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52

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
JUN 25 2001
MISCELLANEOUS
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County / City / Town / Village of East Fishkill

Local Law No. 03 of the year 20 01

A local law (Insert Title) to provide for the codification of the local laws, ordinances, and certain resolutions of the Town of East Fishkill into a Municipal Code to be designated "The Code of the Town of East Fishkill," and making certain amendments thereto.

Be it enacted by the TOWN BOARD (Name of Legislative Body) of the

Town of East Fishkill, County of Dutchess, New York as follows:

§1-1. Title:

This law shall be known as "A local law to provide for the codification of the local laws, ordinances, and certain resolutions of the Town of East Fishkill into a Municipal Code to be designated the "Code of the Town of East Fishkill," and making certain amendments thereto."

§1-2. Legislative intent.

It is important that the current laws, ordinances, and resolutions of the Town of East Fishkill exist in a format where Town Officials and the public may readily have access to them. To this end, the Town Board has researched the current status of the various enactments of the Town, to assemble a current compilation, to update provisions in accordance with State Law amendments and other changes in applicable law; to add certain provisions where needed; and to eliminate unneeded or duplicative regulations. The Board has also undertaken an analysis under SEQR of the environmental impacts of the codification process. The proposed Codification has been compiled by Code Publishers and presented for adoption.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Accordingly, it is the purpose of this Local Law to enact the Codification of all of the current laws, ordinances, and resolutions of the Town of East Fishkill, to enact appropriate additions and amendments thereto; and to repeal unneeded laws and regulations.

§1-3. Adoption of Code; correction of references.

In accordance with §20(3) of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Town of East Fishkill, as amended by this Local Law, shall hereafter be known collectively as the "Code of the Town of East Fishkill," (hereafter referred to as "the Code.") The proposed Code has been prepared by General Code Publishers Corp., dated 2001, is now on file in the Town Clerk's Office, and consists of Chapters 1 through 194, together with an Appendix. Wherever the Code refers to any local law, ordinance or resolution appearing in said Code, such reference shall be deemed changed to the appropriate chapter title, chapter number, article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

§1-4. Copy of Code on file.

A certified copy of the Code as adopted shall be filed in the office in the Town Clerk, and shall remain on file in the office of the Town Clerk.

§1-5. Changes in previously adopted legislation; new provisions.

The following amendments and modifications are hereby made in the several laws, ordinances and resolutions now being codified, to become effective upon the same effective date as the codification. Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.

A. <u>Fee Provisions</u>

In the following sections, the specific fee amount is deleted and wording that the fee shall be as set from time to time by the Town Board is inserted: §§ 68-4; 80-7; 96-6(A); 131-4(B); 131-5(B); 163-8(A)(6); 140-6; 140-8; 163-8(A)(6); 177-2(D); 177-10(B); 194-23(A)(6); 194-25(A)(5)(b); 194-39(B); 194- 750(4); 194-91(F)(3);

B. <u>Chapter 15. Code of Ethics</u>

1. Section 15-2, Definitions, is amended to add two new definitions and shall read as follows:

§ 15-2. Definitions.

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

INTEREST -A direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. For the purposes of this chapter, a municipal officer or employee shall be deemed to have an "interest" in the contract of:

A. His spouse, minor children and dependents, except a contract of employment with the municipality which such officer or employee serves.

B. A firm, partnership or association of which such officer or employee is a member or employee.

C. A corporation of which such officer or employee is an officer, director or employee.

D. A corporation, any stock of which is owned or controlled directly or indirectly by such officer or employee.

TOWN OFFICER OR EMPLOYEE -An officer or employee of the Town of East Fishkill, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

2. Section 15-3(A), relating to prohibited gifts, is amended to increase the threshold of prohibited gifts from "$5" to "$75" in the first sentence.

3. Section 15-5 is revised to add the following sentence: "Failure of the Town Board to distribute any copy of the Code of Ethics or failure of any officer or employee to receive such copy shall have no effect on the duty of compliance with such code nor the enforcement of the provisions thereof."

C. <u>Chapter 33. Planning Board</u>

1. Section 33-3 is amended to revise the statement of powers and duties of the board and restate the training obligations originally enacted in 1993, and shall read as follows:

§ 33-3. General powers and duties.

A. The Planning Board shall exercise all powers conferred upon it by the provisions of the Town Law and Highway Law and shall pass upon all matters which may be referred to it from time to time by resolution of the Town Board.

B. Training requirements.

(1) Within the first two years after initial appointment, a Planning Board member shall attend a training program at an appropriate level relating to the duties of Planning Board members, approved in the manner herein provided.

(2) All other Planning Board members shall attend training programs at an appropriate level during their term of office, approved in the manner herein provided.

(3) After discussion and consultation with the Planning Board Chair, the Town Board shall establish, by resolution, a list of approved programs and the required minimum hours of attendance, to satisfy the requirements of Subsection B(I) and (2). The Town Board may, from time to time, modify and amend the list of, approved programs by resolution, after discussion and consultation with the Planning Board Chair .

(4) The Town Board shall choose programs which relate to the duties of Planning Board members. These may include courses, workshops or training programs sponsored by groups such as the New York State Association of Towns, the New York State Department of State or certified training providers, the New York State Department of

Environmental Conservation, the Dutchess County Planning Federation, the Westchester County Planning Federation, the New York State Planning Federation, or other appropriate entities.

(5) All training provided pursuant to this section shall be at town expense.

(6) By December 31 of each year, members of the Planning Board shall file with the Town Clerk proof of attendance at any training programs required by this section.

(7) Noncompliance with minimum requirements relating to training shall be deemed a proper cause for removal from office. A Planning Board member who fails to attend the programs as provided in this section and specified pursuant to the resolutions promulgated thereunder, shall be subject to removal following the procedures set forth in Town Law § 271.

D. **Chapter 40. Records**

1. Former § 22-1(D) is deleted.

2. Section 40-2(A) is amended to delete "Bookkeeper" and "Budget Officer" and to add "Financial Manager"; and to change "Animal Warden" to "Dog Control Officer."

3. Section 40-3(B) is amended to delete the text "§88(1)(g), (1)(i) and (10) of."

4. A new Article II, entitled "Retention and Disposition", is adopted to read as follows:

ARTICLE II
Retention and Disposition

§ 40-10. Standards adopted.

The Records Retention and Disposition Schedule MU-I , issued pursuant to Article 57 -A of the Arts and Cultural Affairs Law and containing legal minimum retention periods for municipal

government records, is hereby adopted for use by all municipal officers in disposing of municipal government records listed therein.

§ 40-11. **Disposition.**

In accordance with Article 57-A:

A. Only those records will be disposed of that are described in Records Retention and Disposition Schedule MU-I after they have met the minimum retention period prescribed therein.

B. Only those records will be disposed of that do not have sufficient administrative, fiscal, legal or historical value to merit retention beyond established time periods.

E. <u>Chapter 58, Alcoholic Beverages</u>

1. Section 58-3, Definitions is amended by adding two new definitions as follows:

   INTENT TO CONSUME -Drinking from the container, with alcohol on the breath of the possessor and/or any circumstances evidencing an intent to ultimately consume on any public lands.

   OPEN CONTAINER -A container, as defined herein, with the contents exposed to the atmosphere or the seal thereof broken.

