance of license. Code Enforcement Official shall issue a license authorizing said applicant to conduct such business in the Town of Hamburg upon being satisfied that the applicant has met the following conditions:
- (1) Approval of Code Enforcement Official, evidenced by the receipt of a certificate from the Town Plumbing License examiner showing that such person, has satisfactorily passed an examination held by said examiner. The certificate must be dated within one year of the date of the application.
 - (2) Proof of financial responsibility. The applicant shall file with the Code Enforcement Department, a certificate of insurance protecting the town to the extent of the following limits: personal liability of \$300,000 and property liability of \$50,000.
 - (3) Payment of a fees as prescribed a master license, a journeyman license or site utility contractor.
- D. Use of license by others. No license holder shall allow his name or license to be used by any other person or party either for the purpose of obtaining permits or doing any work under his license. Plumbers will be held responsible for the violation of any rules of the Town by journeymen plumbers or others in their employ. [Amended 8-15-1994 by L.L. No. 7-1994]
- E. Transfer of license. A license cannot be transferred to any successor in the business or to any person whomsoever under any circumstances. [Amended 8-15-1994 by L.L. No. 7-1994]
- F. Expiration of license. All licenses shall expire on the 31st Day of December of the year issued and may be renewed within 30 days preceding expiration. [Amended 8-15-1994 by L.L. No. 7-1994]

- G. Renewals. A renewal license shall be issued by the Code Enforcement Department each year to any person holding a license at the expiration of the previous year, without examination, upon payment of the license fee and proof of financial responsibility. If, however, the application for the renewal license is not made within 30 days after the expiration of the prior existing license, such license shall be deemed to have lapsed. A new license shall not be issued except upon new application made pursuant to Subsections B and C of this section unless the licensee make payable all prior annual renewal fees.
- H. Examinations.
- (1) It shall be joint responsibility of the Code Enforcement Official and duly appointed Plumbing License Examiner to have jurisdiction over and examine all persons desiring or intending to engage in the plumbing business, sewer installations or as employing plumbers in the Town of Hamburg with the power of examining persons applying for examinations, such as plumbers and site utility contractors, to determine their qualifications for conducting the business of plumbing and sewer construction and to issue certificates of competency to all such persons who shall have satisfactorily passed the examination before it determined to be qualified for conducting business as plumbers and site utility contractors within the Town. The Town Board (by resolution on an annual basis) shall appoint a qualified individual hereafter known as the Plumbing License Examiner. It shall be this individuals responsibility to preparing and monitor plumbing examinations in order to certify the that all applicants meet a satisfactory level of competency.
 - (2) The plumbing License Examiner shall hold an examination during each June and December hereafter, for site utility contractors, master and journeyman plumbers.
 - (3) Upon the request of a qualified applicant, a special examination may be held, at any time, at the discretion of the Supervising Code Enforcement Official. The expense of such special examination shall be established by Town Board Resolution, which amount shall be deposited with the Town Clerk by the applicant for such examination.
 - (4) Before an applicant shall be admitted to an examination, he shall file his application in writing with the Code Enforcement Department at least five days before the examination date and shall pay to the Town Clerk the required examination fee. The names and addresses of applicants shall be forwarded by the Code Enforcement Department to the Town Clerk.
- I. Inspection of plumbing and site utility work. There shall be appointed as provided by law a duly certified Code Enforcement Official whose duties, in addition to those prescribed by law and those which may be prescribed by the Town Board, shall be to inspect the construction and alteration of all plumbing work performed in the Town of Hamburg and to report, in writing, the results of such inspection of such plumbing to the Code Enforcement Department, and he shall also report in like manner any person engaged in or carrying on the business of employing plumbers, without having the license herein provided.
- J. Notice of violation of rules.
- (1) Whenever any Inspector or other person reports a violation of any rule or regulation for plumbing and drainage, or a deviation from any officially approved plan or specification for plumbing and drainage filed with the Code Enforcement Department, a notice of the violation thereof upon the person, firm or corporation doing the work, if a registered plumber.
 - (2) Such notice may be served personally or by mail, and, if by mail it may be addressed to such licensed plumber at the address registered by him or it with the Town Clerk, but the failure of a plumber to register will relieve the Town from the requirement of giving notice of violation. Unless the violation is removed within three days after the date of serving or mailing such notice, exclusive of the day of serving or mailing, the Code Enforcement Official may proceed with enforcement action according to law. A reinspection fee shall be charged.

