



DUNKIRK

CITY

CODE

19.	Cable Television and Communications Advisory Board	1901
19A.	Cats	
	1901A	
20.	Curfew	2001
21.	(Reserved).....	2101
22.	Defense and Indemnification	2201
23.	(Reserved).....	2301
24.	Dock and Harbor Use.....	2401
25.	Dogs.....	2501
26.	(Reserved).....	2601
27.	(Reserved).....	2701
28.	Electrical Installations	2801
29.	(Reserved).....	2901
30.	Ethics, Code of	3001
31.	Fees	3101
	Article I	Recreation Services Fee Schedule
	Article II	Sewer Rate Schedule
	Article III	Water Rate Schedule
	Article IV	Farmers Market Fee Schedule
	Article V	Dog License Fees
	Article VI	DPW-Parks Division Equipment and
Facilities	Article VII	Zoning Fees – Telecommunications
Facilities		
32.	Fire Prevention	3201
33.	Firearms	3301
34.	Fireworks Displays	3401
34A.	Flood	Damage Prevention
	3401A	
35.	Games of Chance	3501
35A.	Garage	Sales
	3501A	
36.	(Reserved).....	3601

37.	(Reserved).....	3701
38.	(Reserved).....	3801
39.	Hawkers and Peddlers.....	3901
40.	Housing Standards	4001
41.	(Reserved).....	4101
42.	(Reserved).....	4201
43.	(Reserved).....	4301
44.	Junk Dealers and Pawnbrokers	4401
45.	(Reserved).....	4501
46.	Landmark Preservation	4601
47.	Noise	4701
48.	Notification of Defects	4801
49.	Parks	4901
50.	(Reserved).....	5001
51.	Permits	5101
52.	Planning Board.....	5201
53.	Plant Growth, Removal of	5301
54.	(Reserved).....	5401
55.	Plumbing	5501
56.	Property Maintenance Code.....	5601
57.	Public Records, Access to	5701
58.	Public Records Management Program	5801
59.	Railroads	5901
60.	Real Estate Acquired by Tax Foreclosure	6001
61.	(Reserved).....	6100
62.	(Reserved).....	6201
63.	Sewer Use	6301
64.	Sex Offenders	6401
65.	Sidewalks and Streets	6501
65A	Snakes	
	6501A	

66.	Solid Waste Management and Recycling	6601
67.	Subdivision Regulations	6701
68.	Taxation.....	6801
	Article I	
	Taxable Status Date for Real Property	
69.	Taxation: Exemption for Senior Citizens.....	6901
69A.	Taxation: Partial Exemption For Certain Improvements To One And Two-Family Residential Buildings	
	6901A	
70.	Taxation: Tax on Utility Services.....	7001
71.	Taxation: Veterans Exemption	7101
72.	Taxicabs and Taxicab Operators.....	7201
	Article I	
	Taxicabs	
	Article II	
	Taxicab Operator's License	
73.	(Reserved).....	7301
74.	(Reserved).....	7401
75.	(Reserved).....	7501
76.	Vehicle and Traffic	7601
77.	Waterworks	7701
78.	(Reserved).....	7801
79.	Zoning.....	7901

CHAPTER 1
GENERAL PROVISIONS

ARTICLE I
Repealer; Penalties

§ 1-1.	Prior ordinances repealed.....	101
§ 1-2.	Penalties for offenses against certain chapters.....	101

ARTICLE II
Adoption of Code

§ 1-3.	Code adoption.....	102
§ 1-4.	When effective.....	103

[HISTORY: Adopted by the Common Council of the City of Dunkirk; Article I, 5-23-1922 as Chapter XXVI of the Ordinances of the City of Dunkirk; Article II 7-6-1971. Amendments noted where applicable.]

ARTICLE I
Repealer; Penalties
[Adopted 5-23-1922]

§ 1-1. Prior ordinances repealed.

All ordinances heretofore enacted by the Common Council of the City of Dunkirk are hereby repealed.

§ 1-2. Penalties for offenses against certain chapters.

Any person, upon being convicted of a violation of any of the provisions of Chapter 4, 6, 11, 28, 36, 39, 44, 51, 65, 67 or 72, Article I, of the Code of the City of Dunkirk shall be punishable by a fine of not more than One Hundred Fifty Dollars (\$150.00), or by imprisonment for not more than one hundred fifty (150) days, or by both such fine and imprisonment.

ARTICLE II
Adoption of Code
[Adopted 7-6-1971]

§ 1-3. Code Adoption

A Code consisting of Chapters 1 through 79, each inclusive, consisting of ordinances heretofore adopted by the Common Council of the City of Dunkirk, is hereby adopted and enacted as a comprehensive compilation of the ordinances of the City of Dunkirk, all as heretofore adopted and in full force and effect in the City of Dunkirk, which Code shall be numbered as follows in lieu of the present numbering designation used in connection with ordinance identification in the City:

- Chapter 1, formerly Chapter XXVI.**
- Chapter 4, formerly Chapter XIII.**
- Chapter 6, formerly Chapter IX.**
- Chapter 9, formerly Chapter XXXI.**
- Chapter 11, formerly Chapter VIII.**
- Chapter 13, formerly Chapter XXXIV.**
- Chapter 15, formerly Chapter XII.**
- Chapter 17, formerly Chapter XXVI-D.**
- Chapter 18, formerly Chapter XXXV.**
- Chapter 24, formerly Chapter XIV.**
- Chapter 25, formerly Chapter XXVIII.**
- Chapter 28, formerly Chapter XXXII.**
- Chapter 30, formerly Chapter XXII.**
- Chapter 32, formerly Chapter X.**
- Chapter 34, formerly Chapter XXVI-B.**
- Chapter 36, formerly Chapter XXIV.**
- Chapter 39, formerly Chapter XXV.**

**Chapter 41, formerly Chapter XXXIII.
Chapter 44, formerly Chapter XV.
Chapter 49, formerly Chapter III.
Chapter 51, formerly Chapter XIX.
Chapter 53, formerly Chapter XXX.
Chapter 55, formerly Chapter XXI.
Chapter 58, formerly Chapter XVII.
Chapter 60, formerly Chapter V.
Chapter 63, formerly Chapter IV.
Chapter 65, formerly Chapter II.
Chapter 67, formerly Chapter I.
Chapter 69, Local Law No. 1, 1970.
Chapter 70, Local Law No. 2, 1937.
Chapter 72, formerly Chapters XVI and XVI-A.
Chapter 74, formerly Chapter XXV-A.
Chapter 76, formerly Chapter VI.
Chapter 79, formerly Chapter XXIX.**

§ 1-4. When effective.

All provisions of said Code of the City of Dunkirk, New York shall remain in full force and effect as therein designated, effective immediately.

CHAPTER 2

ADMINISTRATION OF GOVERNMENT

[Adopted by the Common Council of the City of Dunkirk on 3-5-1991 as L.L. #2-1991]

ARTICLE I

City and Its Government

§ 2-1.01.	Title	208
§ 2-1.02.	Purpose	208
§ 2-1.03.	Effect on state provisions.....	208
§ 2-1.04.	Effect on existing local provisions	208
§ 2-1.05.	Definitions	208
§ 2-1.06.	City Seal	210

ARTICLE II

Officers

§ 2-2.01.	Appointments; oaths; bonds.....	211
§ 2-2.02.	Resignations	211
§ 2-2.03.	Vacancies.....	211
	[Added 2-6-2001 as L.L. #2 (Intro No. 13-2000) 2001]	
§ 2-2.04.	Removal of officers	212
§ 2-2.05.	Acting appointive officers.....	212
§ 2-2.06.	Approval of appointive officer by Common Council	212

ARTICLE III

Mayor

§ 2-3.01.	Powers and duties.....	213
§ 2-3.02.	Conference expenses	215
§ 2-3.03.	State of emergency	215
§ 2-3.04.	Executive approval and disapproval	215

**ARTICLE IV
Common Council**

§ 2-4.01.	Powers and duties.....	217
§ 2-4.02.	Meetings of Council	218
§ 2-4.03.	Rules of Council	219
§ 2-4.04.	Confirmation of appointments	219
§ 2-4.05.	Investigations	220
§ 2-4.06.	Minutes and transcripts	220
§ 2-4.07.	Official notices.....	220
§ 2-4.08.	Powers of Council Member at Large	221
§ 2-4.09.	Conference expenses	222
§ 2-4.10.	Reconsideration	222

**ARTICLE V
Budget and Financial Procedures**

**SUBARTICLE V-A
Capital Program**

§ 2-5.01.	Capital Program Committee	223
§ 2-5.02.	Capital projects	223
§ 2-5.03.	Submission of capital project requests	224
§ 2-5.04.	Review of capital project requests	224
§ 2-5.05.	Preparation of capital budget.....	225
§ 2-5.06.	Amendment of capital program.....	225
§ 2-5.07.	Inclusion of capital projects	226
§§ 2-5.08. through 2-5.20.	(Reserved)	226

**SUBARTICLE V-B
Operating Budget Procedure**

§ 2-5.21.	Notification of data to be submitted	227
	[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]	
§ 2-5.22.	Submission of budget requests.....	227
	[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]	
§ 2-5.23.	Review of requests.....	227
§ 2-5.24.	Information required for proposed City budget.....	227
§ 2-5.25.	Additional data concerning debt.....	228
§ 2-5.26.	Budget message; recommendations.....	228

	[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]	
§ 2-5.27.	Estimated revenues.....	229
§ 2-5.28.	Adoption of budget.....	230
	[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]	
§ 2-5.29.	Levy of taxes; reserve for uncollected taxes	233
§ 2-5.30.	Supplemental and emergency appropriations.....	234
§ 2-5.31.	Insufficient revenues; reduction of appropriations.....	234
§ 2-5.32.	Transfers	234
§ 2-5.33.	Contingent funds.....	235
§ 2-5.34.	Budget controls	235
§ 2-5.35.	Lapse of appropriations.....	235
§§ 2-5.36. through 2-5.50.	(Reserved)	235

SUBARTICLE V-C

Local Improvement Assessments

§ 2-5.51.	Terms defined; sewer locations.....	236
§ 2-5.52.	Declaration of intent.....	236
§ 2-5.53.	Objections	237
§ 2-5.54.	Public hearing.....	237
§ 2-5.55.	Plans and specifications	237
§ 2-5.56.	Connection of utilities	237
§ 2-5.57.	Apportionment of costs	238
§ 2-5.58.	Assessment; review of assessment.....	239
§ 2-5.59.	Collection of assessment	240

SUBARTICLE V-D

Surplus Equipment Disposal

§ 2-5.60.	Committee responsibility.....	242
§ 2-5.61.	Final Sales.....	242
§ 2-5.62.	Auctioneers.....	242
§ 2-5.63.	Alternate methods of disposal	242
§ 2-5.64.	Prohibited sales.....	242
§ 2-5.65.	Open meetings requirement.....	242
§§ 2-5.66. through 2-5.90.	(Reserved)	242

SUBARTICLE V-E

Accounting and Auditing

§ 2-5.91.	Encumbrance accounting system	243
§ 2-5.92.	Procedure for audit of claims.....	243
§ 2-5.93.	Financial reports	244

ARTICLE VI

Department of Law

§ 2-6.01.	Establishment; City Attorney.....	245
§ 2-6.02.	Powers and duties of Attorney.....	245
§ 2-6.03.	Employment of special counsel.....	246
§ 2-6.04.	Assistant City Attorneys	247
§ 2-6.05.	Law Library	247
§ 2-6.06.	Inconsistent interests among City officials	247
§ 2-6.07.	Professional ethics	248

**ARTICLE VII
Department of Public Works**

§ 2-7.01.	Director of Public Works.....	249
§ 2-7.02.	Powers and duties of Director.....	249
§ 2-7.03.	Division of Engineering	251
§ 2-7.04.	Division of Streets and Highways	252
§ 2-7.05.	Division of Parks and Playgrounds	252
§ 2-7.06.	Division of Wastewater Treatment.....	253
§ 2-7.07.	Division of Water Treatment and Water Distribution	253
§ 2-7.08.	Division of Public Works Maintenance.....	256
§ 2-7.09.	Division of Transit Services	256
§ 2-7.10.	Division of Plumbing.....	257

**ARTICLE VIII
Police Department**

§ 2-8.01.	Departmental organization	258
§ 2-8.02.	Appointment and qualifications of Chief of Police.....	258
§ 2-8.03.	Powers and duties of Chief of Police	258
§ 2-8.04.	Assistant Chief of Police	260

**ARTICLE IX
Fire Department**

[Amended as Resolution #155-1990; Amended 2-6-2007 as L.L. #1-2007]

§ 2-9.01.	Departmental organization	261
§ 2-9.02.	Fire Chief and Assistants	261
	[Amended 2-6-2007 as L.L. #1-2007]	
§ 2-9.03.	Powers and duties of Fire Chief.....	261
§ 2-9.04.	Powers and duties of Assistant Chiefs	263

**ARTICLE X
City Clerk**

§ 2-10.01.	Director; maintenance of records	264
------------	--	-----

§ 2-10.02.	Appointment	264
§ 2-10.03.	Powers and duties.....	264
§ 2-10.04.	Deputy City Clerk.....	268
§ 2-10.05.	Registrar and Deputy Registrar of Vital Statistics.....	268

**ARTICLE XI
City Treasurer**

§ 2-11.01.	Establishment.....	269
§ 2-11.02.	Powers and duties.....	269
§ 2-11.03.	Deputy City Treasurer	270
§ 2-11.04.	Bond required.....	270
§ 2-11.05.	Investment of moneys.....	271

**ARTICLE XII
Fiscal Affairs Officer**

§ 2-12.01.	Appointment; qualifications	272
§ 2-12.02.	Powers and duties.....	272
§ 2-12.03.	Accounting.....	273
§ 2-12.04.	Auditing.....	273
§ 2-12.05.	Budgeting.....	273
§ 2-12.06.	Purchasing.....	274

**ARTICLE XIII
Department of Assessment**

§ 2-13.01.	Departmental organization	275
	[Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]	
§ 2-13.02.	Qualifications	275
	[Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]	
§ 2-13.03.	Assessor	275
	[Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]	
§ 2-13.04.	Powers and duties of Department	276
	[Amended 3-4-1993 by L.L. #1-1993; Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]	
§ 2-13.05.	Board of Assessment Review	277

**ARTICLE XIV
Department of Planning and Development**

§ 2-14.01.	Departmental organization	278
§ 2-14.02.	Director.....	278
§ 2-14.03.	Powers and duties of Director.....	278
§ 2-14.04.	Division of Planning	279
§ 2-14.05.	Division of Development.....	280
§ 2-14.06.	Planning Board.....	280

**ARTICLE XV
Personnel Department**

§ 2-15.01.	Establishment; Personnel Administrator	281
§ 2-15.02.	Powers and duties of Personnel Administrator.....	281
§ 2-15.03.	Coordination with other departments	283
§ 2-15.04.	Salary plan	283

**ARTICLE XVI
Department of Housing, Building and Zoning Enforcement**

§ 2-16.01.	Departmental organization	284
§ 2-16.02.	Powers and duties.....	284
§ 2-16.03.	Assistant Housing, Building and Zoning Officer	286
§ 2-16.04.	Zoning Board of Appeals	286
§ 2-16.05.	Housing Commission.....	286

**ARTICLE XVII
Sealer of Weights and Measures
[Abolished 02-01-11 as L.L. #3-2011]**

**ARTICLE XVIII
City Court**

§ 2-18.01.	Governing provisions	288
------------	----------------------------	-----

**ARTICLE XIX
(Reserved)**

**ARTICLE XX
Application of Provisions**

§ 2-20.01.	When effective	290
§ 2-20.02.	Amendments.....	290

§ 2-20.03. Continuity of authority; completion of unfinished business .290
§ 2-20.04. Severability290
§ 2-20.05. Construal of provisions291

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 3-5-1991 as Local Law No. 2-1991. Amendments noted where applicable.]