2. The definition of "public place" is amended to delete the following sentence: "Public place shall include the interior of a vehicle which is parked, stopped or standing within or upon a public place as herein defined."

3. Section 58-4(B) is amended to add the words "with intent to consume the same."

4. Section 26-5 is deleted.

F. <u>Chapter 63, Animals, Article I, Dogs</u>

1. Chapter 63, Article I, is adopted to read as follows:

ARTICLE I
Dogs

§ 63-1. Purpose.

The Town Board of the Town of East Fishkill finds that the running at large and other uncontrolled behavior of licensed and unlicenced dogs have caused physical harm to persons, damage to property and have created nuisances within the town. The purpose of this article is to protect the health, safety and well-being of persons and property by imposing restrictions on the keeping and running at large of dogs within the town.

§ 63-2. Statutory authority.

This article is enacted pursuant to the provisions of §124 of the Agriculture and Markets Law of the State of New York.

§ 63-3. Title.

The title of this article shall be "Dog Control Law of the Town of East Fishkill."

§ 63-4. Definitions.

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

ADEQUATE -Sufficient for age, size and number of dogs on the premises.

AGRICULTURE AND MARKETS LAW -The Agriculture and Markets Law of the State of New York in effect as of the effective date of this article, as amended by this article and as amended thereafter.

CONFINED -That such animal is securely confined or restrained or kept on the owner's premises, either within a building, kennel or other suitable enclosure or is securely fastened on a chain, wire or other effective tether of such length and so arranged that the animal cannot reach or endanger any person on any adjacent premises or on any public street, way or place, or, if the animal is being transported by the owner, that it is

securely confined in a crate or other container or so restrained in a vehicle that it cannot be expected to escape therefrom.

DOG -Male and female, licensed and unlicenced, member of the species canis familiaris.

DOG CONTROL OFFICER -Any person authorized from time to time to enforce the provisions of this article or the provisions of the Agriculture and Markets Law of the State of New York.

DOMESTIC ANIMAL -Any domesticated sheep, horse, cattle, goat, swine, fowl, duck, goose, swan, turkey, confined domestic hare or rabbit, pheasant or other bird which is raised in confinement under license from the state Department of Environmental Conservation before release from captivity, except that the varieties of fowl commonly used for cock fights shall not be considered domestic animals for the purposes of this article.

GUIDE DOG -Any dog that is trained to aid a person who is blind and is actually used for such purpose, or any dog owned by a recognized guide dog training center located within the town during the period such dog is being trained or bred for such purpose.

HEARING DOG -Any dog that is trained to aid a person with a hearing impairment and is actually used for such purpose, or any dog owned by a recognized training center located within the town during the period such dog is being trained or bred for such purpose.

OWNER -The party purchasing the license unless the dog is or has been lost, and such loss reported to the Dog Control Officer and reasonable search has been made. If an animal is not licensed, the term "owner" shall designate and cover any person or persons, firm, association or corporation who or which at any time owns or has custody or control of, harbors or is otherwise responsible for any animal which is kept, brought or comes within the town. Any person owning or harboring a dog for a period of one week prior to the filing

of any complaint charging a violation of this article shall be deemed to be an owner of such dog.

PERSON- Any individual, corporation, partnership, association or other organized group of persons, municipality or other legal entity.

PERSON WITH A DISABILITY -Any person with a physical impairment which is permanent and severely limits such person's mobility or a person who is unable to ambulate without the aid of a wheelchair or other prosthetic device.

POLICE WORK DOG- Any dog owned or harbored by any state or municipal police department or any state or federal law enforcement agency, which has been trained to aid law enforcement officers and is actually being used for police work purposes.

RUN AT LARGE -To be an unleashed dog off of the premises of the owner.

SERVICE DOG -Any dog that is trained to aid a person with a disability and is actually used for such purpose, or any dog owned by a recognized training center located within the town during the period such dog is being trained or bred for such purpose.

TOWN -The area within the corporate limits of the Town of East Fishkill.

§ 63.5. License required; fees.

A. Pursuant to §§107, 108, 109 and 110 of Article 7 of the Agriculture and Markets Law, no person shall own or harbor a dog unless such dog is licensed. Such license shall be renewed annually at fees as set forth below:

(1) Two dollars and fifty cents ($2.50) statutory fee plus five dollars and fifty cents ($5.50) local fee for each spayed or neutered dog.

(2) Ten dollars and fifty cents ($10.50) statutory fee plus five dollars and fifty cents ($5.50) local fee for each un-spayed or un-neutered dog over the age of

six (6) months. The fee for un-spayed or un-neutered dogs less than six (6) months old shall be seven dollars and fifty cents ($7.50) statutory fee plus five dollars and fifty cents ($5.50) local fee.

(3) There shall be no fee for any license issued for a guide dog, hearing dog, service dog, war dog or police work dog. Each copy of any license for such dogs shall be conspicuously marked "Guide Dog", "Hearing Dog", "Service Dog", "War Dog" or "Police Dog", as may be appropriate, by the Clerk or authorized dog control officer.

B. The application shall state the following:

(1) Sex.

(2) Actual or approximate age.

(3) Breed.

(4) Color.

(5) Official identification marks, if any.

(6) Name, address and telephone number of owner.

C. The application shall be accompanied by the license fee and a certificate of rabies vaccination or statement in lieu thereof.

D. In the case of a spayed or neutered dog, every application shall also be accompanied by a certificate signed by a licensed veterinarian or an affidavit signed by the owner, showing that the dog has been spayed or neutered, provided such certificate or affidavit shall not be required if the same is already on file with the clerk or authorized Dog Control Officer. In lieu of the spay or neuter certificate an owner may present a statement certified by a licensed veterinarian stating that he has examined the dog and found that because of old age or other reason, the life of the dog would be endangered by spaying or neutering. In such case, the license fee for the dog shall

be same as for a spayed or neutered dog as set forth in § 63-5.

E. Upon validation by the clerk or authorized Dog Control Officer, the application shall become a license for the dog described therein. Once an application has been validated, no refund therefor shall be made.

F. The clerk or authorized Dog Control Officer shall:

(1) Provide a copy of the license to the owner;

(2) Send, within 48 hours of validation, a copy of the license to the state; and

(3) Retain a copy in the manner prescribed by the state.

G. No license shall be transferable. Upon the transfer of ownership of any dog, the new owner shall immediately make application for a license for such dog.

§ 63-6. Tag required.

All dogs required to be licensed must wear a tag attached to a collar. No dog shall be permitted to be without a collar and a tag. All untagged dogs shall be subject to seizure and confinement by the Dog Control Officer, except for dogs which are in the field with a hunter during hunting season or for the purpose of being trained for hunting.

§ 63-7. Female dogs.

Any female dog in heat shall be confined within a protected enclosure on the premises of the owner or person harboring said dog.

§ 63-8. Adequate shelter required.

All premises occupied or used by dogs shall be kept in a clean, sanitary condition. Failure to provide adequate food, water or shelter shall be a violation and a dog may be seized in accordance with §63-12.

§ 63-9. Restrictions.

A. It shall be unlawful for any owner of any dog in the Town of East Fishkill to permit or allow such dog to:

(1) Run at large unless the dog is restrained by an adequate leash or unless it is accompanied by its owner or a responsible person able to control it by command. For the purpose of this article, a dog or dogs hunting in company of a hunter or hunters shall be considered as accompanied by its owner.