K. Violations; how punished.

- (1) Any person violating the provisions of this article or any rules or regulations of the Town Code Enforcement Department and who fails to remove or correct such violations after notice as provided in Subsection J hereof shall be guilty of a misdemeanor and, on conviction, shall be subject to a fine of not more than \$500 or imprisonment for not more than 30 days, or both, and in addition, if a licensed plumber, shall forfeit his or its license. [Amended 4-9-1984 by L.L. No. 3-1984]
- (2) All violations under this article shall be prosecuted in the name of the Inspector on behalf of the Town of Hamburg.

L. Issuance of permits to connect with sewers restricted.

He (the officer having charge of various sewer districts in the Town of Hamburg) shall not issue a permit to anyone to connect with the sewers in the Town of Hamburg, unless such person is duly licensed to conduct business in the Town of Hamburg.

M. Plans and specifications. Plans and specifications of the work, together with an application signed by the owner or his agent for a permit, must be submitted to the Code Enforcement Official for approval, and a permit must be obtained before any part of the building or work is commenced. There shall be a separate plan for each building, public or private, accompanied by specifications describing the drainage of said building on blanks prescribed and furnished for this purpose, showing the size and kind of pipes, traps, closets, fixtures, etc., to be used, the same to be examined and placed on file with the Code Enforcement Department. A fee as determined by a schedule of fees, adopted by the Town Board, shall accompany each application.

N. A further change in plans. Application for change in plans or work in the building must be made in writing by the plumber, duly signed by the owner or his agent, and a written permit obtained from the Code Enforcement Official before any part of the work is started. [Amended 4-9-1984 by L.L. No. 3-1984]

O. [Added 12-18-1995 by L.L. No. 6-1995] Hamburg Master and Miscellaneous Sanitary Sewer Districts. The fee for a sewer permit to make any connection to the sanitary sewers in the Hamburg Master and Miscellaneous Sewer Districts shall be established at the following rates:

- (1) For single- or double-family dwellings, the fee shall be \$400.
- (2) For multifamily housing, the fee shall be \$400, plus \$200 for each additional dwelling unit in excess of two dwelling units.
- (3) For commercial or institutional facilities having sanitary facilities that are served by a domestic water service less than one inch in diameter, the fee shall be \$400. For those facilities served by a domestic water service which is equal to or greater than one inch in diameter but less than 1 1/2 inches in diameter, the fee shall be \$700. Facilities served by a domestic water service which is equal to or greater than 1 1/2 inches in diameter but less than two inches in diameter, the fee shall be \$1,500.
- (4) Facilities served by a domestic water service which is equal to two inches in diameter, the fee shall be \$2,000. Any facility served by a domestic water service which is greater than two inches in diameter, the fee shall be determined based on the size of the water service, and such fee shall be calculated by the Code Enforcement Department. NOTE: Water services used for the sole purpose of fire protection shall not be considered in the determination of sewer permit fees.
- (5) The fee for a permit to make any connection within sanitary sewers tributary to the Village of Blasdell Sewage Treatment Plant shall be reduced by 50%.

P. [Added 12-18-1995 by L.L. No. 6-1995] Erie County Sanitary Sewer District No. 2. The fee for a sewer permit to make any connection to the sanitary sewers in the Erie County Sanitary Sewer District No. 2 shall be established at the following rates:

- (1) For single- or double-family dwellings, the fee shall be \$50.
- (2) For multifamily housing, the fee shall be \$50, plus \$25 for each additional dwelling unit in excess of two dwelling units.
- (3) For commercial or institutional facilities having sanitary facilities that are served by a domestic water service less than one inch in diameter, the fee shall be \$50. For those facilities served by a domestic water service which is equal to or greater than one inch in diameter but less than 1 1/2 inches in diameter, the fee shall be \$75. Facilities served by a domestic water service which is equal to or greater than 1 1/2 inches in diameter but less than two inches in diameter, the fee shall be \$200.
- (4) Facilities served by a domestic water service which is equal to two inches in diameter, the fee shall be \$350. Any facility served by a domestic water service which is greater than two inches in diameter, the fee shall be determined based on the size of the water service, and such fee shall be calculated by the Code Enforcement Department. NOTE: Water services used for the sole purpose of fire protection shall not be considered in the determination of sewer permit fees.