GENERAL REFERENCES

Governmental offices and general regulations - See Charter.
 Defense and indemnification - See Chapter 22.
 Code of ethics - See Chapter 30.
 Rules of Order of Council - See Appendix 1.

ARTICLE I
City and Its Government

§ 2-1.01. Title.

The code and all amendments hereto shall be known any may be cited as the “Dunkirk Administrative Code.”

§ 2-1.02 Purpose.

The purpose of this code is to set forth the details of administration of the Dunkirk City Government consistent with the provisions of the Dunkirk City Charter. The Mayor shall promulgate and maintain a manual of management policies, organizations and procedures to further implement the provisions of the Dunkirk City Charter and this code.

§ 2-1.03. Effect on state provisions.

General state law will govern and supersede any provision of this code which is inconsistent therewith, except where said law expressly allows for a modification of its provisions.

§ 2-1.04. Effect on existing local provisions.

All existing local laws, ordinances, legalizing acts and resolutions of the City shall remain operative except where inconsistent with this code; provided, however, that no provision of this code shall be construed to invalidate or impair any provision of the Dunkirk City Charter.

§ 2-1.05. Definitions.

Whenever used in this code, unless otherwise expressly states or unless the context or subject matter otherwise requires, the following terms shall have the meanings indicated:

ADMINISTRATIVE CODE or CODE - This chapter, as prescribed by the Charter.

BOARD and COMMISSION - Except as otherwise provided herein, a body of persons appointed or elected in the manner herein provided for the purpose of administering designated City functions or advising on matters of continuing City interest or in the making of City governmental policy.

CHARTER - The Charter of the City of Dunkirk, which consists of Local Law No. 5- 1977, as amended by Local Law No. 6-1977, and as may be amended thereafter from time to time.

CITY - The City of Dunkirk

CITY CODE - The comprehensive compilation of those ordinances heretofore and hereafter adopted by the Common Council of the City which are currently set out in Chapters 1 through 79 of the Code of the City of Dunkirk.

COUNCIL or COMMON COUNCIL - The elected legislative body of the City of Dunkirk

EMPLOYEE - Any person, except an officer, employed by the City or an agency thereof, but shall not include an independent contractor.

FISCAL YEAR - The period beginning with the first day of January and ending with the last day of December each year. (NOTE: The recommendation is to change the year from April 1 to March 31).

FOUR-FIFTHS MAJORITY - An affirmative vote of four (4) members of the Common Council.

LAW - A federal or state statute, charter, local law, ordinance and resolution and court cases interpreting them.

LOCAL LAW - A legislative act of the Council adopted pursuant to the New York State Municipal Home Rule Law, but shall not mean or include an ordinance, resolution or other similar acts of the Council or of any other board or body of this City.

MAJORITY VOTE - An affirmative vote of three (3) or more members of the Common Council.

OFFICER - Includes the following:

- A. All elective and appointive officers as designated by § 2.00 and 2.03 of the City Charter.
- B. Those others defined as such by and under the Public Officers Law of the State of New York.

ORDINANCE - Any legislation adopted by the Common Council providing substantive rules of law, as authorized by the General City Law and other general law.

PERSON - One (1) or more individuals and/or corporations.

QUORUM - That number required to transact business.

RESOLUTION - A legislative act other than a local law or ordinance pursuant to the Charter or other law, which is limited in its application or of a temporary nature, or both.

§ 2-1.06. City Seal.

- A. The City shall have a City Seal as provided for in § 1-03 of the City Charter.
- B. The City Seal shall consist of:
 - (1) Two (2) braided concentric circles with the large circle having a diameter of approximately one and three-fourths (1 3/4) inches;
 - (2) Within the two (2) concentric circles shall appear the words "SEAL OF THE CITY OF DUNKIRK, NEW YORK" across the top and the numerals "1880" at the bottom; and **[EDITOR'S NOTE: The City Seal is on file in office of the City Clerk, where it may be examined during regular business hours.]**
 - (3) Within the innermost circle shall appear an upright eagle facing the right on top of a shield of thirteen (13) stars and thirteen (13) vertical bars with three (3) arrows and two (2) olive branches. The seal as so described is affixed below. **[EDITOR'S NOTE: The City Seal is on file in office of the City Clerk, where it may be examined during regular business hours.]**

**ARTICLE II
Officers**

§ 2-2.01. Appointments; oaths; bonds.

- A. Every appointment to a City office shall be made in writing and signed by the appointing officer or, if made by a board, by the presiding officer thereof and shall be filed in the office of the Personnel Administrator and in the office of the City Clerk.
- B. Every elected officer, before beginning official duties, shall file with the City Clerk the constitutional oath of office and, if required by the

Administrative Code or the City Code, an official bond in the amount so required and approved by the Mayor as to the sufficiency of the sureties and by the City Attorney as to its form and validity.

- C. If an officer fails to file the oath of office or, if required, an official bond within thirty (30) days after the commencement of such officer's term of office, the office shall be deemed vacant, and the vacancy must be filled as provided in the Charter and this code.
- D. The premiums for all such bonds shall be paid by the City. If the City, as a general practice, obtains the bonds for officers and employees, the failure by the City to obtain the bond shall not result in a vacancy unless the officer or employee is not bondable.

§ 2-2.02. Resignations.

Resignations of elective and appointive officers shall be made and presented to the City Clerk. The City Clerk shall forthwith file the same in the office of the Personnel Administrator and appointing officer or board.

§ 2-2.03. Vacancies.

- A. The offices of Mayor, Council member or any other elected officer shall become vacant upon the office holder's death or resignation or upon the happening of any event in § 30 of the Public Officers Law.
- B. A vacancy of an elective office shall be filled by appointment by a majority vote of the Common Council within thirty (30) days of such vacancy. If after thirty (30) days no majority is reached, the Councilman at Large or Acting Councilman at Large will fill such vacancy. The appointee shall serve until the commencement of the calendar year next succeeding the first general election after the happening of the vacancy, at which a successor may be elected, and the vacancy shall be filled at such election for the unexpired term. Any person appointed to fill a vacancy shall possess all the qualifications required of the office as set forth in the Charter.

Any person appointed to fill a Common Council vacancy shall be a member of the same political party by which such person was elected any may be nominated by the City Committee of such party. Such City Committee nomination shall be considered a non-binding recommendation. In the event the person vacating the Common Council office was elected with no party affiliation, the Common Council may appoint any qualified elector. **[Added 2-6-2001 as**

L.L. #2 (Intro No. 13-2000) 2001]

§ 2-2.04. Removal of officers.

Appointive and acting appointive officers serve at the pleasure of the Mayor and with the consent of the Common Council. In addition to the reasons causing a vacancy described above, such officer may be removed from the office without cause by the Mayor, at the Mayor's pleasure.

§ 2-2.05. Acting appointive officers.

When a vacancy occurs in an appointive office, the Mayor shall have the power to appoint an acting appointive officer to serve until confirmation by the Common Council or the appointment and confirmation of another to fill said vacancy. While serving in that capacity, the acting appointive officer shall have all the powers and duties of such office and shall receive a salary as set forth by the Common Council. An acting appointive officer shall possess all the qualifications required of the office as set forth in the Charter.

§ 2-2.06. Approval of appointive officer by Common Council.

If the Common Council fails to act on any proposed appointive office within sixty (60) days of the date of appointment, the appointment shall be deemed confirmed.

**ARTICLE III
Mayor**

§ 2-3.01. Powers and duties.

- A. It shall be the duty of the Mayor to be the chief executive officer of the City and to supervise, direct and control, subject to the provisions of the City Charter and this code, the proper administration of all City affairs and all departments of City government
- B. Specifically, the powers and duties of the Mayor shall include:
 - (1) Responsibility for the exercise of all executive and administrative powers in relation to any and all functions of City government.
 - (2) The appointment of all appointive officers, with the consent of the Common Council, and all acting appointive officers as provided for in § 2-2.05 hereof.
 - (3) The removal of any appointive officer and acting appointive

officer at any time, except as otherwise provided by law or the Charter and in accordance with all provisions of law.

- (4) The appointment of all commissioners, members of boards and other employees, except as otherwise provided by law or by the Charter.
- (5) The supervision of all administrative departments, offices, commissions and boards.
- (6) The implementation and execution of all local laws, ordinances and resolutions enacted and adopted by the Common Council.
- (7) The preparation and submission to the Common Council, on or before three (3) months prior to the start of each fiscal year, of the annual budget and the capital program, which shall be prepared in accordance with the law.
- (8) Communication to the Common Council, on or before March 1 of each year, of a general statement of the finances, government and affairs of the City, with a summary statement of the activities of the departments, boards, commissions and offices of the City, to be known as the "state of the City message," and more often if the Mayor so desires.
- (9) The execution of all contracts, deeds, leases, franchises and any other written instruments authorized by the Common Council.
- (10) Responsibility for the negotiation of all employee contracts with the assistance of the Personnel Administrator and the City Attorney.
- (11) Recommendations to the Common Council of the adoption of local laws, ordinances and resolutions necessary for the enactment of innovative programs for the City.
- (12) Calling special meetings of the Common Council.
- (13) Communication to the Council after the end of each fiscal year, or more frequently if so deemed necessary, of a report on the financial status of the City, including such things as categories of revenues, departmental expenditures, the budgeted receipt and/or appropriation and the projected estimate through that period and the actual receipts and

expenditures, and recommending Council action if necessary.

- (14) In addition to the duties imposed by the Charter and this Administrative Code, those duties given to the Mayor by the City Code, including but not limited to:
 - (a) The conducting of auctions pursuant to Chapter 6.
 - (b) The conducting of bingo pursuant to Chapter 13.
 - (c) The regulation of junk dealers and pawnbrokers pursuant to Chapter 44.
 - (d) The issuance of permits under Chapter 51.
 - (15) The performance of such other duties and the execution of such other powers as may be prescribed by law, the Administrative Code or resolution, approved by the Common Council.
- C. The Mayor shall notify the Councilman at Large in advance of any scheduled absence from the City and advise the Common Council, through the office of the City Clerk, accordingly.

§ 2-3.02. Conference expenses.

The Mayor shall have the power to designate and authorize any appointive officer, as defined under Article II, § 2.03, of the City Charter, paid from City funds, except Common Council members, to attend an official or unofficial convention, conference or school for the betterment of City government. Within the budget-appropriated limits therefor and when so authorized, all necessary and actual expenses, including but not limited to a registration fee, meals, room and mileage (at a rate set and fixed by the Common Council), shall be paid from City funds. The Mayor shall submit written approval of the expenses to the Common Council, the appropriate department head and the Fiscal Affairs Officer.

§ 2-3.03. State of emergency.

In the event of an occurrence of an emergency affecting the life, health or safety of the inhabitants of the City, the Mayor or Acting Mayor, as defined in the Charter, except as otherwise provided by law, shall have the power to declare a state of emergency within the City and to perform all acts which are necessary for the protection of the life, health, safety and property of such inhabitants. As soon as practicable, the Mayor shall submit a written statement so declaring the emergency to the City Clerk.

§ 2-3.04. Executive approval and disapproval.

- A. Every ordinance and resolution passed by the Common Council, except resolutions regulating the internal affairs of the Common Council, shall be certified by the City Clerk as to its passage by the Common Council and shall be presented by the City Clerk to the Mayor within three (3) working days for the Mayor's consideration.
- (1) The Mayor shall have ten (10) calendar days after receipt to approve or disapprove.
 - (2) If the Mayor approves the ordinance or resolution, the Mayor shall sign it within those ten (10) calendar days after its receipt and return it signed forthwith to the City Clerk.
 - (3) If the Mayor disapproves the ordinance or resolution, the Mayor shall so indicate, in writing, within ten (10) calendar days after its receipt, setting forth objections thereto, and shall return the same to the City Clerk forthwith.
 - (4) If the ordinance or resolution is not approved or disapproved by the Mayor within ten (10) calendar days after its receipt, it shall be deemed approved as if the Mayor had approved it.
- B. Local laws shall be enacted in accordance with and pursuant to the Municipal Home Rule Law of the State of New York notwithstanding any inconsistent local laws previously adopted.
- C. In considering the budget, the Mayor shall have the power to disapprove any specific item or items which the Common Council has changed from the original budget submitted by the Mayor without disapproving the entire budget. The Common Council, however, retains its power for reconsideration as defined under Article IV, § 4.03, of the Dunkirk City Charter.

ARTICLE IV
Common Council

§ 2-4.01. Powers and duties.