(2) Engage in habitual loud howling, barking, crying or whining or conduct itself in such a manner so as to unreasonably and habitually disturb the comfort or repose of any person other than the owner of such dog.

(3) Uproot, dig or otherwise damage any vegetables, lawns, flowers, garden beds or other property not belonging to the owner of such dog.

(4) Chase, bite, jump upon or at or otherwise harass any person in such a manner as to reasonably cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury .

(5) Habitually chase, run alongside of or bark at vehicles or bicyclists while on a public street or highway or upon public or private property other than property of the owner or other person in control of said dog.

(6) Cause damage or destruction to private or public property or create a nuisance by defecating, urinating or digging on public or private property, other than property of the owner or other person in control of the dog.

(7) Kill or injure any domestic animal.

B. Establishment of the fact or facts that the owner of a dog has allowed or permitted such dog to commit any of the acts prohibited by Subsection A of this section shall be

presumptive evidence against the owner or harborer of such dog that he has failed to properly confine, leash or control his dog.

§ 63-10. Rabies inoculations.

No one in the Town of East Fishkill shall harbor a dog unless the same has been inoculated against rabies, and upon the request of a Town Justice or Dog Control Officer, such person shall produce a certificate confirming the inoculation.

§ 63-11. Enforcement official.

This article shall be enforced by a Dog Control Officer, as defined herein.

§ 63-12. Seizure of dogs; redemption; disposition of unclaimed dogs.

A. Any dog in violation of this article or of § 118 of the Agriculture and Markets Law may be seized by any Dog Control Officer, as defined herein, and such dog shall be impounded and disposed of in accordance with the provisions of Article 7 or other applicable provisions of the Agriculture and Markets Law.

B. No person shall hinder, resist or oppose the Dog Control Officer or other person authorized to administer and enforce the provisions of this article in the performance of the person's duties pursuant to this article.

C. After any such seizure, the record owner of such dog or an adult member of his family, if the owner is ascertainable from the dog's license tag, shall be notified personally or by regular mail that the dog has been seized and may be destroyed unless redeemed.

D. A dog owner may redeem his dog from the pound upon payment in cash or certified check in the amount of $25 for the first impoundment, $50 for the second impoundment and $100 for the third impoundment thereafter, plus the cost of keeping, feeding and caring for the dog while impounded.

E. No action shall be maintained against the Town of East Fishkill, any duly designed Dog Control Officer or any other agent or officer of the town to recover the possession or value of any dog or for damages for injury or compensation for the destruction of any dog seized or destroyed pursuant to the provisions of this article.

§ 63-13. Complaints.

A. The Dog Control Officer or a peace officer observing a violation of this article in his presence shall issue and serve an appearance ticket for such violation. The appearance ticket shall be in the form prescribed by the Town Board by resolution in accordance with the provisions of § 124 of the Agriculture and Markets Law and this article. An answer to such appearance ticket shall be made within five days of the violation, by registered or certified mail, return receipt requested, in lieu of a personal appearance on the return date at the time and court specified in the appearance ticket, in accordance with the provisions of § 124 of the Agriculture and Markets Law and this article.

B. Any person who observes a dog in violation of this article may file a complaint under oath with a Town Justice specifying the nature of the violation, the date thereof, a description of the dog and the name and residence, if known, of the owner of the dog. Upon receipt by the Town Justice of any such complaint, he shall summon the alleged owner to appear in person before him for a hearing, at which both the complainant and owner shall have an opportunity to be represented by counsel and to present evidence. If, after such hearing, the Town Justice decides that further action is warranted, he may, in addition to imposing a penalty pursuant to § 63-14:

(1) Order the owner to restrain such dog by collar and leash at all times whether on or off the owner's property.

(2) Order the owner to confine such dog to the premises of the owner.

(3) Effect such other remedy authorized by law as may

be warranted by the circumstances in such case.

C. A violation of any order issued by a Town Justice under the provisions of this section shall be an offense punishable, upon conviction thereof, as provided in § 63-14.

§ 63-14. Penalties for offenses.

Upon conviction, a violation of this article shall be deemed an offense and shall be punishable by a fine not exceeding $50 for the first offense, $100 for the second offense and $250 for each offense thereafter, or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment.

G. <u>Chapter 75. Bingo</u>

1. Chapter 75 is amended to read as follows:

§ 75-1. Conduct authorized.

It shall be lawful for any authorized organization, as defined in § 476 of the General Municipal Law, upon obtaining the required license, to conduct the game of bingo within the territorial limits of the Town of East Fishkill, subject to the provisions of this chapter, Article 14-H of the General Municipal Law and Article 19-B of the Executive Law.

§ 75-2. Sunday games.

Any game of bingo conducted within the town pursuant to a license issued in accordance with this chapter and the applicable statutes may be operated by authorized organizations on the first day of the week, commonly known as "Sunday," subject to the following:

A. No licensee shall be permitted to conduct bingo games on more than one Sunday in any calendar month.

B. Any permitted operations on Sundays shall be only between the hours of 12:00 noon and 10:00 p.m.

C. Notwithstanding the foregoing, no bingo games

shall be authorized on New Year's Eve, New Year's Day, Easter Sunday or Christmas Day.

D. All Sunday games shall be subject to all provisions of this chapter, and of Article 14-H of the General Municipal Law, and all other applicable provisions of law.

H. Chapter 87. Unsafe Buildings

1. Section 87-2 is amended to change "Subsection 18" to "Subdivision 16."

I. Chapter 96. Electrical Standards

1. Section 96-5(A) is amended to change "a fine not to exceed $500 or imprisonment not to exceed one month" to "a fine not to exceed $1,000 or imprisonment not to exceed one year."

J. Chapter 103. Fees

1. Section 103-1(C) is amended to read as follows:

   C. Exclusion of administrative fees. The professional fees provided for herein are in addition to application or administrative fees required pursuant to other sections of the East Fishkill Code. Funds deposited by applicants pursuant to this section shall not be used to offset the town' s general expenses of professional services for the several boards of the town, nor its general administration expenses.

2. Section 103-5(A) is amended to read as follows:

   A. Audit of vouchers. All vouchers submitted by professional consultants shall be reviewed and audited by town officials in the same manner as all other charges. The town shall approve payment of only such fees as are reasonable in amount and are necessarily incurred by the town in connection with the review. A fee shall be considered reasonable in amount if it bears a reasonable relationship to fees prevailing in the surrounding

geographical area for similar services in similar projects. In determining similarity of services and projects, the town may consider the size of the project, the topography, soil conditions, drainage conditions, surface water conditions, other site constraints, the nature of the improvements to be constructed, the nature of the planning, engineering or legal issues arising in the factual context of the application. In determining whether the fees were necessarily incurred, the town may consider, in addition to the factors listed above, the nature of the materials provided by the applicant, the manner in which the service relates to the issues which must be decided by the town in reviewing the application, whether the service provided reasonably assists the Board in performing a function required by law or regulation and such other factors as may be relevant in the factual context of the application. Records shall be maintained showing all amounts deposited, and all amounts paid from the escrow account and all bills and vouchers submitted by the town professional consultants. The applicant shall in no case be billed for more than the town has actually expended for consultant review fees.