Q. [Added 12-18-1995 by L.L. No. 6-1995] Northeast Hamburg Erie County Sanitary Sewer District No. 3. The fees for a sewer permit to make any connection to the sanitary sewers in the Northeast Hamburg Erie County Sewer District No. 3 shall be established at the following rates:

- (1) For single- or double-family dwellings, the fee shall be \$200.
- (2) For multifamily housing, the fee shall be \$200, plus \$100 for each additional dwelling unit in excess of two dwelling units.
- (3) For commercial or institutional facilities having sanitary facilities that are served by a domestic water service less than one inch in diameter, the fee shall be \$200.
- (4) For those facilities served by domestic water service which is equal to or greater than one inch in diameter but less than 1 1/2 inches in diameter, the fee shall be \$350. Facilities served by a domestic water service which is equal to or greater than 1 1/2 inches in diameter but less than two inches in diameter, the fee shall be \$800.
- (5) Facilities served by a domestic water service which is equal to two inches in diameter, the fee shall be \$1,400. Any facility served by a domestic water service which is greater than two inches in diameter, the fee shall be determined based on the size of the water service, and such fee shall be calculated by the Code Enforcement Department. NOTE: Water services used for the sole purpose of fire protection shall not be considered in the determination of sewer permit fees.

76-25. General regulations.

- A. Use of public sewers required. Where a public sewer is accessible in a street, alley, easement or thoroughfare to a building or premises abutting thereon, the liquid waste from any plumbing system in said building shall be discharged into the public sewer unless otherwise prohibited.
- B. Sewage treatment required. Where the liquid wastes from any plumbing are not discharged into a public sewer, such wastes shall be so treated or disposed of as recommended by the Erie County Health Department.
- C. Septic tank location. Septic tanks to be located as recommended by the Erie County Health Department.
- D. Harmful wastes in sewers.
 - (1) Attention is referred to the provisions Part 403 of Title 40, Code of Federal Regulations (40 CFR) and the Rules and Regulations for Erie County Sewer Districts Section 404 - Oil and Grease Separators and/or Sediment Separators which stipulates that all food preparation facilities, vehicle maintenance shops and garages and similar commercial establishments which generate and discharge oil, grease, grit and sediments, or other harmful ingredients in excess of one hundred milligrams per (100mg/l), or as determined to be detrimental to, and into the public sewer, shall be required to provide an oil and grease and /or sediment separator in compliance to the required design guidelines stated therein.

- (2) In no case may any liquid or vapors having a temperature greater than 122 degrees Fahrenheit (50 degrees Celsius) be discharged or wastewater of such quantity and temperature as to cause the temperature of the influent at the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius). In such a case there shall be provided a satisfactory cooling device.
- E. Explosive or inflammable matter in sewers.
- 1.) No explosive or inflammable matters shall be discharged into any sewer.
 - 2.) Cleaning establishments, buildings used for housing or repairing automobiles, gasoline and oil service stations and other buildings or establishments where gasoline, oils, calcium, carbide or other explosives or inflammable materials are stored, sold or handled, the drains from which are connected to the public sewers must be provided with an approved intercepting pit or tank so constructed, located and maintained as to prevent the entrance into the sewer of such explosive or inflammable matter.
- F. Protection of material. All pipes passing under or through walls shall be protected from breakage. No metal pipes shall pass through or under cinders, slag or other corrosive material.
- G. Workmanship. Workmanship shall be of such character as fully to secure the result sought to be obtained in all of the sections of this code.
- H. Installation of inside plumbing by owner. All inside plumbing installed by the owner himself, who shall occupy the building as his home, shall comply with the requirements of this code, and in such event the word "owner" shall be substituted for the word "plumber" throughout this code, with the exception that the license requirement will be waived.

76-26. Electrical inspection.

- A. Electrical Inspector. The Supervising Code Enforcement Officer and each of the duly appointed Inspectors of any electrical inspection company or agency which has been approved by local electric utilities and which has submitted to the Town of Hamburg proof of satisfactory liability coverage are hereby authorized and deputized as agents of the Town of Hamburg to make inspections and re-inspections of all electrical installations heretofore and hereafter described and to approve or disapprove the same. In no event, however, will the cost or expense of such inspections and re-inspections be a charge against the Town of Hamburg. [Amended 4-9-1984 by L.L. No. 3-1984]
- B. Duties of the Electrical Inspector.
- 1.) It shall be the duty of the designated Inspector to report in writing to the Code Enforcement Department Inspector, whose duty it shall be to enforce all provisions of this code, all violations or deviations from or omissions of the electrical provisions of the New York State Uniform Fire Prevention and Building Code applicable to the Town of Hamburg and of all local laws, ordinances and the New York State Uniform Fire Prevention and Building Code, as referred to in this article, insofar as any of the same apply to electrical wiring. The Inspector shall make inspections and reinspections of electrical installations in and on properties in the Town of Hamburg upon the written request of an authorized official of the Town of Hamburg or as herein provided. The Inspector is authorized to make inspections and reinspections of electrical wiring, installations, devices, appliances and equipment in or on properties within the Town of Hamburg where he deems it necessary for the protection of life and property. In the event of an emergency, it is the duty of the Inspector to make electrical inspections upon the oral request of an official or officer of the Town of Hamburg. [Amended 4-9-1984 by L.L. No. 3-1984]