The powers and duties of the Common Council shall include:

- A. The adoption by a majority vote of its members of resolutions and of all necessary rules and regulations for the conduct and procedures of the Common Council.
- B. The enactment, amendment or rescission of local laws, ordinances and resolutions.
- C. The adoption of the budget, levying of taxes, making of appropriations and contracting of indebtedness.
- D. All appointments, such as assistants and other employees, of each respective City department shall be fixed by resolution of the Common Council, which shall determine the compensation of all officers and employees of the City, except that the compensation of each elective officer shall be fixed by resolution of the Common Council at a meeting thereof to be held in June, prior to his or her election and shall not thereafter be changed until the expiration of the term for which he or she has been elected.
- E. The adoption of and revision to an Administrative Code, which shall set forth the details of administration of the City government in harmony with the provisions of the Charter.
- F. The creation of any necessary administrative departments, offices, commissions and boards.
- G. Authorization for the execution of contracts, deeds, leases, permits, franchises, licenses and any other written instruments.
- H. The designation of such officers and employees of the City who shall be bonded in favor of the City in such amounts as prescribed by the Common Council.
- I. The construction, maintenance and repair of a sewer or system of sewers and treatment facilities, sidewalks, waterlines and treatment

facilities, within any public street or street right-of-way and an assessment of the cost thereof in a manner to be determined by the Common Council.

- J. The determination of water rates, sewer use rates and solid waste rates and penalties for nonpayment of water and sewer and solid waste use bills or abuse of the service.
- K. The acceptance of all streets and lands which may be offered or dedicated to the public and the laying out, opening, closing and improving of streets and highways within the City and altering or discontinuing the same. Whenever the Common Council shall deem it necessary to pave a street, the Common Council shall determine the percentage to be assumed by the City and that to be assumed by the abutting property owner.
- L. The performance of such legislative duties and powers as prescribed by state or federal statute.

§ 2-4.02. Meetings of Council.

- A. The Common Council shall organize not later than January 3rd of each year and at the time shall adopt its rules, designate the official paper(s) of the City and establish its committees and such other organizational matters.
- B. The Common Council shall hold regular meetings at least twice in each month. All meetings shall be public, and no action shall be taken by said Common Council except in an open meeting, except as permitted under the Public Officers Law.
- C. Each Council member present at any official meeting shall have a vote on every question brought before the Council for its consideration. However, no person, whose election as a Council member is contested shall be entitled to vote on any question connected with such contest.
- D. No Council member shall be excused from voting on any question unless a majority vote of all members present approves such abstention. It is expected that abstentions shall be approved where the member has a conflict of matters. All Council members shall abide by Article 18 of the General Municipal Law and Chapter 30 of the City Code with regard to any possible conflicts of interest.

§ 2-4.03. Rules of Council.

- A. The Common Council, by resolution, shall adopt and maintain rules and regulations for its business. Such rules and regulations may provide means to compel the attendance of a member and to punish or expel a member for cause. Such rules and regulations shall be public and shall be made available to all Council members and any other interested individual.
- B. All pre-filed resolutions shall be sponsored by appropriate committee members. Resolutions failing to receive committee support may be introduced as new business by other Council members.
- C. Standing committees shall be designated by resolution as defined in the Common Council Rules of Order as adopted February 27, 1980, and revisions thereto. **[Editor's Note: See Chapter A85, Rules of Order of the Common Council.]**

§ 2-4.04. Confirmation of appointments.

- A. All appointments by the Mayor subject to confirmation by the Common Council shall be in writing, signed by the Mayor and filed in the office of the City Clerk and Personnel Administrator within four (4) days after the date of appointment.
- B. Upon confirmation by the Common Council and upon qualifying for the office, an appointive officer shall enter upon the duties of such office. In the event that the Common Council has neither confirmed nor rejected by majority vote an appointment within a period of sixty (60) days after the filing thereof with the City Clerk, such appointment shall be deemed to be confirmed.
- C. Confirmation of an appointment, where required, shall be by majority vote of the Common Council taken at a regular or special meeting.

§ 2-4.05. Investigations.

- A. The Common Council is empowered to conduct an investigation into any subject matter within its jurisdiction, including the conduct and performance of official duties of any officer or employee paid from the City funds and the accounting for all money or property owned by or under the control of the City. The power to conduct investigations may be delegated to a committee of the Council.

- B. Both the Council Member at Large and the Chairman of such committee, after being so authorized to do so by majority vote of the whole Council or committee respectively, may issue a subpoena requiring a person to attend before the Common Council or such committee and be examined with reference to any matter within the scope of the investigation and in a proper case to produce all books, records, papers and documents or material relevant to the investigation. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules. The Council Member at Large and the Chairman of such committee(s) may administer an oath to any witness. Adjournments may be taken from time to time.

§ 2-4.06. Minutes and transcripts.

- A. All actions taken at any meeting of the Council shall be recorded in the complete minutes of each such meeting. The minutes shall be typed within ten (10) days after the adjournment of the meeting and shall be distributed by the City Clerk to each member of the Council, to the Mayor and to the head of each City department and bureau. All local laws, ordinances and resolutions shall appear in full in the minutes of the meeting at which they are introduced.
- B. Whenever deemed appropriate by the Council Member at Large, committee Chairman or City Attorney, a verbatim transcript shall be made. In all other cases, electronic recording of Council and committee proceedings shall suffice.

§ 2-4.07. Official notices.

Official notices which are required by law to be published shall be published in the official newspaper of the City as designated by the Common Council at its organizational meeting. When such notices are required to be published in more than one (1) paper, the additional paper or papers shall be designated by the Council.

§ 2-4.08. Powers of Council Member at Large.

- A. The Council Member at Large shall be the presiding officer at all meetings and public hearing of the Common Council. In the absence of the Council Member at Large, the Common Council shall designate by majority vote an acting presiding officer. In the event that no majority is reached, the Council member with the greatest rate of continuous length of service shall serve as acting presiding officer.

- B. If the Mayor is temporarily absent from the City or is temporarily mentally or physically unable to perform the duties of the office, the Council Member at Large shall become the Acting Mayor. In any such case, the Mayor must first notify or have notice be given to the Council Member at Large and the City Clerk so that the Council Member at Large knows when to begin to discharge the duties of Acting Mayor. In such case, the Council Member at Large shall continue to vote and act as Council Member at Large.
- C. Notwithstanding the language of § 2.05 of the City Charter and § 2-2.03 of this code, if the Mayor is permanently mentally or physically unable to perform the duties of the office, the Council Member at Large shall become Acting Mayor. As such, the Acting Mayor shall serve until the commencement of the calendar year next succeeding the first general election after the happening of the vacancy, at which a successor may be elected, and the vacancy shall be filled as such election for the unexpired term. The Acting Mayor in this case shall be paid the Mayor's salary while so acting and relinquish his Council salary for the acting term. The Council Member at Large may decline to assume such Acting Mayor status by a written notice filed with the City Clerk.
- D. As its organizational meeting, the Common Council shall designate one (1) of its members to act as a backup designee to the Council Member at Large should the Council Member at Large not be able to perform the duties as Acting Mayor under Subsections B and C hereof. In such cases, the backup designee shall assume and discharge the duties and powers of Acting Mayor.

§ 2-4.09. Conference expenses.

The Common Council, by majority vote, shall have the power to designate and authorize any Council member and/or employee to attend an official or unofficial convention, conference or school for the betterment of City government. Within the appropriation therefor and when so authorized, all necessary and actual expenses, including but not limited to a registration fee, meals, room and mileage (at a rate set and fixed by the Common Council), shall be paid from City funds. The Common Council and/or employees shall submit written approval of the expenses to the Fiscal Affairs Officer.

§ 2-4.10. Reconsideration.

In the event of executive disapproval of any local law, ordinance, resolution or budget item, the Common Council shall not later than its next regular meeting reconsider the local law, ordinance, resolution or budget item. If, after such reconsideration, four (4) members of the Common Council shall vote to override

the executive disapproval, the local law, ordinance, resolution or budget item shall be of force notwithstanding the objection of the Mayor.

ARTICLE V
Budget and Financial Procedures

SUBARTICLE V-A
Capital Program

§ 2-5.01. Capital Program Committee.

- A. There shall be a Capital Program Committee, the members of which shall hold their positions thereon by virtue of their official positions in the City government as follows: the Mayor, who shall be Chairman; the Fiscal Affairs Officer, who shall serve as Secretary for the Committee; the Director of Public Works; and the Director of Planning and Development. The Mayor may appoint such other officials or employees of the City to act as technical advisers to the Committee.

- B. The Capital Program Committee shall, each year, prepare a proposed capital program for the next six (6) fiscal years, showing the purpose and the amount of recommended capital expenditures by years and including total expenditures remaining beyond the six-year period for capital projects included in the six-year capital program, if any, the suggested methods of paying for the capital projects included in such program, and the estimated effect of such

program, and the estimated effect of such program on future budgets, with respect to operating, maintenance, debt service and other costs, and such other information as it may deem advisable. The first year of such program shall constitute the recommendations of the Capital Program Committee for the capital budget of the ensuing year.

§ 2-5.02. Capital projects.

- A. The term "capital project," as used in this code, shall mean:
 - (1) Any physical betterment or improvement, including furnishings, machinery, apparatus or equipment for such physical betterment or improvement when first constructed or acquired.
 - (2) Any preliminary studies and surveys relating to any physical betterment or improvement.
 - (3) Land or rights in land.
 - (4) Any combination of Subsection A(1), (2) and (3).
 - (5) Anything so defined by state law.
- B. The policy as to what constitutes the minimum dollar value and the necessary useful life for a proposed capital project shall be drafted by the Capital Program Committee and approved by the Common Council.

§ 2-5.03. Submission of capital project requests.

On or before the first day of July in each year, the head of each City department and administrative unit shall furnish to the Fiscal Affairs Officer a description, justification and estimate for each capital project which is proposed for development during one (1) or more of the ensuing six (6) fiscal years. The Mayor or Capital Program Committee may prescribe an earlier date, provided that at least thirty (30) days' written notice is given by the Mayor or Fiscal Affairs Officer. Each capital project request shall show such information as is required in the capital program and any other information that the Mayor or Fiscal Affairs Officer deems useful.

§ 2-5.04. Review of capital project requests.

- A. The Capital Program Committee shall review all project requests and shall analyze the fiscal and programmatic aspects of the requests

and consistency with the Master Plan. The various administrative units shall provide such additional information as the Committee may request.

- B. Based on these analyses, the Capital Program Committee shall prepare a proposed capital program.
- C. The Mayor, as Chairman of the Capital Program Committee, shall, at least thirty (30) days before the presentation of the proposed capital budget, submit the same to the City Planning Board. Its Chairman shall append thereto a summary of that Board's concurrence or objection to any item or items in the recommendations of the Capital Program Committee for the proposed capital budget for the ensuing or future years. The Mayor shall include this communication without alteration as an exhibit in the budget message to the Common Council.

§ 2-5.05. Preparation of capital budget.

- A. The Fiscal Affairs Officer shall, based on the proposed capital program, prepare a tentative capital budget, which shall be arranged so as to give in parallel columns not less than the following comparative information for the appropriations and methods of financing capital projects:
 - (1) Appropriations for the last completed fiscal year.
 - (2) Appropriations for the present fiscal year.
 - (3) Recommendations of the Mayor for the ensuing fiscal year.
- B. The tentative capital budget shall also contain a statement as to each pending and proposed capital project, incorporating in columnar form the following data:
 - (1) The estimated ultimate total cost
 - (2) The amount appropriated to date.
 - (3) The amount expended to date.
 - (4) The amount of additional or new appropriations included in the tentative capital budget for each project.
 - (5) The method of financing each pending and proposed capital project.

- C. The capital budget shall be submitted with the operating budget to the Common Council ninety (90) days prior to the end of the City's fiscal year.

§ 2-5.06. Amendment of capital program.

Any time after the adoption of the capital program, the Common Council may amend it to add, modify or abandon capital projects or to change the method of financing. Such amendments to the capital program are subject to the same review procedures applicable to new capital projects.

§ 2-5.07. Inclusion of capital projects.

- A. No capital project shall be authorized or undertaken unless it is included in the capital program as it is adopted or amended.
- B. No capital project shall be included in the capital program unless it is in the capital budget.

§ 2-5.08 through 2-5.20. (Reserved)

SUBARTICLE V-B
Operating Budget Procedure

§ 2-5.21. Notification of data to be submitted. [Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]

On or before August 3rd, the Mayor shall notify, in writing, the head of each administrative unit and of each agency receiving City funds, including those pursuant to contract or otherwise, during the current fiscal year to submit their budget request on the required form with any necessary backup information.

§ 2-5.22. Submission of budget requests. [Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]

On or before September 2nd, or such earlier date as the Mayor may prescribe, the head of each administrative unit of the City government and each City-funded agency shall furnish to the Fiscal Affairs Officer a budget request on such form and with such information as required by the Fiscal Affairs Officer and Mayor, together with an estimate of revenues which might accrue in said department. The head of each administrative unit of the City government and each City-funded agency shall simultaneously furnish a copy of their budget request and estimate of revenues to the Common Council.

§ 2-5.23. Review of requests.

The Fiscal Affairs Officer, upon the receipt of the budget estimates and requests for appropriations, shall proceed to make such review and investigation thereon as deemed necessary. The Mayor and Fiscal Affairs Officer may require the head of each administrative unit or any officer or employee thereof and any agency requesting City funds to furnish data and information and answer inquiries pertinent to such review or investigation. They shall also review the recommendations of the various boards and commissions.

§ 2-5.24. Information required for proposed City budget.

- A. Upon the completion of the review and investigation of the estimates and requests from the various administrative units and agencies, the

Fiscal Affairs Officer shall prepare, under the direction of the Mayor, the proposed City budget for the ensuing fiscal year for both current operating and capital purposes. The tentative operating budget shall be in such form as the Mayor may deem advisable and shall show in parallel columns, the following comparative information:

- (1) The actual expenditures and revenues for the last completed fiscal year.
- (2) The budget as modified for the current fiscal year.
- (3) The estimates of expenditures and revenues for the ensuing fiscal year submitted by the heads of the various departments, other administrative units and agencies.
- (4) The Mayor's recommendations and estimates as to proposed expenditures and revenues for the ensuing fiscal year, which shall be called the proposed City budget.

B. The capital budget shall be as specified in § 2-5.05 of this code.

§ 2-5.25. Additional data concerning debt.