3. Section 103-5(C) is added to read as follows:

C. Town Board review. Within 30 days of receiving any voucher for professional consultant fees, whether it has as yet been paid or not, an applicant may file a written request to the Town Board seeking review of the charges therein, to determine whether such fees are reasonable in amount and are necessarily incurred by the town in connection with the review, under the standards set forth in this article.

K. <u>Chapter 112. Games of Chance.</u>

A. Chapter 112 is amended in its entirety to read as follows:

§ 112-1. Authorization; license required.

It shall be lawful for any authorized organization, upon obtaining

a license as provided in Article 9-A of the General Municipal Law, to conduct games of chance within the Town of East Fishkill, subject to the provisions of this chapter, Article 9-A of the General Municipal Law and the New York State Racing and Wagering Board.

§ 112-2. Sundays; holidays.

The conduct of games of chance on Sunday is only permitted when it is specifically provided for in the license issued. No games of chance, however, shall be conducted on Easter Sunday, Christmas Day, New Year's Eve, Rosh Hashanah or Yom Kippur.

§ 112-3. Enforcement.

The Chief Law Enforcement Officer of the Town of East Fishkill shall exercise control over and supervision of all games of chance.

§ 112-4. Summary license applications.

Pursuant to General Municipal Law § 190, Subdivision 3, certain repeat authorized organizations may submit summary applications.

L. **Chapter 136. Parks and Recreation**

1. Section 136-2(D) is amended to add the following sentence: "It shall be the duty of each dog owner or person having possession, custody or control of a dog to remove any feces left by his dog in any park and to dispose of the same in a safe and sanitary manner."

2. Section 136-21 is added to read as follows:

    1. Golfing activity is prohibited.

3. Section 136-5(H) is added to read as follows:

    1. Ride a bicycle or roller skate or roller blade without wearing a helmet. Proper protective gear shall be worn for all sports and activities.

M. Chapter 159. Streets and Sidewalks

1. Section 159-7 is amended to increase the number of days with which the Highway Superintendent must transmit notices to the Town Clerk from "two days" to "10 days."

N. Chapter 163. Subdivision of Land

1. This chapter is amended in conformity with revisions to the New York Town Law. Section 163-4, Definitions is amended as follows:

(a) The definition of "conditional approval of a final plat" is added to read as follows:

CONDITIONAL APPROVAL OF A FINAL PLAT- Approval by a Planning Board of a final plat subject to conditions set forth by the Planning Board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the Planning Board and recording of the plat in the office of the County Clerk or Registrar as herein provided.

(b) The definition of "final plat" is added to read as follows:

FINAL PLAT (formerly known as "subdivision plat") -A drawing, prepared in the manner prescribed by this code, that shows a proposed subdivision, containing in such additional detail as required in this code all information required to be shown on a preliminary plat and the modifications, if any, required by the Planning Board at the time of approval of the preliminary plat, if such preliminary plat has been so approved.

(c) The definition of "final subdivision plat approval" is added to read as follows:

FINAL SUBDIVISION PLAT APPROVAL -The signing of a plat in final form by a duly authorized officer of a Planning Board pursuant to a Planning Board resolution granting final approval to the plat or after conditions specified in a

resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the County Clerk or Registrar in the county in which such plat is located.

(d) The definition of "preliminary plat" is amended to read as follows:

PRELIMINARY PLAT- A drawing prepared in the manner prescribed in this code showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities unsized, including preliminary plans and profiles, at suitable scale and in such detail as this code requires.

(e) The definition of "preliminary plat approval" is added to read as follows:

PRELIMINARY PLAT APPROVAL -The approval of the layout of a proposed subdivision as set forth in a preliminary plat, but subject to the approval of the plat in final form in accordance with the provisions of this code.

(f) The definition of "resubdivision" is amended to read as follows:

RESUBDIVISION -A change in a subdivision plat previously approved and filed in the County Clerk's office, which change:

A. Affects any street layout shown on such plat;

B. Affects any area reserved thereon for public use; or

C. Diminishes the size of any lot, or changes or alters the boundaries, lot lines or dimensions of any lot, plot or site, including so-called "lot-line realignments."

(g) The definition of "subdivider" is amended to read as follows:

SUBDIVIDER -Any person, firm, corporation, partnership, association or other entity who shall lay out any subdivision, or resubdivision, or part thereof, either on behalf of himself or for another or others.

(h) The definition of "subdivision" is amended to read as follows:

SUBDIVISION -The division of any parcel of land into two or more lots, plots, or sites, with or without streets or highways, for the purpose, with respect to any portion of the original parcel, of immediate or future development, or for the immediate or future sale, lease or any other transfer of any interest in any portion of such original parcel. The term "subdivision" shall include a resubdivision.

(i) The former definition of "subdivision plat" is deleted.

2. Section 163-8, entitled Preliminary Plat, is amended as follows:

(a) Subsection A(7) is added to read as follows:

(7) Comply with the State Environmental Quality Review Act. A preliminary plat shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.

(b) Subsection A(8) is added to read as follows:

(8) Agricultural data statement. If any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, the application must include an agricultural data statement containing the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

(c) Subsection B(9) is added to read as follows:

(9) The potential environmental impact of the proposed action. The agricultural data statement, if any, shall be considered regarding the possible impacts of the proposed project upon the functioning of farm operations within the relevant agricultural district. The Clerk of the Planning Board shall mail written notice of any application requiring an agricultural data statement to the owners of land as identified in such statement. Such notice shall include a description of the proposed project and its location, and may be sent with any other notice required by law.

(d) Subsection D is amended to read as follows:

D. Public hearing.

(1) The Planning Board shall hold a public hearing on the preliminary plat within the applicable time period provided in Town Law § 276, and advertise such hearing according to the provision of that section. The Planning Board may open the public hearing prior to the adoption of a finding of significance in order to obtain public comment on the issues of environmental concern. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened, unless the applicant has consented to a further continuation.

(2) Approval only constitutes an affirmative expression to the proposed development submitted in the preliminary plat, which is to guide the formulation of the final subdivision plat. Prior to final approval of the subdivision plat, the Planning Board may require additional changes as a result of further study of the subdivision in its final form.

(e) Subsection E is amended to read as follows:

E. Decision.

(1) Prior to making a decision on the

preliminary plat, the Planning Board shall make a determination of significance under the State Environmental Quality Review Act.

(2) The Planning Board shall render a decision to approve, with or without modification, or disapprove the preliminary plat within the applicable time period provided in Town Law § 276. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. In approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.

(3) Approval only constitutes an affirmative expression to the proposed development submitted in the preliminary plat, which is to guide the formulation of the final subdivision plat. Prior to final approval of the subdivision plat, the Planning Board may require additional changes asa result of further study of the subdivision in its final form.

(f) Subsections F, G and H are added to read as follows:

F. Certification and filing of preliminary plat. Within five business days of the adoption of the resolution granting approval of such preliminary plat, such plat shall be certified by the Clerk of the Planning Board as having been granted preliminary approval, and a copy of the plat and resolution shall be filed in such Clerk's office. A copy of the resolution shall be mailed to the owner.

G. Filing of decision. Within five business days from the date of adoption of the resolution stating the decision of the Board on the preliminary plat, the Chairman or other duly authorized member of the Planning Board shall cause a copy of such resolution to be filed in the office of the Town Clerk.