- 2.) It shall be the duty of the Inspector to furnish written reports to the proper officials of the Town of Hamburg and owners and/or lessees of property where defective electrical installations and equipment are found upon inspection. He shall authorize the issuing of a certificate of compliance when electrical installations and equipment are in conformity with this article. He shall direct that a copy of the certificate of compliance be sent to the Town of Hamburg to the attention of the Code Enforcement Department.
- C. Violations of the local law. It shall be a violation of this article for any person, firm or corporation to install, to cause to be installed or to alter electrical wiring for light, heat or power in or on properties of the Town of Hamburg until an application for inspection has been filed with any electrical inspection company or agency which has been approved by local electric utilities and which has submitted to the Town of Hamburg proof of satisfactory liability coverage. It shall be a violation of this article for a person, firm or corporation to connect or cause to be connected electrical wiring in or on properties for light, heat or power to any source of electrical energy supply prior to the issuance of a temporary certificate or a certificate of compliance by the designated electrical inspector or inspection agency.

76-27. Special regulations. [Amended 4-9-1984 by L.L. No. 3-1984]

In cases where the New York State Uniform Fire Prevention and Building Code has referred to local jurisdiction, in the absence of a local law, the designated Code Enforcement Official shall be the local authority having jurisdiction.

76-28 Effective date.

- A. This article shall take effect immediately.

CHAPTER 109: FAIR HOUSING

[HISTORY: Adopted by the Town Board of the Town of Hamburg 8/4/1986 by L.L. Number 8-1986. Amendments noted where applicable.]

Section 109 - 1: Policy.

It is the policy of the Town of Hamburg to provide for fair housing throughout the town.

Section 109 - 2: Definitions.

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

DISABILITY : A disability is a physical or mental impairment which substantially limits one (1) or more major life activities, a record of such an impairment or a condition regarded by others as such an impairment.

MARITAL STATUS: Shall mean single, married, divorced, separated or widowed.

SOURCE OF INCOME: Shall mean any income or source of rent payment from lawful sources.

SEXUAL ORIENTATION: Shall mean heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived.

ADVERTISING: Shall mean printing, circulating, placing or publishing or causing to be placed or published any written statement with respect to the availability for sale or rental of a dwelling.

HOUSING UNIT: Shall mean any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home or residence of one or more persons maintaining a common household.

Section 109 - 3: Unlawful Acts.

It shall be unlawful:

- A: To refuse to sell or rent or refuse to negotiate for the sale or to deny any dwelling to any person because of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation or because the person has a child or children.
- B: To discriminate against any person in the terms, conditions or provision of services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation or because the person has a child or children.
- C: To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or person of a particular race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation or because the person has a child or children.
- D: For a person offering residential property for sale or rent or anyone acting on behalf of such a person to print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for the sale or rental of a dwelling or to make any record or inquiry in connection with the sale or rental of a dwelling which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation or because the person has a child or children.

For purposes of this chapter, discrimination shall include (i) a refusal to permit, at the expense of a disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises (except that, in the case of rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted), and (ii) a refusal to make reasonable accommodations in the rules, policies, practices or services when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Section 109 - 4: Applicability.

This chapter shall apply to all residential structures located within the Town as well as land zoned for residential uses.

Section 109 - 5: Exemptions.

- A) The prohibitions of this chapter shall not apply to a religious institution or organization limiting the sale, rental or occupancy of dwellings which it owns or operates to persons of the same religion or giving preference to such persons, unless membership in such religion is restricted on account of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation or because the person has a child or children.
- B) The prohibitions of his chapter against discrimination because of sex shall not apply to a residential building owned by a public body or by a private institution or organization and maintained, in whole or part, for the exclusive use of one (1) sex.
- C) The provisions of this chapter shall not apply to:
 - 1) the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations and the rental has occurred without advertising,
 - 2) to the restriction of the rental of all room in a housing accommodation to individuals of the same sex or,
 - 3) to the rental of rooms in a housing accommodation if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or members of his family reside in such housing accommodation,
 - 4) solely with respect to age to the restriction of the sale, rental or lease of housing accommodations exclusively to persons fifty-five years of age or older.

Section 109 - 6: Enforcement.