In addition to the operating and capital budgets, the proposed City budget shall include a statement showing the bonded indebtedness of the City government and its authorized agencies, the debt redemption and interest requirements, the indebtedness authorized and unissued, the condition of the capital reserve funds, the borrowing capacity of the City and any other matter which the Mayor may deem advisable or the Common Council may require.

§ 2-5.26. Budget message; recommendations.

- A. The budget message, which shall be presented no later than November 1st, shall describe the important features; outline the proposed capital programs; indicate any major changes from the current fiscal year in financial policies, expenditures and revenues, together with the reasons for such changes; summarize the City's debt condition; and include such other material as the Mayor may deem advisable. **[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]**
[Amended 2-20-2007 as L.L. #2-2007]
- C. The recommendations for expenditures in the proposed City budget shall be classified by administrative units and their subunits according to the internal organization of such units or by special funds. Such recommendations shall show the character and object of expenditure and shall contain the following:

- (1) An estimate of the several amounts which the Mayor deems necessary in the ensuing fiscal year for conducting the business of the City and each administrative unit thereof, separately stated, and for other City purposes and charges, classified to show separately:
 - (a) The ordinary recurring expense of the operation and maintenance of City government.
 - (b) Any extraordinary or nonrecurring expenses to be financed from current revenue.
- (2) An estimate of the General Fund Contingent Account which the Mayor recommends to be provided for unanticipated or emergency City purposes or charges.
- (3) A statement of the several amounts recommended by the Mayor for appropriation to the reserve funds, if any.
- (4) A statement of the amount required to pay the interest on and amortization of or redemption of indebtedness becoming due in the ensuing fiscal year.
- (5) The amount of any judgment recovered against the City and payable during the fiscal year and for which no bonds have been or will be issued.

§ 2-5.27. Estimated revenues.

The estimates of revenue in the proposed City budget shall be classified by accounts and administrative units of City government and shall show the sources of income and shall contain:

- A. A statement of all estimated revenues, including federal and state revenue sharing funds, to be received by the City during the ensuing fiscal year, except City real property taxes to be levied.
- B. A statement of all estimated unexpended balances, if any, at the end of the last completed fiscal year which are available to meet the expenditure requirements of the fiscal year for which the proposed budget is being prepared.
- C. An estimate of the anticipated receipts from delinquent taxes and tax sales, which shall not exceed the amount received in the previous fiscal year.

§ 2-5.28. Adoption of budget.

A. Review by Common Council. The Common Council shall review the proposed City budget as submitted by the Mayor and shall, not later than December 15th, file with the City Clerk its report, including any recommended amendments proposed therein. The Fiscal Affairs Officer shall assist the Common Council in the preparation and submission of this report. Such report shall become a public record in the office of the City Clerk. Copies of the same shall be made by the City Clerk and shall be provided to the Mayor and Fiscal Affairs Officer and shall be made available for distribution to and inspection by the public. **[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]**

B. Public notice.

(1) Not later than December 9th, the City Clerk shall cause to be published in the official newspaper of the City a notice of a public hearing, which shall specify: **[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]**

(a) The date, time and place of the public hearing.

(b) The total amount of the proposed budget.

(c) The amount thereof to be raised by taxes.

(d) The anticipated tax rate per thousand dollars of assessed valuation.

(e) The public availability of copies of the proposed City budget in the City Clerk's office.

(2) Said notice shall be given not less than five (5) days prior to the date of said public hearing.

C. Public hearing. **[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]**

No sooner than five (5) days after the public notice required above has been given and in no event later than December 15th, the Common Council shall meet and conduct a public hearing on the proposed City budget as submitted by the Mayor and on the report submitted by the Common Council. At such hearing, any person may be heard for or against the proposed City budget or any item thereof and the Council's report or any item thereof. The Mayor shall be present at the public hearing.

D. Adoption of City budget.

- (1) After the conclusion of the public hearing, the Common Council may:
 - (a) Decrease or delete programs and the amounts or items of expenditure.
 - (b) Increase and add new programs or amounts, but in no event may expenditures required by law, expenditures for debt service, estimated deficits or estimated revenues be changed except to correct omissions or mathematical errors.
- (2) Before proceeding to adopt changes to the proposed City budget, the Common Council shall first entertain a resolution adopting the proposed City budget as presented by the Mayor. Each addition, deletion, increase, decrease or other change to the proposed City budget shall take the form of a separate amendment to the resolution adopting the proposed City budget and must be self-balancing to identify where funds for a new or increased expenditure will come from and where funds from a deleted or decreased expenditure will go, with the necessary amendments to the source account or receiving account. Each such amendment shall be reviewed by the Fiscal Affairs Officer as to fiscal propriety and by the City Attorney as to legality. Upon completion of action on all amendments, the original resolution adopting the proposed City budget, as amended, will be submitted for the Council's approval.
- (3) The Common Council may, however, decrease the amount of the tax levy for the ensuing fiscal year as proposed by the Mayor in proportion to such decrease in the total expenditures as it may have determined. If the Common Council shall increase the total expenditures, such increase shall be included in the amount to be raised by taxes.

E. Resolutions to be enacted.

After the completion of its review and analysis, the Common Council shall enact three (3) separate resolutions as follows:

- (1) A budget resolution, which shall present an account-by-account detailed list of the City budget for the ensuing year.

- (2) An appropriations resolution, which shall appropriate funds by department.
 - (3) A warrant resolution authorizing the City Treasurer to levy the taxes necessary to raise sufficient funds for the appropriations so made.
- F. Submission to Mayor and his/her action thereon.
- (1) The proposed City budget, with any amendments, if made, shall be approved by the Common Council no later than December 1st, and the three (3) resolutions adopted shall be presented by the City Clerk to the Mayor within three (3) days after their approval. **[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]**
 - (2) Pursuant to § 3.03 of the City Charter, the Mayor may approve said resolutions within ten (10) days of the resolution's presentation and return the same to the City Clerk. The Mayor shall also have ten (10) days, which shall not be later than December 12th, to disapprove any specific item or items which the Common Council may have changed from the proposed City budget as submitted without disapproving the entire budget. The Mayor, in disapproving any item or items, shall do so in writing, setting forth objections thereto. The Mayor shall return the original documents, with any disapproval messages attached, to the City Clerk within ten (10) days of their presentation but in no event later than December 12th. If the Mayor fails to approve or disapprove the budget submitted, with amendments, if any, and return the same to the City Clerk within ten (10) days, the proposed City budget as amended and enacted by the Council shall be deemed approved. **[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]**
- G. Final Common Council action. The Common Council shall convene in a meeting on or before December 15th, to consider budget items disapproved by the Mayor, enactment of an appropriation resolution and enactment of a warrant resolution. **[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]**
- H. Common Council's failure to act. If the proposed City budget has not been enacted by the Common Council on or before December 15th, as herein provided, then the proposed City budget, with those amendments approved by the Mayor and Common Council to that time, shall be deemed to be the budget for the ensuing fiscal year.

[Amended 9-3-96 as L.L. #14 (Intro No. 18) 1996]

- I. Certification of budget. Four (4) copies of the City budget as finally enacted shall be certified by the City Clerk. One (1) such copy shall be filed in the office of the Mayor and one (1) each in the offices of the Fiscal Affairs Officer, the City Treasurer and the City Clerk, for inspection by the public, on or before January 5 of that budget year. The City budget, as so certified, shall be printed or otherwise reproduced, and copies shall be made available to the public by the City Clerk.
- J. Other procedures to be included herein. Any other public notice, public hearing or requirement mandated by federal, state or local law concerning the adoption of the City's budget shall be accommodated to the greatest extent possible into the procedure outlined in this section to avoid duplication of notices, hearings and requirements.

§ 2-5.29. Levy of taxes; reserve for uncollected taxes.

The net City tax requirement, determined by subtracting the total estimated revenues from the total proposed expenditures as set forth in the adopted budget, shall be levied in advance of the start of the fiscal year by the Common Council on the taxable real property of the City. The taxes so levied shall include an amount to be known as "reserve for uncollected taxes," which shall be a City charge. The Common Council shall fix the amount of such reserve at such sum as it may deem sufficient to produce in cash from the collection of taxes and other revenues during the year moneys required to meet the estimated expenditures of such year; provided, however, that such reserve shall be not less than the face amount of unpaid taxes for the preceding completed fiscal year.

§ 2-5.30. Supplemental and emergency appropriations.

If, during any fiscal year, there are available for appropriation revenues received from sources not anticipated in the budget for that year or revenues received from anticipated sources but in excess of the budget estimates therefor, the Common Council, upon the recommendation of the Fiscal Affairs Officer, may make supplemental appropriations for the year, not in excess, however, of such additional revenues. To meet a public emergency affecting life, health or property, the Common Council may make emergency appropriations. To the extent that there are no available unappropriated revenues to meet such appropriations, the Common Council may authorize the issuance of obligations pursuant to applicable law.

§ 2-5.31. Insufficient revenues; reduction of appropriations.

If, at any time during the fiscal year, it appears that the revenues available

will be insufficient to meet the amounts appropriated, the Mayor shall report to the Common Council, without delay, the following: the estimated amount of the deficit or revenue shortfall, remedial action already taken and any recommendations as to further action. The Common Council shall take such action as it deems necessary to prevent any deficit. For that purpose, it may, by resolution, reduce one (1) or more appropriations; but no appropriation for debt service may be reduced, and no appropriation may be reduced by more than the unencumbered balance thereof or below any amount required by law to be so appropriated. The Common Council may also, if it so desires, authorize borrowing temporarily pursuant to applicable law in any amount not greater than such deficit for such purposes.

§ 2-5.32. Transfers.

Within limitations established by the Common Council, the Mayor may, upon advice of the Fiscal Affairs Officer, at any time during the fiscal year, transfer an amount up to five hundred dollars (\$500.) in part or all of any unencumbered appropriation balance between classifications or expenditures within the same department of City government. The Common Council may transfer part or all of any unencumbered appropriation balance from one department or authorized agency to another, but no transfer shall be made from appropriations for debt service, and no appropriation may be reduced below any amount required by law to be so appropriated.

§ 2-5.33. Contingent funds.

The budget may include a contingent fund for unanticipated or unallowable expenditures. The Common Council may appropriate all or any part of the moneys in the General Fund Contingent Account for general City purposes. The contingent account funds shall not be greater than five percent (5%) of the proposed budget estimated total expenditures.

§ 2-5.34. Budget controls.

No City officer, employee, administrative unit or other funded agency shall, during a fiscal year, expend or contract to expend any money or incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amount appropriated for any account or having been authorized to be borrowed, pursuant to the Finance Law, by the Common Council. This shall not prevent the making, when permitted by law, of any contract or any lease providing for the payment of funds at a time beyond the end of the fiscal year in which the contract or lease is made, but any contract, lease or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one (1) fiscal year shall be authorized by the Common Council.

§ 2-5.35. Lapse of appropriations.

Every appropriation, except an appropriation for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. An appropriation for a capital expenditure shall continue in force until the purpose for which it was made has been accomplished or abandoned by a two-thirds vote of the Common Council membership.

§ 2-5.36 through 2-5.50. (Reserved)

SUBARTICLE V-C
Local Improvement Assessments

§ 2-5.51. Terms defined; sewer locations.

A. The meanings of terms used in this Subarticle shall be as follows:

LOCAL IMPROVEMENT - The pavement of City streets and the construction of City sewers.

PAVEMENT - The artificial covering of a street with a hard, permanent surface such as concrete, macadam, asphalt or brick.

SEWAGE - A combination of the water-carried wastes from residences and business and industrial establishments, together with such ground-, storm- and surface waters as may be present.

SEWER - A pipe or conduit for carrying sewage.

STREET - A thoroughfare used for vehicular travel.

B. Location of sewers.

The Common Council of the City of Dunkirk may, by resolution, cause to be constructed such sewers within the streets or parts of streets of said City or within such areas in said City as, in its judgment are necessary and proper for the convenience of the people or the preservation of public health.

§ 2-5.52. Declaration of intent.

A. The Common Council may, by resolution, declare its intent to undertake any local improvement in the City as in its judgment is necessary for the convenience and general welfare of the public. Said declaration of intent shall specify the area to be improved and the materials to be used and shall establish a date for a public hearing on the proposed construction.

B. The declaration of intent shall be published in the official City newspaper once a week for two (2) successive weeks. On or before the first day of publication, the City Clerk shall cause to be mailed a copy of said declaration of intent to the owners of real property subject to local assessment for payment of the costs of paving as herein set forth.

§ 2-5.53. Objections.

Any owner of real property within the City of Dunkirk may, at any time within ten (10) days of the first publication of the resolution of intent, present to the Common Council written objections to the construction of such local assessment.

§ 2-5.54. Public hearing.

Before the Common Council shall, by resolution, adhere to its intent to undertake the local improvement, it shall conduct a public hearing on the matter, and any written objections received, before the Common Council, sitting as a committee of the whole, which public hearing shall be held at a time and place set forth in the declaration of intent but not less than ten (10) days from the date of the first publication of the declaration.

§ 2-5.55. Plans and specifications.

Whenever the Common Council orders the construction of any local improvement as herein provided, it shall cause to have plans and specifications for such construction prepared and shall thereafter advertise for bids in accordance with controlling statutes.

§ 2-5.56. Connection of utilities.

- A. Wherever utilities are installed in any street or portion thereof to be paved, it shall be the duty of the Director of Public Works to require the owners of abutting improved or unimproved real property to provide sufficient connections to said utilities to a point outside the roadway to be surfaced. Such connections shall be made by the owners upon fifteen (15) days' notice from the Director of Public Works, who shall establish the standards for such connections and who shall supervise and approve the installation thereof.
- B. In the event that any owner fails to cause connections to be made as required by the Director of Public Works, the Director may cause such connections to be made and charge the cost thereof to the realty. Charges so levied for utility installation shall become a lien against the realty, to be collected in the manner provided by law for the collection of delinquent taxes.

§ 2-5.57. Apportionment of costs.

The expense of paving shall be borne in the manner following:

A. Streets.

- (1) The City shall pay the entire cost of paving all street intersections and, in addition, shall pay one-third (1/3) of the balance of the cost of paving.
- (2) The abutting owners of real property shall pay the remaining two-thirds (2/3) of the cost of paving in proportion to the number of feet of frontage which each owner has on the street so improved.
- (3) Repairs to streets previously paved or resurfacing or repaving of streets shall be paid by the City as part of the general expenses of the operation of government and shall not be charged against the abutting real property owners as a local assessment.