H. Revocation of approval of preliminary plat. Within six months of the approval of the preliminary plat the owner must submit the plat in final form. If the final plat is not submitted within six months, approval of the preliminary plat may be revoked by the Planning Board.

3. Section 163-9, entitled "Subdivision Plat" is amended as follows:

(a) Subsections B, C, D and E are amended to read as follows:

B. Study of final plat; public hearing; decision.

(1) Upon receipt of a final plat, the Board shall examine it to determine if it is in substantial agreement with the approved preliminary plat. If the final plat is in substantial agreement with a preliminary plat, approved pursuant to this section, the Planning Board shall by resolution conditionally approve, with or without modification, disapprove or grant final approval and authorize the signing of such plat within 62 days of its receipt by the Clerk of the Planning Board.

(2) If the final plat is not in substantial agreement with the approved preliminary plat, the Planning Board shall hold a public hearing on the final plat within the applicable time period provided in Town Law §276, and advertise such hearing according to the provisions of that section. The hearing on the final plat shall be closed upon motion of the Planning Board within 120 days after it has been opened, unless the applicant has consented to a further continuation.

(3) The Planning Board shall by resolution conditionally approve, with or without modification, disapprove or grant final approval and authorize the signing of such plat within the applicable time period provided in Town Law § 276. The conditions imposed, if any, and the grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.

C. Certification and signature of final plats.

(1) Within five business days of the adoption of the resolution granting conditional or final approval of the final plat, the Clerk of the Planning Board shall certify such plat as having been granted conditional or final approval, and shall file a copy of such approval resolution, including a list of the conditions and requirements which must be completed prior to the signing of the plat, in his/her office. The Planning Board Clerk shall also mail a copy of the resolution, and any list of conditions, to the owner .

(2) Conditional approval of the final plat shall expire within 180 days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The Planning Board may extend by not more than two additional periods of 90 days each, the time in which a conditionally approved plat must be submitted for signature if, in the Planning Board's opinion, such extension is warranted by the particular circumstances.

D. Approval of plat in sections. In granting conditional or final approval of a plat in final form, the Planning Board may permit the plat to be subdivided and developed in two or more sections and may in its resolution granting conditional or final approval state that such requirements as it deems necessary to ensure the orderly development of the plat be completed before said sections may be signed by the duly authorized officer of the Planning Board. Conditional or final approval of the sections of a final plat may be granted concurrently with conditional or final approval of the entire plat, subject to any requirements imposed by the Planning Board.

E. Signing of plat. Upon proof of timely completion of all conditions and requirements imposed at the time of conditional approval, the plat shall be signed by the Chair of the Planning Board, or, in his absence, by the Vice Chair. The plat shall also carry the following note:

NOTE: The roadway and storm drainage system construction will be jointly inspected by the Town Engineer and the developer's engineer. The developer's engineer must certify to construction compliance upon completion of the project.

A copy of such signed plat shall be filed in the office of the Planning Board Clerk.

(b) Subsection G is amended to read as follows:

G. Filing of approved plat.

(1) Within five business days from the date of the adoption of the resolution stating the decision of the Board on the final plat, the Planning Board Clerk shall file a copy of the resolution in the office of the Town Clerk.

(2) The owner shall file such approved plat, or a section of such plat, within 62 days of the date of final approval, or such approval shall expire. The following shall constitute final approval: the signature of the Chair or acting Chair of the Planning Board constituting final approval by the Planning Board of a plat as herein provided; or the approval by such Board of the development of a plat or plats already filed in the office of the County Clerk, if such plats are entirely or partially undeveloped; or the certificate of the Town Clerk as to the date of the submission of the final plat and the failure of the Planning Board to take action within the time herein provided.

(3) In the event the owner shall file only a section of such approved plat in the office of the County Clerk or Registrar, the entire approved plat shall be filed within 30 days of the filing of such section with the Town Clerk of each town in which any portion of the land described in the plat is situated. Such section shall encompass at least 10% of the total number of lots contained in the approved plat, and the approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to

which such plat is entitled under the provisions of § 265-a of the Town Law.

(c) Subsection I is added to read as follows:

I. Abandonment. The owner of an approved subdivision may abandon such subdivision pursuant to the provisions of § 560 of the Real Property Tax Law.

4. Section 163-12, entitled Performance Bonds, is amended to read as follows:

§ 163-12. Performance bonds.

Performance bonds shall comply with the provisions of Town Law § 277 as to form, type and term. The Planning Board shall fix the term of the performance bond or security agreement, which shall in no case be longer than three years; provided, however, that the Planning Board may extend the term of the bond with consent of the parties thereto. The Planning Board shall also have authority to reduce the amount of improvements required, with the consent of the Town Board, and shall have the authority to reduce the amount of the security in accordance with Town Law § 277. In the event of a default, the town shall have the authority to proceed in accordance with Town Law § 277.

5. Section 163-21(A) is amended to change "transparent linen tracing cloth" to "Mylar or its equivalent."

O. Chapter 168. Taxation

1. Section 168-2(C) is amended to change "24 consecutive months" to "12 consecutive months."

P. Chapter 194. Zoning

1. Section 194-3, entitled "Definitions", is amended as follows:

(a) The definition of "hospital" is amended to change "including those for epileptic, drug, liquor, insane or incompetent patients" to "including those for epileptic, drug addiction or alcohol addiction patients or those suffering from psychological disorders."

(b) The definition of "use, accessory" is amended to change "professional man" to "professional."

2. Section 194-5 entitled "Zoning Map", is amended as follows:

(a) Section 194-5(A) is amended to delete the reference to a map in four quadrants and include reference to the current Town Zoning Map and shall read as follows:

A. Said districts are bounded as shown on a map entitled "Town of East Fishkill Zoning Map", which map is on file in the Town Clerk's office.

(b) Section 194-5(C) is amended to delete the reference to the quadrant maps and shall read as follows:

C. The Town Board may also make available to the public for purchase copies of these maps.

3. In the Schedule of Permitted Uses following § 194-18, the regulations for the 1-3 District are amended to provide that accessory one family apartments are permitted, and to provide that Excavations for soil mining are not permitted. The amended schedule for the I-3 District will read as follows:

1. Farming, forestry, florists, green-houses, nurseries, truck gardens and dairies 2. Cold storage plant, creamery, ice cream factory, bottling works, baking plant and food or drink distribution plant 3. Candy, cigar and cigarette manufacture 4. Textile, leather goods and clothing manufacture 5. Publishing, printing and bookbinding 6. Toys, games and the novelties manufacture 7. Mechanical, optical, photographic, scientific or electronic instrument manufacture 8. Cosmetic and pharmaceutical manufacture 9. Furniture and cabinet manufacture	1. Same as I-1 2. Customary accessory uses (see § 194-49) including retail sales incidental to any listed permitted use 3. Accessory one-family apartment	1. Any use of the same general character as listed permitted use, provided that the Board shall find that said use is not inconsistent with the generally accepted definition of the term "light industry" and where, in the estimation of the Board, the enterprise in question will be beneficial to the town as a whole (5*) 2. Commercial Communications tower, subject to provisions of § 194-67 (5*) 3. Stationary solicitor, peddler, vendor (§ 194-66) (6*)

10. Laboratory for scientific or industrial research, testing and development

II. Warehousing and distributing,

provided that no outdoor storage of materials shall be permitted

12. Lumberyard, building material sales yard or contractor's equipment storage yard

13. Plumbing, sheet metal or machine shop or motor vehicle repair

14. Public utility structures, except commercial communication towers (see § 194-161)

15. Same as B-I, where property has frontage on Route 376 or Van Wyck Lane, or frontage on an approved subdivision road with direct access onto Route 376 or Van Wyck Lane

4. Article VIII relating to Site Plan Approval is amended as follows:

(a) Section 194-25(B), relating to site plan applications is amended by adding a new section (2)(t) to read as follows:

(t) Agricultural data statement. If any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, the application must include an agricultural data statement containing the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

(b) Section 194-26(G) regarding standards for site plan approval is amended to add the following sentence: "The Planning Board shall evaluate and consider the agricultural data statement, if any, in its review of the possible impacts of the proposed project upon the functioning of farm operations within the relevant agricultural district."