- A) Filing of complaints:
 - 1) The Town shall receive and investigate complaints under this chapter. The Supervisor shall designate the Director of Community Development of the Town to perform the function contained in this section and may also designate a not-for-profit fair housing organization to either assist the Director of Community Development in conducting investigations or to complete said function and investigations.
 - 2) Any person or organization, whether or not an aggrieved party, may file with the Supervisor's designee a complaint of a violation of this chapter.
 - 3) The Supervisor's designee may investigate individual instances and patterns of conduct prohibited by this chapter, even without a complaint from another person or organization, and may initiate complaints in connection therewith.
- B) Investigation. The Supervisor's designee shall notify the accused party, in writing, within thirty (30) days of the filing of any complaint. The designee shall make a prompt investigation in connection with the complaint and within one hundred days after a complaint is filed, determine whether the Town has jurisdiction and, if so, whether there is probable cause to believe that the person named in the complaint (hereinafter referred to as the respondent), has engaged or is engaging in an unlawful discriminatory practice. If, during or after the investigation, the designee believes that appropriate action to preserve the status quo or to prevent irreparable harm is advisable, the designee shall advise the Town Attorney, in writing, to bring immediately in the name of the Town, any action necessary to preserve such status quo or to prevent such harm, including the seeking of temporary restraining orders and preliminary injunctions.

- C) Action: If, at the conclusion of the investigation, the Supervisor's designee shall determine that there is probably cause to credit the allegation of the complaint, the designee shall certify the matter to the Town Attorney, who shall institute proceedings in the name of the Town.

Section 109 - 7: Penalties for offenses.

- A) Any person found to have violated any provision of this chapter shall be subject to the following:
- 1) A fine of not more than five-thousand (\$5,000) dollars for a first violation and not more than ten thousand dollars (\$10,000) for a respondent adjudged to have committed any prior discriminatory housing practice. The Town may choose to designate a portion of any recovery to further the purposes of this chapter.
 - 2) Revocation or suspension of any license or permit necessary for the operation of the dwelling unit in question.
 - 3) Costs, expenses and disbursements incurred by the Town, necessary to obtain complete compliance by the respondent with the chapter; and/or Restraining orders and temporary or permanent injunctions necessary to obtain complete compliance with this chapter.
 - 4) Each day a violation continues shall constitute a separate violation of this chapter.
 - 5) The Town Attorney may institute criminal action to punish a violation of this chapter by imprisonment for a term not exceeding thirty (30) days if the above proceeding does not result in compliance with this chapter.
 - 6) The Town may choose to designate a portion of any penalties recovered to further the purposes of this chapter including: further public information; the engagement of a fair housing agency or agencies to further promote fair housing activities within the town; the participation by the town in/with any other organization whose principal goal is to provide fair housing and/or housing counseling activities; the offset of any fees and/or expenses originated with the pursuit of this chapter.

Section 109 - 8: Court action.

Any person claiming to be aggrieved by an unlawful discriminatory practice as defined by Section 109 - A - 3 of this chapter, shall have a cause of action in any court of competent jurisdiction within one (1) year from the date of the occurrence for damages and such other remedies as may be appropriate. The court may:

- A) Award actual damages, including but not limited to mental anguish, embarrassment and humiliation.
- B) Award punitive damages.
- C) Award reasonable attorney's fees in the case of a prevailing plaintiff; and/or
- D) Grant as relief it deems appropriate any permanent or temporary injunction, temporary restraining order or other order. No bond shall be required prior to the issuance of injunctive relief.

Section 109 - 9: Other remedies.

Nothing in this chapter shall be construed to limit the rights of the complainant to pursue, at any time prior to or after the filing of a complaint, any other remedies which the complainant may have under the law of any state, the United States or any jurisdiction. Pursuit of one (1) or more remedies available under this chapter shall not preclude the pursuit of any other remedy available under this chapter.

Section 109 - 10: Education and promotion of housing goals.

Immediately after the enactment of this chapter, the Town shall commence educational activities which will explain the law and help to promote the Town's fair housing goals. Such activities shall continue while this chapter remains in force.

- A) Housing providers or real estate brokers selling or renting twenty (20) or more dwelling units within a calendar year shall formulate an Affirmative Fair Housing Marketing Plan, which must be filed with the Director of Community Development or his designee. At minimum, such Affirmative Fair Housing Marketing Plans shall include: (a) a statement of non-discrimination and (b) a marketing plan designed to attract a diverse pool of applicants. The Town may require annual reports of housing providers' compliance with their plans.
- B) Housing providers or real estate brokers selling or renting twenty (20) or more dwelling units within a calendar year shall be required to use the equal opportunity logotype on applications and marketing materials and to display in rental or real estate offices a public notice of equal opportunity housing.

Section 109 - 11: Expedition of proceedings.

Any court in which a proceeding under this chapter is instituted shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

Section 109 - 12: Construal of provisions.