B. Sewers.

- (1) Except as otherwise provided, the cost and expense of any sewer constructed pursuant to this Subarticle shall be charged upon and collected from the property owners abutting the street within which such sewer is constructed, pro rata, share and share alike, in proportion to the number of feet of frontage which the owner has on that portion of the street within which such sewer is constructed.
- (2) Whenever property abutting upon intersecting streets shall have been previously assessed for the cost and expense of a sewer within one of its abutting street fronts, it shall be held exempt from assessment for the cost and expense of any sewer constructed within the other intersecting street for a distance back from such intersecting street of one hundred (100) feet or the distance previously assessed, whichever is less.
- (3) The cost and expense of the construction of any sewer upon intersecting streets where an exemption provided in Subsection B(2) hereof exists shall be borne, pro rata, share and share alike, by the number of remaining feet of frontage upon each and every block wherein such sewer is constructed.
- (4) That portion of the cost and expense of construction of any sewer constructed within a street but lying wholly outside the limits of the frontage of any abutting property shall be borne

by the City and assessed against all of the taxable property of the City as a part of the general expenses of the operation of government.

- (5) In any area wherein a sewer is constructed pursuant to this Subarticle outside the limits of a public street, highway or thoroughfare, the cost and expense of such sewer construction shall be borne, pro rata, share and share alike, among the owners of vacant lots having an area of at least three thousand (3,000) square feet and the owners of dwellings or structures suitable for human habitation, excepting guest houses. For purposes of apportionment of the costs and expenses of such sewer construction, each dwelling or structure suitable for human habitation, excepting guest houses, and each vacant lot having an area of at least three thousand (3,000) square feet shall be considered one (1) unit and shall bear a unit charge in relation to the number of units situate within said area. The Common Council shall designate the limits of such area and require that all units within such area pay a proportionate cost of the expense of such sewer construction.
- (6) Whenever the Common Council determines that a sewer or a portion thereof constructed within any street or area in the City is so constructed or partially constructed for the convenience of the City, it may cause the cost and expense of such sewer or portion thereof as is in its determination is constructed for the convenience of the City to be assessed against all of the taxable property of the City as a part of the general expense of the operation of government.

§ 2-5.58. Assessment; review of assessment.

- A. Upon the completion of a local improvement undertaken pursuant to this Subarticle, the Common Council shall prepare and deliver to the Department of Assessors of the City of Dunkirk a statement of the total cost of said local improvement and related costs and such other facts as it shall deem necessary. Said Department of Assessors, whose duty it shall be to assess the cost and expense of said paving in the manner provided in this Subarticle, shall thereupon prepare a local assessment roll, which shall be open for public inspection in the office of the Assessors. Said local assessment roll shall contain the names of the owners of each parcel of land affected by the local improvement, a statement of the linear feet of frontage on the street and the amount chargeable to each owner.

- B. The Department of Assessors shall designate a date for review of said assessment not less than ten (10) days from the date of first publication and shall publish notice of said day for review in the official City newspaper once a week for two (2) successive weeks. On or before the first day of publication, the Clerk of the Department of Assessment shall cause to be mailed a copy of said notice of review to each owner of real property subject to local assessment for payment of the costs of said local assessment.
- C. On said day of review, the Department of Assessors shall meet at the time and place appointed to hear and consider all objections concerning said assessment. It shall have authority to administer oaths to all persons appearing or produced as witnesses and to subpoena all necessary persons. Said Department of Assessors shall have the power to adjourn said hearing from time to time and to make changes or amendments of said assignment and it may affirm and adopt the same as originally proposed or as changed or amended. It may annul the assessment and proceed anew and prepare a new roll, which, when completed, shall be subject to review de novo. Upon adoption of the assessment roll by the Department of Assessors, it shall forthwith report the same to the Common Council, whose duty it shall be to finally adopt or reject said assessment.

§ 2-5.59. Collection of assessment.

- A. Upon final adoption of the assessment by the Common Council, it shall be filed with the City Treasurer, together with a warrant of the Common Council for the collection of the same, and the charge assessed therein shall become a lien upon the real property therein mentioned.
- B. The City Treasurer shall publish one (1) notice in the official newspaper that the City Treasurer will commence receiving payment of said charge with a one-percent fee added on the day stated in said notice and will so receive the same for a period of sixty (60) days after said date.
- C. Any owner of real property subject to special assessment may pay the whole or any part thereof, but not less than ten percent (10%), within the aforesaid sixty-day period. The balance thereof shall be due and payable in nine (9) equal installments, with interest not exceeding the legal maximum interest rate permissible by law but not less than six percent (6%) annually on all unpaid balances.
- D. Any owner subject to special assessment may pay any remaining

unpaid installments after a date sixty (60) days after the notice given by the City Treasurer pursuant to this section by adding thereto the interest which the City of Dunkirk may be required to pay by reason of the issuance of bonds or notes to pay the cost of the improvement.

- E. Moneys received upon the collection of the special assessment roll shall be used in paying the cost of such improvement.

SUBARTICLE V-D
Surplus Equipment Disposal
[Added 4-12-1993 as L.L. No. 4-1993]

2-5.60. Committee responsibility.

The Committee having charge of a particular department shall be responsible for the disposition of surplus equipment and other personal property of the City. Such Committee shall fix the times and places at which public auctions shall be held and shall promulgate such additional rules and establish such procedures as may be necessary to effect the orderly and proper conduct thereof.

2-5.61. Final sales.

All sales shall become final upon payment by the purchaser of the full amount of the purchase price.

2-5.62. Auctioneers.

The Committee is authorized to employ such professional auctioneers from time to time for this purpose as may be necessary and to delegate its responsibility for the conduct of such auctions to one or more of its members or to any official of City government.

2-5.63. Alternate methods of disposal.

All officers, departments, and other agencies of City government shall dispose of office equipment no longer necessary for public use in the manner set forth herein. The disposition of a specific item of office equipment by another method may be permitted by the Committee.

2-5.64. Prohibited sales.

No sale of property shall be made at any public auction or sealed bid held pursuant hereto to any officer, employee or agent of City government.

2-5.65. Open meetings requirement.

The decisions of the appropriate Committee under this subarticle are to be made in accordance with Article 7 of the Public Officers Law.

§2-5.66. through § 2-5.90. (Reserved)

SUBARTICLE V-E
Accounting and Auditing

§ 2-5.91. Encumbrance accounting system.

The Fiscal Affairs Officer shall update and maintain an encumbrance accounting system for all City funds.

§ 2-5.92. Procedure for audit of claims.

Any claim or charge against the City or against funds for which the City is responsible, except for a fixed salary or for the regular or stated compensation of City officers and employees or for witness and juror fees, shall be paid in the following manner:

- A. Any such claim shall be verified by or on behalf of the claimant to the effect that it is just, true and correct; that the services were of the quantity and quality stated therein; that the services were actually performed; that the prices charged are reasonable and do not exceed the prevailing rate of wage or the market price; that the charges are in accordance with the contract or agreement existing, if there is one; that no part thereof has been paid; and that there are no offset or counter claims thereto.
- B. Any such claim shall be approved by a department head or officer whose action gave rise or origin to the claim.
- C. Presentation for audit.
 - (1) Any such claim shall be presented to the Fiscal Affairs Officer and shall be audited by said Officer. The Fiscal Affairs Officer shall cause each such claim presented to him for audit to be numbered, and the number, the date of the claim, the name of the claimant and a brief statement of the character of each claim shall be entered in a book kept for such purpose, which shall at all times during office hours be so placed as to be convenient for public inspection and examination.
 - (2) This section shall not apply, however, to the use of any petty cash fund established pursuant to the Dunkirk City Charter and the Dunkirk Administrative Code.
- D. When a claim has been finally audited by the Fiscal Affairs Officer, said Officer shall endorse thereon or attach thereto a certificate as to such audit. If said Officer shall reject such claim in whole or in part

or modify the same, such certificate shall include a statement of the items recommended to be disallowed, rejected or reduced and the reason or reasons for the action. If the Fiscal Affairs Officer audits and recommends payment of a claim at less than the amount claimed by the claimant, a notice thereof shall be served upon the claimant within three (3) days, either personally or by mail to such claimant's last known address, and said claim and certificate shall thereupon be filed and remain a public record in the Fiscal Affairs Officer's office and shall be open to public inspection. If such claim shall be recommended for payment in whole or in part, the Fiscal Affairs Officer shall certify the amount recommended and the City fund properly charged therewith, and said Officer shall specify the appropriation account to which it is charged.

§ 2-5.93. Financial reports.

- A. At the end of each month, the Fiscal Affairs Officer shall prepare a report of budget account encumbrances and balances to date. Each administrative unit of City government or authorized agency shall be notified as to the condition of those accounts which it is responsible for. A complete monthly report of all accounts shall be given to the Mayor and each member of the Common Council.
- B. A copy of each department's accounts and funded agencies shall be given to the administrative head of each City department and said agencies.

**ARTICLE VI
Department of Law**

§ 2-6.01. Establishment; City Attorney.

- A. There shall be a Department of Law under the direction of the City

Attorney, who shall be appointed by the Mayor with the consent of the Common Council. The City Attorney shall serve at the pleasure of the Mayor.

- B. The City Attorney shall be duly admitted to the practice of law as an attorney and counselor in New York State and shall be a resident of the City of Dunkirk while holding said office if the Public Officers Law requires such residency.

§ 2-6.02. Powers and duties of Attorney.

The powers and duties of the City Attorney shall include:

- A. Being the chief legal adviser of and Attorney for the City, the Common Council and all City departments, boards, commissions and offices in matters relating to the official powers and duties.
- B. The appearance for and protection of the rights and remedies of the City in all actions, suits or proceedings brought by or against the City or any City department, office, board or commission.
- C. The prosecution of all offenses against the ordinances of the City and such offenses against the laws of the state as may be required by law.
- D. The preparation of all local laws, ordinances, resolutions, contracts, deeds and other instruments for the City, except in such instances where special counsel has been retained to perform such duties and as otherwise required by law.
- E. Attendance at Common Council meetings.
- F. Giving legal advice and opinion, oral or written, when so requested by the Common Council, the Mayor or the executive head of any department.
- G. Subject to the Civil Service Law, Rules and Regulations, the appointment of such assistants and other employees of the Department to fill such positions with the Department as authorized by the Common Council. The City Attorney may also suspend and remove all assistants and other employees of the Department subject to the Civil Service Law, Rules and Regulations.
- H. In addition to the duties imposed upon the City Attorney by the Charter or required by local law, ordinance or resolution of the Common Council, the performance of any duties imposed upon the

chief legal officers of municipalities by law or those duties incident to the Department. Said duties imposed on the City Attorney shall include but not be limited to:

- (1) The approval of bonds under Chapter 6, Auctions and Auctioneers, Chapter 24, Dock and Harbor Use, Chapter 28, Electrical Installations, Chapter 39, Gas Wells, Chapter 39, Hawkers and Peddlers, Chapter 44, Junk Dealers and Pawnbrokers, and Chapter 55, Plumbing.
 - (2) The serving as an ex officio member of the Landmark and Preservation Board under Chapter 46.
- I. On or before February 1 of each year, making an annual written report for the immediately preceding calendar year, covering generally the work of the Department of Law, with copies of such report being filed with the Common Council and Mayor.
 - J. The preparation annually of a supplement to the City Charter, the Administrative Code and the City Code, which shall indicate all additions to, repeals of and amendments of said Charter and codes.

§ 2-6.03. Employment of special counsel.

- A. The Common Council may, upon the request of the City Attorney, employ bond counsel and other special counsel and experts, at such compensation as may be authorized by the Common Council, to handle or assist the Department in difficult and unusual or specialized matters or proceedings in which the City is interested or in which the City is a party.
- B. Whenever special counsel or other experts are retained by the City, they shall report directly to the City Attorney and shall work generally under the City Attorney's supervision. The City Attorney shall act as liaison with such counsel and experts and shall report regularly to the Mayor and Common Council on the work done by such individuals.

2-6.04. Assistant City Attorneys.

If the Common Council shall create and approve one (1) or more Assistant City Attorney position(s) and if the City Attorney shall appoint more than one (1) such assistant, the City Attorney shall then designate one (1) to serve as the First Assistant, who may act in the City Attorney's position when the City Attorney is out of the City or otherwise temporarily unable to perform the duties of the office, but the First Assistant shall have no power to hire or fire employees within the Department. Any such designation shall be in writing and shall be filed with the

Mayor, the Common Council, the Personnel Administrator and the City Clerk. Such designation may be revoked at any time by the filing of a written revocation of said designation.

§ 2-6.05. Law Library.

The Department of Law shall continue to maintain the Law Library of the City of Dunkirk to aid the work of the City Attorney and other City officers.

§ 2-6.06. Inconsistent interests among City officials.

It is the paramount interest of the Department of Law and the City Attorney to represent the interests of the City of Dunkirk, even when it appears that the interests of the Common Council, the Mayor or an individual officer or board differ from that of the City. When said interests are inconsistent, the City Attorney and the Department of Law shall represent the interests of the City. The interests of the City shall be determined by the City Attorney in light of the State Constitution, the general state statutes, the City Charter and other applicable local laws, ordinances and resolutions and the Code of Professional Responsibility. The City Attorney shall consult with the Common Council, the Mayor and other appropriate City officials and employees, as well as with other attorneys, in determining the true legal interests of the City. In any such case of inconsistent interests, the officer, employee or body may employ an attorney at law to represent such other interest. The City shall be responsible only for such other legal services as allowed by the statutory and case law of the State of New York.

§ 2-6.07. Professional ethics.

The City of Dunkirk needs and deserves attorneys of high professional competence and ethics. All attorneys serving the City shall adhere to the standards of the Code of Professional Responsibility as promulgated and interpreted by the American and New York State Bar Associations. In particular, attorney(s) serving the City should refrain from activities in which personal or professional interests are or foreseeably may be in conflict with their official duties.

In addition, all employees of the Department of Law shall adhere to the Code of Ethics enacted by the City of Dunkirk, Chapter 30 of the City Code. Any actual or potential conflicts of interest shall be disclosed in writing to the City Clerk.

ARTICLE VII
Department of Public Works

§ 2-7.01. Director of Public Works.