(c) Section 194-26(H) regarding standards for approval is amended to read as follows:

H. Reservation of parkland on site plans containing residential units.

(1) Before such Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Board, a park or parks suitably located for playground or other recreational purposes.

(2) Land for park, playground or recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population growth to which the particular site plan will contribute.

(3) In the event the Planning Board makes a finding pursuant to Subsection H(2) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the Board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors, including whether there is a need for additional facilities in the immediate neighborhood. Any moneys required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into the East Fishkill recreation trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

(4) Notwithstanding the foregoing provisions of this subsection, if the land included in a site plan under review is a portion of a

subdivision plat which has been reviewed and approved pursuant to Town Law § 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof, under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

(d) Section 194-26(I) is added to read as follows:

I. Performance bond or other security. As an alternative to the installation of required infrastructure and improvements prior to approval by the Planning Board, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the Planning Board or a town department designated by the Planning Board to make such estimate, where such departmental estimate is deemed acceptable by the Planning Board, shall be furnished to the town by the owner. Such security shall be provided to the town pursuant to the provisions of Subdivision 9 of § 277 of the Town Law.

(e) Section 194-27(A) relating to Planning Board action on a site plan is amended to read as follows:

A. Referrals. If the application includes an agricultural data statement, the Board Clerk shall mail written notice of such application, including a description of the proposed project and its location, to the owners of land as identified by the applicant in the statement. At least 10 days before the public hearing, the Planning Board Clerk shall mail notices thereof to the applicant and to the County Planning Agency, if required, under General Municipal Law Section 239-m, which notice shall be accompanied by a full statement of such proposed action, as defined in General Municipal Law § 239-m. All applications requiring an agricultural data statement shall be referred to the County planning department as required under General Municipal Law § 239-m.

5. Article IX relating to Special Permits is amended as follows:

(a) Section 194-40 is amended to read as follows:

§ 194-40. Procedures.

A. Within 62 days of receipt of a completed application, the approving agency shall hold a public hearing and give public notice thereof by publication in the official newspaper at least five days prior to the date of the hearing. Within 62 days of the close of such hearing, and subject to the requirements of SEQR and General Municipal Law §§ 239-1 and 239-m, the reviewing agency shall approve, disapprove or approve with modifications and conditions the special permit application. Where the Zoning Board of Appeals is the reviewing agency, conditions may include Planning Board site plan approval under Article VII of the East Fishkill Zoning Code. The decision of the reviewing board shall be filed in the office of the Town Clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

B. Agricultural data statement. If any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, the application must include an agricultural data statement containing the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

C. The reviewing agency shall consider plans for site layout and design of the proposed use, containing elements relating to parking, means of access, screening, signs, location and dimension of buildings, impact of the proposed use on adjacent land uses, and such other elements as may be reasonably related to the health, safety and general welfare of the community.

D. Where the reviewing agency is the Planning Board and the use is also subject to site plan approval,

the Planning Board may concurrently review the special permit and site plan applications.

E. Referrals. If the application includes an agricultural data statement, the Board Clerk shall mail written notice of such application, including a description of the proposed project and its location, to the owners of land as identified by the applicant in the statement. At least 10 days before the public hearing, the Board shall mail notices thereof to the County Planning Agency, if required, under General Municipal Law § 239-m, which notice shall be accompanied by a full statement of such proposed action, as defined in General Municipal Law § 239-m. All applications requiring an agricultural data statement shall be referred to the County Planning Department as required under General Municipal Law § 239-m.

F. The time periods stated herein may be extended by mutual consent of the applicant and the reviewing board.

G. In the process of reviewing applications, the appropriate reviewing agency shall have the authority to interpret the ordinance.

(b) Section 194-44(C) relating to standards for special permit uses, is amended to read as follows:

C. Impacts on neighboring properties. Operations in connection with the special use shall not cause more severe impacts to nearby properties by reason of noise, fumes, odors, vibrations, flashing lights or other operational characteristics than would the operations of any permitted use not requiring a special use permit.

(c) Section 194-44(D), relating to conditions on special permit approvals, is amended by adding the following sentence: "The reviewing agency shall evaluate and consider the agricultural data statement, if any, in its review of the possible impacts of the proposed project upon the functioning of farm operations within the relevant agricultural district."

(d) Section 194-46, relating to conditions and special permit approvals is amended to read as follows:

§ 194-46. Conditions.

The authorized Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

6. Article X entitled "General Use Regulations" is amended as follows:

   (a) Section 194-55(E)(1), relating to Planned Research and Development Rules is amended to replace "September_____,1993" with "September 9, 1993."

7. Article XI entitled "Planning Board Special Permits" is amended as follows:

   (a) Section 194-57(A), relating to Hospitals is amended to read as follows:

      A. Authority of the Planning Board. Authorization is hereby granted to the Planning Board, Town of East Fishkill, to permit hospitals in any district where permitted, by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

   (b) Section 194-58(A), relating to Hotels and Motels is amended to read as follows:

      A. Authority of the Planning Board. Authorization is hereby granted to the Planning Board, Town of East Fishkill, to permit hotels and motels in any district where permitted, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

   (c) Section 194-58(C)(5)(a), relating to off street parking for hotels and motels is amended to delete " As required by Sections 5 and 8" in the second sentence.

   (d) Section 194-59(A), relating to Large Scale Recreation developments and camps is amended to read as follows:

      A. Authority of the Planning Board. Authorization is hereby granted to the Planning Board, Town of

East Fishkill, to permit large-scale recreational developments and camps in any district where permitted, by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(e) Section 194-60(A), relating to Churches, Schools, and other public uses, is amended to read as follows:

A. Authority of the Planning Board. Authorization is hereby granted to the Planning Board, Town of East Fishkill, to permit churches or other places of worship, schools and libraries in any district where permitted, by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(f) The opening paragraph of § 194-61, relating to Commercial Stables and riding academies is amended to read as follows:

In any district where permitted, commercial stables and riding academies may be permitted, by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(g) Section 194-62(A), relating to Nursing Homes and alternative care housing is amended to read as follows:

A. Authority of the Planning Board. Authorization is hereby granted to the Planning Board, Town of East Fishkill, to permit nursing homes and alternative care housing in all residential districts, by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(h) Section 194-63(A), relating to Daycare facilities is amended to read as follows:

A. Authority of the Planning Board. Authority is hereby granted to the Planning Board, Town of East Fishkill to permit day-care facilities within any residential district of the town by special permit,

provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(i). Section 194-64(C), relating to Historic structures is amended to read as follows:

C. Uses permitted by special permit. The following uses may be permitted by special permit granted by the Planning Board, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(a) Specialized business uses of low traffic volume, normally associated with history, the arts or cultural uses, appropriate to the structure and compatible with the neighborhood. Such uses may include:

(a) Artists' or artisans' studios.