Nothing in this chapter shall be construed to invalidate or limit any law of the state, the United States or any other jurisdiction that grants, guarantees or protects the same rights granted, guaranteed or protected by this chapter.

There was no correspondence received.

Drew Reilly comments that the public hearing is for two revisions to the Zoning Code, a new Building Code, and an update to the Fairhousing ordinance. Basically they are creating a new Zoning District in the Town called Waterfront Commercial Zoning District. This is in accordance with the Town Local Waterfront Revitalization Plan and they are trying to come up with a zoning that would be applicable to the waterfront area and waterfront commercial businesses. This is creating the District and they are not attaching it to any properties. They will do that at a later date when they figure out the properties that fit into that zoning district. Then they will have another public hearing. Another thing they discussed in the LWRP and the Comprehensive Plan was to have a Route 5 Overlay Zoning District. This doesn't change the zoning of the property along Route 5, but has additional standards for development along Route 5. This basically deals with landscaping, visual aesthetics and also access to the roads. The other ordinances are updates through existing codes.

Mr. Allen will explain the changes to the Building Codes and Scott Gehl from HOME is present.

The Town adopted a Fairhousing law in 1986 to protect residents from housing discrimination. Recently the Town did an update to analysis of impediments to fairhousing, which is required by HUD. The result of this analysis noticed that the law was out of date, and did not address everything that needed to be addressed. Therefore, the Town has come up a revision to that ordinance and HOME helped put that ordinance together. Mr. Gehl is present from HOME to answer any questions. Kurt Allen is present to answer questions on the Building Code.

Mr. Allen comments that this Building Code project started about three years ago. Originally it was looked at as amendments to update the Code in view of the fact that the State Building Code was completely restructured in 2001. They basically re-wrote about 2/3rds of it. Broadening the terminology and defining the duties of Building Officials. They eliminated all references to Building Inspectors, they are now referred to as Code Enforcement Officers. There were references to the Building Board which was disbanded years ago. The new Code is called Building Construction & Fire Prevention and they are putting more emphasis on fire prevention. The nature of their business is fire prevention and safety in building construction. The entire revision is on file for public review.

Mr. Gehl comments that he is the Executive Director of Housing Opportunities Made Equal and they had the privilege to work with the Town of Hamburg since 1990 assisting with fairhousing matters. Basically, as Drew mentioned, the Town enacted a fairhousing ordinance in 1986 that served the Town well for 19 years, but Congress has amended the Fairhousing Act and the State Legislature has amended the New York State Human Rights Law. In reviewing the 1986 statute they found many instances that were outdated and they wanted to make the Hamburg Statue consistent with Federal and State Law and to clarify the Statute. These amendments that are proposed will put in place some technical issues related to enforcement. For example, complaints under the Hamburg Ordinance would have to be filed with the Director of Community Development. Persons accused of discrimination would be notified within 30 days of filing and within 100 days of filing the Town will make a determination as to whether they had jurisdiction and whether there was probable cause

Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Quatroche
Noes: None
Carried

VIII.

RESOLVED, that the Town Board approve the hiring of personnel for the Tax Department as follows:

1. Early, Cecilia Clerk - P/T 02/17/2005 \$9.22

Moved: Hoak Seconded: Quatroche
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Quatroche
Noes: None
Carried

IX.

WHEREAS, the Town of Hamburg was awarded a matching grant in the amount of \$141,500.00 by the New York State Office of Parks, Recreation and Historic Preservation from the Clean Water/Clean Air Bond Act for the Lake Erie Shorefront Trail at Hoover Beach, and

WHEREAS, Architectural/Engineering design services are required to implement the project, and

WHEREAS, a three person consultant selection committee was established to select a professional design firm from a list of firms responding to a published request for proposal for the project, and

WHEREAS, after due consideration the firm of Wendel Duchscherer Architects and Engineers was selected, based upon their experience, expertise and familiarity with the project, and

WHEREAS, Wendel Duchscherer Architects and Engineers has submitted a proposal to the Town for providing architectural/engineering design services associated with the project for a lump sum of \$46,500.00,

THEREFORE BE IT RESOLVED, that Wendel Duchscherer be awarded a contract in the amount of \$46,500.00 for providing architectural/engineering design services for the project and that the Town Supervisor is authorized to sign an agreement (contract) based upon the consultant's proposal. Funding for said design services are available from Account H84 7280.331

Moved: Quatroche Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Quatroche
Noes: None
Carried

X.