- A. The Department of Public Works shall be headed by the Director of Public Works, who shall be appointed by the Mayor with the consent of the Common Council. The Director shall be qualified on the basis of training and experience in public works administration and in civic engineering practice and shall serve at the pleasure of the Mayor.

- B. If the Common Council shall create and approve the position of an Assistant Director of Public Works, the Assistant Director shall have all the powers and duties of the Director of Public Works when the Director is out of the City or otherwise temporarily unable to perform the duties of the office, but the Assistant Director shall have no power to hire or fire employees within the Department.

§ 2-7.02. Powers and duties of Director.

The powers and duties of the Director of Public Works shall include:

- A. The supervision of all departmental divisions and their functions, with responsibility for all engineering work of the City.
- B. Responsibility for supervision of consulting engineers when retained by the Common Council for specific purposes.
- C. Having custody of City maps and surveys.
- D. Attendance at Common Council meeting.
- E. Certification of all public work performed pursuant to contract under supervision and control of the Department before it is accepted, to the effect that such work is performed in a good and substantial manner, with the materials required and of the quality and in the manner directed by the terms of the contract. The Director of Public Works shall file such certificate of completion with the City Clerk and City Treasurer before final payment is made under the contract.
- F. Subject to Civil Service Law, Rules and Regulations, the appointment of such assistants and other employees of the Department to fill such positions within the Department as authorized by the Common Council. The Director of Public Works may also suspend and remove all assistants and other employees of the Department, subject to the Civil Service Law, Rules and Regulations.
- G. In addition to the duties imposed upon the Director of Public Works by the Charter or required by ordinance or resolution of the Common Council, the performance of any duties incident to the Department or assigned by the Mayor, and such additional duties shall include but are not limited to supervision of:
 - (1) The collection of garbage and rubbish under Chapter 36 of the City Code.
 - (2) Garbage and rubbish disposal under Chapter 37 of the City Code.
 - (3) The City parks under Chapter 49 of the City Code.
 - (4) Sewers under Chapter 63 of the City Code.
 - (5) Sidewalks under Chapter 65 of the City Code.
 - (6) Streets under Chapter 67 of the City Code.

- (7) The public dock under Chapter 24 of the City Code.
- H. Within the appropriations provided therefor and when authorized by the Mayor and Council, the employment of such special engineering, architectural or other technical counsel and incurring of such expenses as may be necessary for the performance of any of the duties prescribed by this code or by the Charter.
- I. Contracting, subject to the approval of the Mayor and the Common Council, with any public corporation, public authority or any combination of the same for public works services.
- J. Assisting in the preparation of specifications as directed by the Mayor and Common Council, assisting in the advertisement of bids and reviewing bids and making any necessary recommendations to the Mayor and Common Council with respect to the awarding of such bids.
- K. Assisting all administrative units in the preparation of and development of information for their respective capital project requests, when such assistance is requested.
- L. Making a monthly report to the Mayor and Common Council giving an account of work projects completed, those in progress and those scheduled. The report shall be submitted on or before the 10th day of each month.
- M. On or before February 1 of each year, making an annual written report to the Mayor and Common Council for the immediately preceding calendar year covering generally the work of the Department.
- N. Filing with the Mayor, Common Council and Fiscal Affairs Officer a report covering maintenance of an inventory of all equipment in said Department, including the year, the make, the model, the purchase price, the division to which it is assigned and the estimated replacement date.

§ 2-7.03. Division of Engineering.

- A. The Division of Engineering shall be headed by the Director of Public Works. It shall be staffed by those employees of the Department of Public Works who shall be designated by the Director of Public Works on the basis of administrative experience and engineering qualifications to handle the engineering services of the City. Said

Division shall be directly responsible to the Director of Public Works.

B. This Division shall be responsible for:

- (1) The day-to-day engineering work of the City.
- (2) Supervision of the work of the City's consulting engineers.
- (3) The preparation and preservation of all maps of all streets, sewers, waterlines and City easements in the City.
- (4) House numbering.
- (5) Street lighting.
- (6) The installation and maintenance of traffic control devices, signs, markings and records under the direction of the Chief of Police.
- (7) Such other assignments as directed by the Director of Public Works.

§ 2-7.04. Division of Streets and Highways.

A. The Division of Streets and Highways shall be headed by the Public Works Supervisor, who shall be so designated by the Director of Public Works in accordance with Civil Service Law, Rules and Regulations.

B. The Division of Streets and Highways shall be responsible for:

- (1) The maintenance and condition of City streets, highways, alleys, sanitary and storm sewers and public parking lots.
- (2) The exercise of supervision over sidewalks.
- (3) The collection of garbage and rubbish.
- (4) The care and removal of trees and shrubs situate on City property.
- (5) Such other assignments as directed by the Director of Public Works.

§ 2-7.05. Division of Parks and Playgrounds.

A. The Division of Parks and Playgrounds shall be headed by a Parks

Maintenance Supervisor designated by the Director of Public Works based on experience and training in parks and playground operation and maintenance, in accordance with Civil Service Law, Rules and Regulations.

- B. The Division of Parks and Playgrounds shall be responsible for:
 - (1) The maintenance of public parks, playing fields, playground facilities and equipment and other public grounds or such other assignments as directed by the Director of Public Works.

§ 2-7.06. Division of Wastewater Treatment.

- A. The Division of Wastewater Treatment shall be headed by the Chief Wastewater Treatment Plant Operator, who shall be designated by the Director of Public Works based on experience and training in wastewater treatment, subject to Civil Service Law, Rules and Regulations. The Chief Wastewater Treatment Plant Operator shall hold a Class I-A operator's license from the State of New York or shall otherwise meet such requirements for Wastewater Treatment Plant Operator as set by the State of New York.
- B. The Division of Wastewater Treatment shall be responsible for:
 - (1) The operation of the wastewater treatment plant of the City in all aspects, including but not limited to supervision of plant personnel and equipment, inventory of supplies and compliance with the appropriate state and federal regulations concerning wastewater treatment.
 - (2) Such other assignments as directed by the Director of Public Works.

§ 2-7.07. Division of Water Treatment and Water Distribution.

The Division of Water Treatment and Water Distribution shall be subdivided into three (3) Subdivisions: Water Treatment, Water Maintenance and Distribution and Water Meter Service.

- A. Water Treatment Subdivision.
 - (1) The Water Treatment Subdivision shall be headed by the Chief Water Treatment Plant Operator, who shall be designated by the Director of Public Works based on experience and training in water treatment and shall hold a

Class I-A operator's license or shall otherwise meet such requirements for Water Treatment Plant Operator as set by the State of New York and in accordance with Civil Service Law, Rules and Regulations.

- (2) The Water Treatment Plant Operator shall be responsible for:
 - (a) The operation of the water treatment plant of the City in all aspects, including but not limited to supervision of plant personnel and equipment, inventory of supplies and compliance with the appropriate state and federal regulations concerning water treatment.
 - (b) The testing of water throughout the City and as requested under contract outside the City.
 - (c) Such other assignments as directed by the Director of Public Works.

B. Water Maintenance and Distribution Subdivision.

- (1) The Water Maintenance and Distribution Subdivision shall be headed by the Water Maintenance Supervisor, who shall be designated by the Director of Public Works based on experience and training and in accordance with Civil Service Law, Rules and Regulations.
- (2) This Subdivision shall be responsible for:
 - (a) The construction, operation, repair and replacement of all public waterlines in the City.
 - (b) Responsibilities under contract for water supply and service outside the City limits.
 - (c) Such other assignments as directed by the Director of Public Works.
- (3) The following powers are reserved by the Common Council in respect to the Water Maintenance and Distribution Subdivision:
 - (a) The power to extend the current waterworks system for the purpose of furnishing water to the City of Dunkirk, its residents and industries.

- (b) The power to extend the current waterworks system outside the City limits upon such terms which may be agreed upon in a contract that adequately compensates the City for capital costs, debt service and use of its treatment plant, maintenance of the water distribution system and installation and service of new lines.
 - (c) The power to acquire, by purchase, gift or eminent domain, all the lands, to erect all the buildings and structures and to purchase, lease and install all the machinery and equipment which is necessary to maintain, increase and extend the current water distribution system.
 - (d) The power to ascertain annually the cost of supplying water to the City of Dunkirk and its instrumentalities, and it may exempt the City and its instrumentalities from all charges therefor.
 - (e) The power to establish a scale of rates for water furnished to any person, firm or corporation and to alter and change said rates at such time and in such manner as it may determine.
 - (f) The power to make all necessary contracts incidental to or connected with this Subdivision.
- (4) The Common Council shall not have the power to sell or lease said water supply system to any person, firm, corporation or association.
 - (5) Nothing in this code shall in any way invalidate, vitiate or affect any obligations now outstanding against the Water Department as established under Article XVIII of the old City Charter or under the new City Charter.
 - (6) All water rates and charges for labor and material in installing the same shall be paid to the Treasurer of the City of Dunkirk, and water rates and charges for labor and materials and installing the same shall be kept in a separate fund. All such water charges shall be collected from the real property owners upon which the distributing pipes are connected. Such water charges shall be, like other taxes of the City, a lien upon the real property where the water is connected. Such water charges shall be levied, corrected, enforced and

collected in the same manner, by the same proceedings, at the same time and under the same penalties as City tax foreclosures.

C. Water Meter Service Subdivision.

- (1) The Water Meter Service Subdivision shall be headed by a Water Meter Supervisor, who shall be designated by the Director of Public Works based on experience and training and subject to Civil Service Law, Rules and Regulations.
- (2) The Subdivision shall be responsible for:
 - (a) The reading of all water meters within the City and outside the City when required by contract.
 - (b) The repair and maintenance of all such water meters.
 - (c) Such other assignments as directed by the Director of Public Works.

§ 2-7.08. Division of Public Works Maintenance.

- A. The Division of Public Works Maintenance shall be headed by the Automotive Mechanic Supervisor, who shall be designated by the Director of Public Works based on experience and training in automotive repair and maintenance and subject to Civil Service Law, Rules and Regulations.
- B. The Division of Public Works Maintenance shall be responsible for:
 - (1) The operation of the City barns, including fuel supply.
 - (2) The maintenance and repair of all City vehicles and equipment.
 - (3) Such other assignments as directed by the Director of Public Works.

§ 2-7.09. Division of Transit Services.

- A. The Transit Services Division shall be headed by a Transit Supervisor, who shall be designated by the Director of Public Works based on experience and training, subject to Civil Service Law, Rules and Regulations.

- B. The Division shall be responsible for:
 - (1) The scheduling and operation of the City bus services.
 - (2) Such other assignments as directed by the Director of Public Works.

§ 2-7.10. Division of Plumbing.

- A. The Division of Plumbing shall be headed by a Plumbing Inspector, who shall be appointed pursuant to Chapter 55 of the City Code. The Examining Board of Plumbers as provided by law and said chapter shall function in this Division.
- B. The Division shall be responsible for:
 - (1) All duties imposed by Chapter 55, Plumbing, of the City Code.
 - (2) Such other assignments as directed by the Director of Public Works.

ARTICLE VIII
Police Department

§ 2-8.01. Departmental organization.

- A. The Police Department shall consist of the Chief of Police and such other officers and positions within the Department as now exist and as the Common Council may hereafter create or abolish. It shall be organized into such divisions as the Chief of Police shall establish. The Department shall have jurisdiction, supervision and control of all functions and duties customarily performed by a Police Department. Police officers shall have all the powers, authority and duties conferred upon them by the laws of the State of New York. They shall perform such other duties as may be assigned to them by the Chief of Police.

- B. The Police Department shall enforce the laws of the state and the ordinances of the City, except where such enforcement is expressly given to another department, and shall perform such other duties as may be assigned to them by the Chief of Police.

§ 2-8.02. Appointment and qualifications of Chief of Police.

The Chief of Police shall be appointed by the Mayor with the consent of the Common Council from the competitive class of civil service. The Chief shall have at least eight (8) years' service with law enforcement agencies and shall be appointed on the basis of executive and administrative qualifications in the field of police science and in accordance with Civil Service Law, Rules and Regulations.

§ 2-8.03. Powers and duties of Chief of Police.

The Chief of Police shall be the executive head of the Police Department. The powers and duties of the Chief of Police shall include:

- A. Enforcement of the laws of the state and the ordinances of the City.

- B. Assignment of all members of the Department to their respective posts, shifts, details and duties.

- C. The promulgation of reasonable rules and regulations concerning the operation of the Department and the conduct, duties and assignments of all officers and employees for the better efficiency of the Department. Each officer shall be provided with a copy of the existing regulations and of each new regulation prior to its effective date.

- D. Responsibility for the efficiency, discipline and good conduct of the Department and for the care and custody of all property used by the Department, including the maintenance of an inventory of all equipment in said Department, which shall include the year, the make, the model, the purchase price, the division to which it is assigned and the estimated replacement date. Said inventory shall be submitted annually to the Mayor and Common Council and Fiscal Affairs Officer.
- E. Provision for suitable, ongoing training for members of the Department.
- F. The adoption of such innovations within the Department as may be desirable for the betterment and increased efficiency of the Department.
- G. Attendance at Common Council meetings.
- H. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The Chief may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- I. The performance of such other similar and related duties as may be assigned by the Mayor.
- J. On or before February 1 of each year, the preparation and filing of an annual written report to the Mayor and Common Council for the immediately preceding calendar year covering:
 - (1) Generally the work of the Department.
 - (2) A report of all crimes and offenses against the laws of the state and City ordinances.
 - (3) Any recommended laws for new or revised City ordinances which the Chief feels necessary for safeguarding the rights and property of the citizens of the City of Dunkirk.
- K. Having custody and administration of all lost, abandoned, stolen and impounded property recovered in the City.
- L. The proper maintenance and operation of the City jail and custody of all persons incarcerated therein.

§ 2-8.04. Assistant Chief of Police.

If created by the Common Council, the Chief may appoint an Assistant Chief of Police from the classified competitive class of civil service. The Assistant Chief shall be in charge of the Police Department in the temporary absence of the Police Chief. While in such capacity, the Assistant Chief shall have all the powers and duties of the Police Chief except the promulgation of rules under § 2-8.03C hereof and the power to appoint and dismiss officers or employees under § 2-8.03H hereof.