(b) Art galleries.

(c) Antique shops.

(d) Rare book, coin or stamp shops.

(2) Residential or professional uses, provided that they are appropriate to the structure, compatible with the neighborhood and are located on a state or county road that can accommodate increased traffic. These uses may include the following:

(a) Sit down restaurants not to exceed an average seating capacity of 50 unless the preservation of the structure necessitates a larger size.

(b) Bed-and-breakfast not to exceed 12 rooms.

(c) Professional offices not to exceed six employees.

(d) Multifamily residential use not to exceed four units

(j) Section 194-65(A), relating to subdivision recreation areas is amended to read as follows:

A. Authority of the Planning Board. Authorization is hereby granted to the Planning Board, Town of East Fishkill to permit subdivision recreation areas in any district where permitted, by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(k) Section 194-66(A), relating to stationary solicitors, peddlers, and vendors, is amended to read as follows:

A. Authority of the Planing Board. Authorization is hereby granted to the Planning Board, Town of East Fishkill, to permit a solicitor, peddler or vendor using either a vehicle or stand, in any commercial or industrial district where permitted, by a temporary special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(l) Section 194-67(A), relating to outdoor recreation development is amended to read as follows:

A. Authority of the Planning Board. Authorization is hereby granted to the Planning Board, Town of East Fishkill, to permit outdoor recreation developments in B-I zones, by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

8. Article XII entitled "Zoning Board Special Permits" is amended as follows:

(a) The opening paragraph of § 194-69, relating to cemeteries, is added to read as follows:

The Zoning Board of Appeals may grant a special permit to establish cemeteries, provided that the Board finds that the application meets all the general conditions of Article

IX and further meets all the applicable conditions set forth in this section.

(b) The opening paragraph of §194- 70, relating to preparation of mulching materials, is amended to add the following sentence:

The Zoning Board of Appeals may grant a special permit for preparation of mulching materials, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(c) The opening paragraph of §194-71, relating to Membership Clubs, is amended to read as follows:

In any district where permitted, membership clubs not operated for gain may be permitted by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(d) The opening paragraph of §194-72, relating to Mobile Home Parks, is amended to read as follows:

Mobile home parks may be established and maintained in an R-3 District, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(e) The opening paragraph of §194- 73, relating to Kennels, is amended to read as follows:

In any district where permitted, kennels may be permitted by special permit, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(f) The opening paragraph of §194-74, relating to Private Stables is amended to read as follows:

The Zoning Board of Appeals is authorized to grant a special permit for a private stable in the harboring or keeping of horses on a lot, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(g) The opening paragraph of §194-75, relating to Land Excavations and filling, is amended to read as follows:

The Zoning Board of Appeals is authorized to grant a special permit for land excavations and filling, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(h) Section 194-75(A)(5), relating to effect of existing excavation operations, is amended to replace the phrase "as of _____, (the effective date of this local law, intended to be inserted upon enactment)" with "November 11, 2000."

(i) Section 194-76, relating to Commercial Communication Towers, is amended to read as follows:

§ 194- 76. Commercial communications towers and antenna installations.

The Zoning Board of Appeals is authorized to grant a special permit for commercial communications towers and antenna installations, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in §§194-77 through 194-84.

(j) The opening paragraph of §194-85, relating to gasoline filling stations, is amended to read as follows:

In any district where permitted, the Zoning Board of Appeals may grant a special permit for a gasoline filling station, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(k) Former §67-46, Height variations, is deleted.

(l) The opening paragraph of §194-88, relating to car washes, is amended to read as follows:

In any district where permitted, the Zoning Board of Appeals may grant a special permit for a car wash, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(m) The opening paragraph of §194-90, relating to medical or

dental clinics, is amended to read as follows:

In any district where permitted, the Zoning Board of Appeals may grant a special permit for professional offices of a physician, attorney at law, dentist, engineer, architect, teacher, artist, musician and other members of a recognized profession or trade are permitted in residential districts when conducted by the resident only, provided that the Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

(n) Section 194-91(A), relating to Accessory Residential Units in residential distress, is amended to read as follows:

A. Authority. The Building Inspector has authority to issue an accessory unit permit for accessory residential units in residential districts, provided that the Building Inspector finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

9. Article XIII entitled "Supplementary Bulk Regulations" is amended as follows:

(a) Section 194-95(C) is amended to increase the required side and rear setback of swimming pools and tennis courts from "10 feet" to "25 feet."

(c) Section 194-101(C), entitled "Height Variations" is added to read as follows:

C. Height variations. The height limitation of 35 feet or $2^{1/2}$ stories for the R-I, R-2 and R-3 Districts may be increased 10 feet for every 100 feet of additional front yard depth which is furnished in excess of the 50 feet minimum front yard depth established in the Bulk Schedule, provided that any building exceeding the height limit of 35 feet or $2^{1/2}$ stories shall not be located, with respect to any boundary line, a distance less than the height of such building.

10. Article XV entitled "Non-Conforming Uses and Buildings" is amended as follows:

(a) Sections 194-130(C) and 194-131(B) are amended to insert the date "April, 1985" following the phrase "the

effective date of this local law, to wit."

11. Article XVI entitled "Enforcement" is hereby amended as follows:

(a) Section 194-135 is added to read as follows:

§ 194-135. Filing of administrative decisions.

Each order, requirement, decision, interpretation or determination of the Building and Zoning Administrator and any other administrative official subsequently charged with the enforcement of the Zoning Chapter shall be filed in the office of such administrative official within five business days from the day it is rendered, and shall be a public record.

12. Article XIX entitled "Board of Appeals" is amended as follows:

(a) Section 194-147 is amended to read as follows:

§ 194-147. Appointment; rules of conduct and procedure.

The Board shall appoint a Board of Appeals consisting of five members and shall designate the chairperson thereof. In the absence of the chair, the Board of Appeals may designate a member to serve as acting chair. The Board of Appeals shall, consistent with the provisions of town law, determine its own rules of conduct and procedure.

(b) Section 194-151, entitled "Special Permits" is amended to add the words: "and VIII, under the procedures set forth therein."

(c) Section 194-152, entitled "Variances" is amended to read as follows:

§ 194-152. Variances.

A. The Board of Appeals may grant variances as set forth herein.

(1) Use variances.

(a) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this chapter, shall have the power to grant use variances, as defined in the Town Law.

(b) No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

[1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

[2] That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

[3] That the requested use variance, if granted, will not alter the essential character of the neighborhood.

[4] That the alleged hardship has not been self-created.

(c) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(2) Area variances.

(a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of this chapter, to grant area variances as defined in the Town Law.

(b) In making its determination, the Zoning Board of Appeals shall take into

consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

[3] Whether the requested area variance is substantial;

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

[5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(c) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

B. Imposition of conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the

neighborhood or community.

C. The application for a variance to the Board of Appeals pursuant to this chapter shall be accompanied by a fee which shall be fixed from time to time by the Town Board by resolution.