RESOLVED, that the Town Board approve the Travel Request for Dispatcher Jack Chiappone Jr., and Dispatcher Robert K. Paas to travel to Rural Metro Medical Services, 481 William Gaiter Pkwy., Buffalo, New York on 4-13-05 to 4-15-05 at an estimated cost of \$600 to attend Emergency Medical Dispatch Training, provided by Priority Dispatch Consultants, of Salt Lake City, Utah.

This training is required for all Public Safety Dispatchers for utilization of our Emergency Medical Dispatch Program. This program is utilized on a daily basis to determine the correct dispatch of Emergency Medical Providers, and provide pre-arrival, and post-dispatch instructions to callers.

The estimated cost is \$600.00. Finance Department to transfer funds to Account A3020.492, upon approval of the Town Board. (As per memo from Town Supervisor's Office 1-4-2005.)

Town vehicle also requested for transportation if available.

Moved: Hoak Seconded: Cavalcoli
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Quatroche
Noes: None
Carried

and his staff that the Town has done so well.

Councilman Cavalcoli explains that the Town is looking into forming a townwide refuse district and townwide refuse service. The steps are a bit complicated. The first thing they have to do is have a refuse district to establish boundaries and critical features. At the same time, they will be looking at bids from various vendors to provide that service. They are looking for a single consolidated service for the entire town excluding the two villages and excluding any private developments, such as sub-divisions that have their own homeowners associations and have their own service, and mobile home parks. What they are doing tonight is setting a public hearing for March 14th. At that time they will go through the steps that are needed to establish the district. They need to have the district in place by May 24th in order to put this on the tax roles for 2006. Between now and May 24th they will hold the public hearing and they will present information to the public on the cost. If the cost comes in higher than what the residents are now paying for their own subscription services, then they will not establish the district. The purpose is to reduce the cost of service to residents through publically bid contract to create a reduction in the refuse collection, through recyclables, and to decrease the number of trucks that are going through our community. It would provide a weekly rubbish collection instead of a once a month rubbish collection. They have been working with the Chamber of Commerce, the Who Does What Committee, and they said they felt this was one of the critical issues. There is no action tonight, they are only calling for the public hearing on March 14th.

XIII.

At a regular meeting of the

Town Board of the Town of
Hamburg in the County of
Erie, New York, which was held
at the Town Hall, S-6100 South Park
Road, Hamburg, New York on the
28th day of February, 2005.

PRESENT:

Hon. Patrick H. Hoak,	Supervisor
D. Mark Cavalcoli,	Councilman
Kathleen Hochul,	Councilperson
Joan A. Kesner,	Councilperson
Thomas J. Quatroche, Jr.,	Councilman

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In the Matter

of the

Proposed Establishment of the Hamburg,
Refuse and Garbage District in the Town
of Hamburg, in the County of Erie,
New York, pursuant to Article 12-A
of the Town Law.

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ORDER CALLING
PUBLIC HEARING
March 14, 2005

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WHEREAS, the Town Board of the Town of Hamburg (herein called "Town Board" and "Town", respectively), in the County of Erie, New York pursuant to Article 12-A of the Town Law, has caused Gerard Kapsiak, P.E., the Town Engineer of the Town, to prepare a map, plan and report for the proposed establishment of the Hamburg Refuse and Garbage District in the Town (herein called "District"), said District only to provide refuse and garbage collection and disposal service to the entire area of the Town outside of villages, which map, plan and report have been duly filed in the office of the Town Clerk of the Town for public inspection; and

WHEREAS, the Town Board has given due consideration to the impact that the establishment of the District may have on the environment and, on the basis of such consideration, the Town Board has found that no substantial adverse environmental impact will be caused by the establishment of such District; and

WHEREAS, the Town Board and the Town have complied in every respect with all applicable federal, state and local laws and regulations regarding environmental matters, including compliance with the New York State Environmental Quality Review Act, comprising Article 8 of the Environmental Conservation Law and, in connection therewith, a duly executed Short Environmental Assessment Form has been filed in the office of the Town Clerk; and

WHEREAS, the Town Board has determined to proceed with the establishment of the

proposed District and the supply of such service provided that favorable bids are received; and

WHEREAS, the proposed District is bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situate within the boundaries of the Town of Hamburg, County of Erie and State of New York, being part of Township 9, Ranges 7 and 8, and Township 10, Ranges 7 and 8 of the Holland Land Company's Survey, and being more particularly bounded and described as being coterminous with the boundaries of the Town of Hamburg, not including those portions of the Town of Hamburg within the incorporated boundaries of the Village of Hamburg and the Village of Blasdell.