**ARTICLE IX
Fire Department**

§ 2-9.01. Departmental organization. [Amended 4-24-1990 as Resolution #155-1990] [Amended 2-6-2007 as L.L. #1-2007]

The Fire Department shall consist of the Fire Chief, the First Assistant Fire Chief, the Second Assistant Fire Chief, both volunteer and paid fire fighters and such other officers and positions within the Fire Department as now exist or that the Common Council may hereafter create or abolish. It shall be organized into such divisions as the Fire Chief shall establish. Included among the functions of

the Department shall be the prevention of fire, the fighting and control of fires and the performance of emergency and rescue operations.

§ 2-9.02. Fire Chief and Assistants.

The Chief of the Fire Department shall be appointed by the Mayor with the consent of the Common Council from the Competitive Class of Civil Service. The Chief shall have at least ten (10) years of service as a professional fireman and shall be appointed on the basis of executive and administrative qualifications in the field. Upon the recommendation of the Dunkirk Volunteer Firemen's Association, the Mayor, with the consent of the Common Council, shall appoint the First Assistant Fire Chief and the Second Assistant Fire Chief for a term of two (2) years. **[Amended 2-6-2007 as L.L. #1-2007]**

§ 2-9.03. Powers and duties of Fire Chief.

The Fire Chief shall be the executive head of the Fire Department. The powers and duties of the Fire Chief shall include:

- A. Authority, direction and control over the Fire Department, its officers, members and employees.
- B. The assignment of all members of the Department to their respective posts, shifts, details and duties.
- C. The promulgation of reasonable rules and regulations concerning the operation of the Department and the conduct, duties and assignment of all officers and employees for the better efficiency of the Department. Each member of the Department shall be provided with a copy of the existing regulations and of each new regulation prior to its effective date.
- D. Responsibility for the efficiency, discipline and good conduct of the Department and for the care and custody of all property used by the Department, including the maintenance of an inventory of all equipment in said Department, which shall include the year, the make, the model, the purchase price, the division to which it is assigned and the estimated replacement date. Said inventory shall be submitted annually to the Mayor, Common Council and Fiscal Affairs Officer.
- E. Provision for suitable, ongoing training for members of the Department.
- F. The adoption of such innovations within the Department as may be desirable for the betterment and increased efficiency of the

Department.

- G. Attendance at Common Council meetings.
- H. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The Chief may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- I. The performance of such other similar and related duties as may be assigned by the Mayor.
- J. On or before February 1 of each year, the preparation and filing of an annual written report to the Mayor and Common Council for the immediately preceding calendar year covering:
 - (1) The general work of the Fire Department.
 - (2) A report of all fires, fire alarms and causes of fire against the laws of the state and City ordinances and in particular a statement of losses.
 - (3) Any recommended laws for new or revised City ordinances which the Chief feels necessary for safeguarding the rights and property of the citizens of the City of Dunkirk.
- K. Cooperation with the Department of Public Works to ensure that the fire alarm system is maintained in working order and operation.
- L. Cooperation with the county alarm and dispatch operations.
- M. Enforcement of the Fire Prevention Code, Chapter 32 of the Dunkirk City Code.

§ 2-9.04. Powers and duties of Assistant Chiefs.

- A. When the Fire Chief is out of the City or otherwise temporarily unable to perform the duties of the office or by the Chief's designation, the First Assistant Chief shall have all the powers and duties of the Fire Chief except the power to appoint and dismiss officers and employees within the Department under § 2-9.03H hereof and the power to promulgate rules under § 2-9.03C hereof.
- B. When the Fire Chief and First Assistant Chief are out of the City or otherwise temporarily unable to perform the duties of the office or by

the Chief's designation, the Second Assistant Chief shall have the powers and duties of the Fire Chief except the power to appoint and dismiss officers and employees within the Department under § 2-9.03H hereof and the power to promulgate rules under § 2-9.03C hereof.

- C. When the Fire Chief, First Assistant Chief and Second Assistant Chief are out of the City or otherwise temporarily unable to perform the duties of the office or by the Chief's designation, the Third Assistant Chief shall have the powers and duties of the Fire Chief except the power to appoint and dismiss officers and employees within the Department under § 2-9.03H hereof and the power to promulgate rules under § 2-9.03C hereof.

ARTICLE X
City Clerk

§ 2-10.01. Director; maintenance of records.

The City Clerk's Department shall be directed by the City Clerk and in the City Clerk's absence by the Deputy City Clerk. The Department shall keep and maintain all official City records.

§ 2-10.02. Appointment.

The City Clerk shall be appointed by the Mayor with the consent of Common Council and shall serve at the pleasure of the Mayor. The City Clerk shall be the Clerk of the Common Council and the Registrar of Vital Statistics.

§ 2-10.03. Powers and duties.

The powers and duties of the City Clerk shall include:

- A. Having custody of all City records, including but not limited to all books, papers and documents of the City, except as provided otherwise by the City Charter or this code, and of the Official Seal of the City.
- B. The appointment of a Deputy City Clerk, who shall also serve as Deputy Registrar of Vital Statistics.
- C. Countersigning contracts, deeds, leases, permits, franchises, licenses and any other written instruments authorized by the Common Council or by law, including but not limited to permits and licenses issued under the following chapters of the City Code, and maintaining a record of the same:
 - (1) Auctions under Chapter 6.
 - (2) Bicycles under Chapter 9.
 - (3) Billboards under Chapter 11.
 - (4) Bingo games under Chapter 13.
 - (5) The use of the public dock under Chapter 24.
 - (6) Fireworks displays under Chapter 34.
 - (7) Hawkers and peddlers under Chapter 39.

- (8) Permits after the Mayor's approval under Chapters 44, 51 and 74.
 - (9) Permits after Council approval and pavilion reservations under Chapter 49.
 - (10) Plumbing licenses under Chapter 55.
 - (11) Public telephone facilities on streets and public grounds under Chapter 67.
 - (12) Taxicabs and taxicab operators under Chapter 72.
- D. The receipt and collection of all fees, charges and moneys from the granting of licenses, permits and other fee services rendered by the Office of the City Clerk. After allocating fees as may be required by law, all moneys so received shall be delivered to the City Treasurer for deposit. These fees shall include, in addition to those licenses and permits referred to above, the receipt of fees for:
- (1) Building permits issued under Chapter 15.
 - (2) Public dock and boat launch fees under Chapter 24.
 - (3) Electrician licenses under Chapter 28.
 - (4) Gas well permits under Chapter 38.
 - (5) Permits issued under Chapter 51.
 - (6) Land rentals, towing fees, telephone reimbursements, police tags, sale of scrap and equipment, and bathroom supplies.
 - (7) Any other fees instituted by the Common Council, except as otherwise provided.
- E. Upon receipt from the Common Council, the City Clerk shall forthwith deliver to the Mayor all local laws, ordinances and resolutions adopted by the Common Council as provided for in § 2-3.04 of this code, and a record of the date of delivery and return from the Mayor shall be kept by the City Clerk.
- F. Attendance at all Common Council meetings and the clerking thereof and those other meetings as may be required herein.

- G. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The City Clerk may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- H. The performance of such other similar and related duties as may be assigned by the Mayor, the Common Council or by law.
- I. The preparation and maintenance of a record of all official Common Council meetings in a book to be provided for that purpose, said book to be deemed a public record of proceedings, ordinances, resolutions and rules; and copies of all papers duly filed in the Clerk's office and transcripts thereof and of the records of the proceedings of the Common Council, certified by the Clerk under the Corporate Seal, shall be evidence in all courts and places with the same effect that the original would have, if procured.
- J. The distribution to department heads of copies of official proceedings of the Common Council as well as referral sheets identifying responsibilities and referrals.
- K. The maintenance of a system of indexing and cataloging of all matters coming before the Common Council, including the numbering of all Council resolutions and monthly and yearly compilations of such indexes.
- L. The service of all notices and their filing as required by federal and state statute, the City Charter or by the Common Council.
- M. The service of all notices of meetings as required under the Open Meetings Law, Article 7 of the Public Officers Law.
- N. Stamping upon all papers filed in the Clerk's office with the date and time of receipt.
- O. Keeping a record of all legal notices, notices of claim and all other notices serviced.
- P. Responsibility for the City's compliance with state election law for general and special elections within the City of Dunkirk.
- Q. Filing all oaths of office of City officers, employees (if required) and board and commission members.
- R. The maintenance of official minutes of all boards and commissions

of the City of Dunkirk, said minutes to be recorded by the secretaries of these duly appointed boards, and service of notice of meetings to the members of all boards and commissions unless otherwise done by another department.

- S. Responsibility for the printing of agendas of all Common Council proceedings in the duly designated City newspaper prior to their occurrence if at all possible and their posting in one (1) conspicuous place at City Hall.
- T. Presiding at bid openings; and the receipt of bids, bonds and certified checks attached to bids are to be filed with the City Clerk, which shall be returned to their owners upon authorization of the Common Council.
- U. The preparation, as much as possible, and distribution of a calendar of regular and special Common Council meetings, public hearings, Mayor's hearings and meetings of City boards and commissions.
- V. The issuance, as necessary, of a numbered and dated receipt for all moneys received by the Clerk's office.
- W. The receipt and filing of certificates of insurance required of persons doing business with or in the City of Dunkirk, as determined by the City Attorney.
- X. Provision of adequate stenographic transcripts of Common Council and other meetings as necessary.
- Y. Responsibility for the printing, sale or distribution of all City maps, bus schedules, zoning, housing and assessment books and other printed official City material, bus advertising and the issuance of City identification numbers and exemption certificates.
- Z. Responsibility for keeping records of the active volunteer firemen roll and the issuance of discharge certificates.
- AA. Acting as the City's records access officer pursuant to Chapter 56 of the City Code and the Freedom of Information Law, Article 6 of the Public Officers Law.
- BB. Maintenance of an inventory of all equipment in said Department, including the year, the make, the model, the purchase price, the division to which it is assigned and the estimated replacement date, said inventory to be submitted annually to the Mayor, Common Council and Fiscal Affairs Officer.

- CC. On or before February 1 of each year, making an annual written report for the immediately preceding calendar year, covering generally the work of the City Clerk's office, with copies of such report being filed with the Common Council and Mayor.

§ 2-10.04. Deputy City Clerk.

The City Clerk shall appoint a Deputy City Clerk from the employees of the Department, who shall serve during the term of said City Clerk. When the City Clerk is out of the City or otherwise temporarily unable to perform the duties of the office, the Deputy City Clerk shall have and exercise all of the powers and duties of that office except the power to hire and fire. In the case of a vacancy or absence in the office of City Clerk, the Deputy City Clerk shall serve until the appointment of a new City Clerk or Acting City Clerk. The Common Council shall fix a separate salary or stipend for the Deputy City Clerk position.

§ 2-10.05. Registrar and Deputy Registrar of Vital Statistics.

The City Clerk shall also be the Registrar of Vital Statistics. The Deputy City Clerk shall also be the Deputy Registrar of Vital Statistics for the City of Dunkirk. As such, they shall attend to and perform all the duties imposed upon such Registrars by the Public Health Law of the State of New York, particularly Article 41 thereof.

**ARTICLE XI
City Treasurer**

§ 2-11.01. Establishment

The City Treasurer shall be the chief fiscal officer of the City and shall be the department head of the Department of the City Treasurer.

§ 2-11.02. Powers and duties.

The powers and duties of the City Treasurer shall include:

- A. The receipt and having custody of all public funds belonging to or handled by the City.
- B. The collection of all taxes, assessments, licenses, fees and other revenues of the City for whose collection the City is responsible, including those payable by law or by the Charter to other City

departments or offices.

- C. The deposit of all funds received in such depositories as may be designated by resolution of the Common Council.
- D. Supervision over and responsibility for the disbursement of all City funds.
- E. The submission of an annual financial statement of the City to the State Comptroller and preparation and distribution of such other statements or reports as may be required from time to time by the Common Council or as otherwise prescribed by law, including an annual written report for the immediate preceding year covering the work of the Department of the City Treasurer, which shall be filed on or before February 1 of each year with the Mayor and Common Council.
- F. Responsibility for the issuance of vouchers to be used by all offices, departments, boards and commissions of the City.
- G. Having custody over the investment and management of all City funds, unless otherwise provided in the Charter or by law.
- H. Requiring reports of receipts and disbursements from all offices, departments, boards and commissions of the City at such intervals as may be deemed advisable or as otherwise required by law.
- I. Attendance at Common Council meetings.
- J. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The City Treasurer may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- K. The appointment of a Deputy City Treasurer.
- L. Maintenance of an inventory of all equipment in said Department, including the year, the make, the model, the purchase price, and the division or employee to whom assigned and the estimated replacement date. A copy of said inventory and all changes thereto shall be supplied to the Fiscal Affairs Officer.
- M. Attendance to those duties imposed by Chapter 70 of the City Code governing taxation of utility service.

- N. The performance of such other similar and related duties as may be assigned by the Mayor.

§ 2-11.03. Deputy City Treasurer.

The City Treasurer shall appoint a Deputy City Treasurer, who shall serve during the term of said City Treasurer. The Deputy City Treasurer shall, during the temporary absence or inability of the City Treasurer, have and exercise all the powers and duties of that office except the power to hire and fire. In the case of a vacancy in the office of City Treasurer, the Deputy City Treasurer shall serve until the appointment of a new City Treasurer or Acting City Treasurer. The Common Council shall fix a separate salary or stipend for the Deputy City Treasurer.

§ 2-11.04. Bond required.

The City Treasurer shall give a bond in the sum of One Hundred Thousand Dollars (\$100,000.00), in such form as may be required by the City Attorney, with two (2) or more good and sufficient sureties. The Common Council shall have the right to require of the City Treasurer a new or additional bond whenever, in its opinion, the existing bond is insufficient. Whenever such new or additional bond is required, the City Treasurer shall perform no official act until said bond is obtained.

§ 2-11.05. Investment of moneys.

The City Treasurer is hereby authorized to invest moneys of the City not required for immediate expenditure according to the provisions of the General Municipal Law and as authorized by the Common Council.

ARTICLE XII
Fiscal Affairs Officer

§ 2-12.01. Appointment; qualifications.

The Fiscal Affairs Officer shall be an independent officer of the City who shall be appointed by the Mayor with the consent of the Common Council and shall serve at the pleasure of the Mayor. The Fiscal Affairs Officer shall have a bachelor's degree in accounting from an accredited college and have three (3) years' experience in the field of finance, budgeting and accounting.