D. Section 194-153(A), relating to procedure of the Zoning Board of Appeals, is amended to add the following text:

An application for a use variance must also contain an agricultural data statement, (containing the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement) if any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district. An appeal may be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of such ordinance or local law in the office of such administrative official. Such appeal shall be taken by filing with such administrative official and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

(e) Section 194-153(B), relating to Notice of Hearing, is amended to read as follows:

B. Notice of hearing. The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of the hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of publication, or a reasonable fee therefore, shall be paid by the appealing

party prior to the opening of the hearing. At least five days before the public hearing, the Board of Appeals shall mail notices thereof to the appellant and to the administrative official, if any, from whom the appeal was taken. If an application for a use variance contains an agricultural data statement, the Board Clerk shall mail written notice of such application, including a description of the proposed project and its location, to the owners of land as identified by the applicant in the agricultural data statement. The Board shall also comply with notice requirements to the County Planning Department as provided in General Municipal Law §239-m, and to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal. All applications requiring an agricultural data statement shall be referred to the County Planning Department as required under General Municipal Law § 239-m. At least 30 days before the date of the Board's decision on an application or appeal to the Board of Appeals, the Secretary of said Board may transmit to the Planning Board a copy of said application or appeal and may request that the Planning Board submit to the Board of Appeals its opinion on said application or appeal. The Planning Board shall submit a report of such advisory opinion prior to the date of said hearing. Upon failure to submit such report, the Planning Board shall be deemed to have approved the application or appeal.

(f) Section 194-153(C), relating to Decision of the Zoning Board of Appeals, is amended to read as follows:

C. Decision. The Board of Appeals shall decide upon the appeal within 62 days after the close of the public hearing. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the

matter by the administrative official. In making such determination, the Board shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken. Prior to any decision, the Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.

(g) Sections 194-153(E) and(F) are added to read as follows:

E. Filing and mailing decisions. Every decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five business days after the decision is rendered, and a copy mailed to the applicant.

F. Rehearing. Any member of the Board of Appeals may make a motion to hold a rehearing to review any order, decision or determination of the Board not previously reheard. Such rehearing may occur only upon a unanimous vote of all members of the Board then present. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in person acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

13. Nomenclature. Throughout Articles XII, XIII, and XIV of Chapter 194, Zoning, all references to "Building Inspector" are changed to "Building and Zoning Administrator."

1-6 Minor non-substantive changes

In addition to the specific amendments set forth in this Local Law, the process of Codification may have resulted in one or more grammatical, numbering, pagination, or other non-substantive changes in text, but no change in the meaning or intent of such text is intended. It is the intention of the Town Board that all such changes

be adopted as part of the Code as if the affected local laws, ordinances and resolutions had been previously formally amended to read as such.

§1-7. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law, are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the original or amended local law, ordinance or resolution, which is being continued in the Code. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as they appear in said Code.

§1-8. Repeal of enactments not included in Code; Exceptions

All local laws and ordinances of a general and permanent nature of the Town of East Fishkill in force on the date of the adoption of this local law and not contained in the Code adopted by this local law, or otherwise recognized and continued in force by reference in this local law are hereby repealed as of the effective date of this local law with the exception of the following classes of local laws, ordinances, rights and obligations, which are hereby expressly saved from repeal:

A. Any right or liability established, accrued or incurred under any legislative provision of the Town of East Fishkill prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.

B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of East Fishkill or any penalty, punishment or forfeiture which may result therefrom.

C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law brought pursuant to any legislative provision of the Town of East Fishkill.

D. Any agreement entered into or any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of East Fishkill.

E. Any local law or ordinance of the Town of East Fishkill providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of -way, easement, street, road, highway, park or other public place within the Town of East Fishkill or any portion thereof.

F. Any local law or ordinance of the Town of East Fishkill appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of East Fishkill or other instruments or evidence of the town's indebtedness.

G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract, agreement or obligation. H. The levy or imposition of special assessments or charges. I. The annexation or dedication of property.

J. Any local law or ordinance relating to salaries and compensation.

K. Any local law or ordinance amending the Zoning Map.

L. Any local law or ordinance relating to or establishing a pension plan or pension fund for town employees.

M. Any local law or ordinance or portion of a local law or ordinance establishing a specific fee amount for any license, permit or service obtained from the town.

N. Any local law adopted subsequent to 9-26-2000.

O. Local laws regarding Economic Development Zones.

P. Legislation regarding highway specifications for the town.

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

The Town Clerk may make available copies of the Code, or any chapter or portion of it, to the public for sale upon the payment of a fee to be set periodically by resolution of the Town Board. The Town Board may also arrange for procedures for the periodic supplementation of the Code.

§1-10. Future Amendments to Code.

The local laws, ordinances, and resolutions know collectively as the "Code of the Town of East Fishkill," may be amended, deleted, or changed from time to time as the Town Board deems desirable. Any and all additions, deletions, amendments or supplements, or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the Town Board to be a part of the Code, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they may thereafter be printed and inserted in the loose-leaf book containing said Code as amendments and supplements thereto.

§1-11. Incorporation of provisions of this Local Law into Code.

The provisions of this local law are hereby made Article I of Chapter I of the Code of the Town of East Fishkill, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§1-1 to 1-13, inclusive. The specific amendments contained in section 1-5 shall be included, in their appropriate place, in the text of the Code, but shall not be repeated in Article I of Chapter I of the Code.

§ 1-12. When effective.

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

§1-13. Severability.

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

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 03 of ~~19~~ 2001 of the (County)(City)(Town)(Village) of East Fishkill was duly passed by the Town Board on June 14 ~~19~~ 2001, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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

I hereby certify that the local law annexed hereto, designated as local law No. ---------- of 19------ of the (County)(City)(Town)(Village) of ---------- was duly passed by the ---------- on ---------- 19 ---, and was (approved)(not approved)(repassed after
(Name of Legislative Body)

disapproval) by the ---------- and was deemed duly adopted on ---------- 19----,
(Elective Chief Executive Officer*)
in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ---------- of 19------ of the (County)(City)(Town)(Village) of ---------- was duly passed by the ---------- on ---------- 19----, and was (approved)(not approved)(repassed after
(Name of Legislative Body)

disapproval) by the ---------- on---------- 19----. Such local law was submitted
(Elective Chief Executive Officer*)

to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on ---------- 19---, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. ---------- of 19------ of the (County)(City)(Town)~~(Village)~~ of ---------- was duly passed by the ---------- on ---------- 19----, and was (approved)(not approved)(repassed after
(Name of Legislative Body)

disapproval) by the ---------- on ---------- 19---. Such local law was subject to
(Elective Chief Executive Officer*)

permissive referendum and no valid petition requesting such referendum was filed as of ---------- 19----, in accordance with the applicable provisions of law.

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

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. ---------- of 19------ of the City of ---------- having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on---------- 19----, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. ---------- of 19------ of the County of ---------- State of New York, having been submitted to the electors at the General Election of November ---------- 19----, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph----one----, above.

Dorothy J. Mekel

Clerk of the ~~County legislative body, City, Town or Village~~ Clerk
~~or officer designated by local legislative body~~

(Seal)

Date: June 21, 2001

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Dutchess

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature Jennifer L. VanTuyl

Attorney to the Town
Title

~~County~~
~~City~~
Town
~~Village~~ of East Fishkill

Date: 6/22/01