WHEREAS, the establishment of the proposed District will be of no cost to the Town since no improvements will be constructed or acquired, said District to be established only to provide refuse and garbage collection and disposal service through an award to the lowest responsible bidder and the expense of the establishment and the operation and maintenance of the District shall be paid by the assessment, levy and collection of special assessments upon the several lots and parcels of land within the proposed District which the Town Board shall deem specially benefitted by said service so much upon and from each as shall be in just proportion to the amount of benefit which said service confers upon the same, with the estimated annual cost of such service to a typical residential property estimated to be \$150;

NOW, THEREFORE , BE IT ORDERED, that a public hearing of the Town Board of the Town be held at the Town Hall, S-6100 South Park Avenue, Hamburg, New York, on the 14th day of March, 2005 at 7:00 o'clock P.M. (Prevailing Time), to consider the proposed establishment of the District and the supplying of such service as herein referred to, and to hear all persons interested in the subject thereof, concerning the same and for such other action on the part of the Town Board with relation thereto as may be required by law, and be it

FURTHER ORDERED, that the Town Clerk publish at least once in the Sun and Erie County Independent and Front Page, designated by the Town as its official newspapers for this publication, and post on the sign board of the Town maintained pursuant to subdivision 6 of Section 30 of the Town Law, a copy of this Order, certified by the Town Clerk, the first publication and said posting to be not less than ten (10) nor more than (20) days before the day designated herein for said public hearing as aforesaid and file a certified copy of this Order with the Department of Audit and Control on or about the date of publication of this Order.

DATED: February 28, 2005

TOWN BOARD OF THE TOWN OF
HAMBURG, NEW YORK

(SEAL)

XIX.

RESOLVED, that the Town Board approve the Audit of Cash Disbursements as follows:

VOUCHER #'S

OPERATING FUND:

BATCH #20	\$ 21,281.26	1007
BATCH #21	\$ 535,000.00	1019
BATCH #22	\$ 658,877.34	1117 - 1244
BATCH #23	\$1,620,000.00	1245 - 1247
BATCH #24	\$ 157,631.93	1248 - 1394
BATCH #25	\$ 502,614.60	UNPROCESSED
PRTRN P/R #4	\$ 544,710.76	

TOTAL OPERATING FUND DISBURSEMENTS: \$4,040,115.89

TRUST & AGENCY:

BATCH #7	\$ 634,120.93	1020 - 1021
BATCH #8	\$ 263,684.83	1388 - 1390
BATCH #9	\$ 500,000.00	1395

TOTAL CAPITAL FUND DISBURSEMENTS: \$1,513,684.83

PAYROLL:

PR # P/R #4	\$ 506,504.32
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TOTAL PAYROLL DISBURSEMENTS: \$ 506,504.32

PETTY CASH: \$ 124.63

TOTAL PETTY CASH DISBURSEMENTS: \$ 124.63

TOTAL CASH DISBURSEMENTS SUBMITTED FOR AUDIT: \$7,243,297.05

Moved: Hoak Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Quatroche
 Noes: None
 Carried

Correspondence

Letter # 11 - Supervisor Hoak comments that this was from Joe Kilian and COLT concerning beach access problems. Mr. Boehm comments that he would be glad to meet with COLT because he has personal knowledge of this problem. The bottom line is that it is a personal problem of individual owners. The cost of having mapping done would be thousands of dollars, but he could give them good direction for enforcement. Councilman Cavalcoli clarifies that this is not a Town problem. Mr. Boehm responds that the individual landowners must enforce an easement or right-of-way. It is between private landowners and he had occasion to have to do this on his property, so he is familiar with the process and would be happy to help.

Richard Root, 4920 Lake Shore Road, questions if the issue should be taken up with the Cloverbank Association. The property in question, Cloverbank has the ownership to the easement next to the lot between his house and the restaurant. Should he take this up with Cloverbank? Mr. Boehm responds he lives on Roberts Road and every owner has access to the beach. So might every owner up in Cloverbank. But, is an enforcement right that needs to be enforced by the property owners, not by the Town. He should have his attorney take a look at this.

Correspondence - February 28, 2005

10 - To Cathy Rybczynski, Town Clerk, from Philip D. Kumiega, UAW Local 897, requesting the use of twelve voting machines for their General Election on May 5th and May 6th.(pre-filed)

11 - To the Town Board from Joe Kilian, C.O.L.T., concerning beach access problems. Asking that the entire length of Route 5 beach accesses and Old Lake Shore Road beach accesses be mapped and vigilantly enforced against encroachment and closings by nearby owners and businesses. Questioning a fence that was put up by Root 5 restaurant blocking beach access.

12 - To the Town Board from Hamburg American Legion Post #527 requesting the use of one voting machine for their election on May 7th. (Pre-filed)