§ 2-12.02. Powers and duties.

The powers and duties of the Fiscal Affairs Officer shall include:

- A. The maintenance and supervision of a general accounting system for the City in accordance with a uniform system of accounts approved by the State Comptroller.
- B. The examination and audit of the accounts of all offices of the City and all persons indebted to the City and certification as to the condition of each account.
- C. Requiring reports of receipts and disbursements from the City Treasurer and all offices, departments, boards and commissions of the City at such intervals as may be deemed advisable or as otherwise provided by law.
- D. Assistance to the Mayor in preparation of the annual City budget and

capital program.

- E. The maintenance of budgetary control for the Common Council, the Mayor and all City departments, commissions, boards and offices.
- F. Acting as purchasing agent of the City pursuant to § 20-a of the General City Law, including the processing of requisitions, purchase orders and vouchers.
- G. Attendance at Common Council meetings.
- H. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The Fiscal Affairs Officer may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- I. Submission on or before February 1 of each year of an annual written report for the immediately preceding calendar year covering generally the work of the Department. Copies of each report shall be filed with the Common Council and Mayor.
- J. Assistance in the preparation of bids and the awarding of public contracts, including any necessary bonding.
- K. The maintenance of an inventory of all equipment in said Department, including the year, the make, the model, the purchase price, the division or employee to whom assigned and the estimated replacement date. A copy of said inventory and all changes thereto shall be supplied to the Director of Public Works.
- L. The performance of such other similar and related duties as may be assigned by the Mayor.
- M. Responsibility for and charge of the overall computer system operations.

2-12.03. Accounting.

The Department shall maintain an encumbrance accounting system for all City funds as prescribed by the New York State Department of Audit and Control. Accounting of fixed assets shall be established and maintained as described in the General Fixed Assets Handbook for Municipalities published by the Department of Audit and Control. Cost accounting shall be done by the Department when requested by the Mayor or as requested by the Common Council.

§ 2-12.04. Auditing.

The Department shall conduct any and all internal audits prescribed by law or as directed by the Mayor or Common Council.

§ 2-12.05. Budgeting.

The Department shall be responsible for preparation and administration of the capital program budget as well as the City operating budget.

§ 2-12.06. Purchasing.

The Department is hereby authorized to establish a uniform system of purchasing, including requisitions, purchase orders and vouchers, and shall enact any necessary rules and regulations for such a system in all City departments.

ARTICLE XIII
Department of Assessment

§ 2-13.01. Departmental organization. [Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]

The Assessment Department as established by the City Charter shall consist of one (1) elected Assessor. The Department shall be responsible to apply state and local laws to the evaluation of property for tax purposes.

§ 2-13.02. Qualifications. [Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]

The elected Assessor shall be required to meet the minimum qualification standards established for such offices by the State Board of Equalization and Assessment and the Real Property Tax Law.

§ 2-13.03. Clerk of Department. [Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]

The Assessor shall devote full time to the duties of the office and shall hold no other elective office. The Assessor shall:

- A. Have custody of and responsibility for preparing and maintaining all files, reports, maps, assessment books and other records and papers of the Department.
- B. Subject to the Civil Service Law, Rules and Regulations, appoint all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council and may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- C. On or before February 1 of each year, make an annual written report for the immediately preceding calendar year, covering generally the work of the Department of Assessment, with copies of such report being filed with the Common Council and Mayor.
- D. File with the Mayor, Common Council and Fiscal Affairs Officer a report covering maintenance of an inventory of all equipment in said Department, including the year, the make, the model, the purchase price, the division to which it is assigned and the estimated replacement date.

§ 2-13.04. Powers and duties of Department. [Amended 3-4-1993 as L.L. #1-1993; Amended 04-05-11 as L.L. #5-2011, and passed on 11-08-11 as a Referendum on City of Dunkirk General Election ballot.]

The powers and duties of the Department shall be as follows:

- A. The assessment of all real property within the City for taxation as provided in the Real Property Tax Law.
- B. The preparation, revision and filing of an annual assessment roll using, pursuant to Local Law No. 1, 1993, May 1 of each year as the taxable status date in the City. **[Amended 3-4-1993 as L.L. #1-1993] [Editor's Note: See Ch. 68, Taxation, Art. I, Taxable Status Date for Real Property.]**
- C. Assistance to the Board of Review in revising and correcting the assessment roll.
- D. Assistance to the City Treasurer in preparation of the annual tax levy.
- E. The preparation of special assessments for public improvements.
- F. The recordation of all conveyances of real property within the City, except mortgages, in books specially prepared therefor, showing the names of the grantors and grantees, the consideration expressed therein, a careful description of the premises conveyed and such other information as deemed relevant by the Clerk of the Board.
- G. Attendance at Common Council meetings.
- H. The performance of such other similar and related duties as may be assigned by the Mayor.
- I. The maintenance of such maps of the City showing in detail the location, size, boundary and ownership of each and every lot or parcel of land within the City.

§ 2-13.05. Board of Assessment Review.

Pursuant to the Real Property Tax Law, there shall continue to exist in the City a Board of Assessment Review, which shall exercise all the powers and duties of such boards under said law.

ARTICLE XIV
Department of Planning and Development

§ 2-14.01. Departmental organization.

There shall be a Department of Planning and Development, which shall consist of the following divisions: Planning, Development and such other divisions as the Common Council may authorize. The Department shall perform those functions specified in § 14.01 of the City Charter.

§ 2-14.02. Director.

The Department of Planning and Development shall be headed by the Director of Planning and Development, who shall be appointed by the Mayor with the consent of the Common Council and shall serve at the pleasure of the Mayor. The Director shall have at least five (5) years of administrative experience in community planning and development.

§ 2-14.03. Powers and duties of Director.

The powers and duties of the Director of Development shall include:

- A. The supervision of each of the divisions of the Department and their functions as established by the Common Council.
- B. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The Director of the Department of Planning and Development may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- C. The preparation of an Official Map of the City, showing the streets, parks, playgrounds, schools and other public places within the City as well as industrial areas and commercial districts, which Official Map shall be revised and updated annually.
- D. Attendance at Common Council meetings.
- E. Coordination of the City development and planning efforts so they are directed in a unified manner.
- F. Acting as an active liaison between the City Planning Board and the Mayor, Common Council and City departments.
- G. Representation of the City, as directed by the Mayor, on county,

regional and state boards for matters related to planning and provision of administrative support to City-appointed representatives on various regional, planning and intermunicipal organizations.

- H. Assistance to the Planning Board in maintaining and updating the City's Master Plan.
- I. Submission, on or before February 1 of each year, of an annual written report to the Mayor and Common Council for the immediately preceding calendar year covering generally the work of the Department.
- J. Filing with the Mayor, Common Council and Fiscal Affairs Officer a report covering maintenance of an inventory of all equipment in said Departments including the year, the make, the model, the purchase price, the division to which it is assigned and the estimated replacement date.
- K. Research into the availability of grants and advice to the Mayor and Common Council of their availability.
- L. Assistance to the Dunkirk Urban Renewal Agency as requested by said Agency.
- M. The performance of such other similar and related duties as may be assigned by the Mayor.

§ 2-14.04. Division of Planning.

- A. The Division of Planning shall be supervised by the Director of Development.
- B. The Division shall:
 - (1) Regularly report to and be supervised by the Director concerning the activities and performance of the Division.
 - (2) Be responsible for executing the planning functions of the Department.
 - (3) Do such other activities as assigned by the Director.

§ 2-14.05. Division of Development.

- A. The Division of Development shall be supervised by the Director of Planning and Development. The Community Development Grant

Administrator shall be appointed by the Director of Planning and Development.

- B. This Division shall:
 - (1) Regularly report to and be supervised by the Director concerning the activities and performance of this Division.
 - (2) Be responsible for executing the development functions of the Department.
 - (3) Do such other activities as assigned by the Director.

§ 2-14.06. Planning Board.

- A. The Planning Board, as established by the City Charter, shall have all the powers and authority conferred on such boards by the General Municipal and General City Laws. The Director of Planning and Development shall advise and guide the Board in its operation and shall act as its agent in performing the planning function.
- B. In addition to the five (5) members of the Board appointed by the Mayor, the Director of Public Works and the Fiscal Affairs Officer shall attend its meetings. The Board may request any City officer to meet with it concerning matters under its consideration. All City officers shall cooperate as much as possible in supplying information to the Board.

ARTICLE XV
Personnel Department

§ 2-15.01. Establishment; Personnel Administrator.

- A. There shall be a Personnel Department, the head of which shall be the Personnel Administrator. The Personnel Administrator shall be appointed by the Mayor with the consent of the Common Council from the competitive class of civil service.
- B. The Personnel Department shall develop and administer policies and procedures for providing qualified employees, ensuring equitable treatment, promoting job satisfaction and providing advancement opportunities for City employees.

§ 2-15.02. Powers and duties of Personnel Administrator.

The powers and duties of the Personnel Administrator shall include:

- A. The preparation and maintenance of employee records and files, including a personnel file for each City officer and employee, showing such information as date of election or appointment, title of position held, rate of pay and rate changes, promotions, demotions, transfers, disciplinary notices, communications concerning the officer or employee and any other information which the Administrator considers necessary for a proper personnel record or as required by the Civil Service Law. He or she shall also keep running totals for accumulated sick, personal and vacation leaves and compensatory time.
- B. Responsibility for the administration of personnel benefits, including but not limited to all types of City-provided insurance and retirement benefits for all employees of the City.
- C. Assistance to the Mayor in negotiating employee contracts, including:
 - (1) Periodic review of the performance of all agreements with recognized employee organizations concerning terms and conditions of employment, including but not limited to wages, employee benefits, sick leave, vacations, health and life insurance and retirement plans.
 - (2) Meeting with department heads concerning employer/employee relations in each department.

- (3) Periodic advisement to the Mayor and City Attorney concerning needed changes in union agreement and the impact of any other suggested changes.
- D. The training of personnel and long-range staff planning.
- E. Obtaining from all City offices, departments, officers and employees all information necessary in the performance of personnel duties.
- F. Attendance at Common Council meetings.
- G. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The Administrator may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
- H. Serving as the City's equal employment opportunities officer and coordinating the implementation of the City's Affirmative Action Plan and advising City officers of said implementation.
- I. Serving as a liaison between the City's Personnel Department and the Dunkirk Municipal Civil Service Commission.
- J. Filing with the Mayor, Common Council and Fiscal Affairs Officer a report covering maintenance of an inventory of all equipment in said Department, including the year, the make, the model, the purchase price and the estimated replacement date.
- K. Filing, on or before February 1 of each year, an annual written report to the Mayor and Common Council for the immediately preceding calendar year covering generally the work of the Department.
- L. The processing of all unemployment insurance claims brought against the City and the monitoring of unemployment insurance experience rating and advising the Mayor, Common Council and department heads on methods of reducing liability costs.
- M. Assistance in processing personnel problems, including disciplinary and grievance proceedings.
- N. The performance of such other similar and related duties as may be assigned by the Mayor.

§ 2-15.03. Coordination with other departments.

The Personnel Administrator shall establish procedures to be followed by each department head to be used in obtaining such information, including:

- A. The preparation and maintenance of employee records and files and any other data that may be useful in evaluating performance of City employees.
- B. Coordination of creating and filling vacancies in accordance with civil service rules and regulations.
- C. Providing to all affected departments any information obtained in the normal performance of personnel duties as outlined in this section.

§ 2-15.04. Salary plan.

The Administrator will maintain a job evaluation and salary plan for City employees as approved by the Mayor and Common Council and periodically resurvey prevailing positions and salaries and recommend amendments to eliminate inequities, recruiting difficulties and employee turnover problems.

ARTICLE XVI
Department of Housing, Building
and Zoning Enforcement

§ 2-16.01. Departmental organization.

There shall be a Department of Housing, Building and Zoning Enforcement, the head of which shall be the Housing, Building and Zoning Officer, who shall also be the Electrical Code Enforcement Officer. The Housing, Building and Zoning Officer shall be appointed by the Mayor with the consent of the Common Council from the competitive class of civil service.

§ 2-16.02. Powers and duties.

The Powers and duties of the Housing, Building and Zoning Officer shall include:

- A. Responsibility for plan review of new construction, additions and renovations and conversion from one occupancy to another.
- B. Responsibility for administration and enforcement of the following:
 - (1) The New York State Uniform Fire Prevention and Building Code (New York Codes, Rules and Regulations, Sections 600-1000).
 - (2) The State Energy Conservation Construction Code (New York Codes, Rules and Regulations, Sections 7810-7815).
 - (3) The City Building Construction Ordinance (Chapter 15 of the City Code).
 - (4) The Unsafe Buildings or Structures Ordinance (Chapter 18 of the City Code).
 - (5) The Electrical Installations Ordinance (Chapter 28 of the City Code).
 - (6) The Gas Wells Ordinance (Chapter 38 of the City Code).
 - (7) The City Housing Standards Ordinance (Chapter 41 of the City Code).
 - (8) The Removal of Plant Growth Ordinance (Chapter 53 of the City Code).

- (9) The City Zoning Ordinance (Chapter 79 of the City Code).
 - (10) Such other duties as may otherwise be required by the City Code.
- C. Attendance at Common Council meetings.
 - D. Subject to the Civil Service Law, Rules and Regulations, the appointment of all officers and employees of the Department to fill such positions within the Department as authorized by the Common Council. The Housing, Building and Zoning Officer may also suspend and remove all employees, subject to the Civil Service Law, Rules and Regulations.
 - E. The maintenance of permanent official records of all transactions and activities conducted within the Department, including but not limited to applications and plans received, permits and certificates issued, inspection reports and notices and orders issued.
 - F. On or before February 1 of each year, the filing of an annual written report for the immediately preceding calendar year, covering generally the work of the Departments and submission of said report to the Mayor and Common Council.
 - G. The maintenance of an inventory of all equipment in said Department, including the year, the make, the model, the purchase price, the division or employee to whom assigned and the estimated replacement date. A copy of said inventory and all changes thereto shall be supplied to the Director of Public Works.
 - H. Filing copies of all building and demolition permits with the Department of Assessment.
 - I. The issuance of uniform appearance tickets as authorized by law for alleged violations of the City Code provisions enforced by this Department.
 - J. The performance of such other similar and related duties as provided by law or as may be assigned by the Mayor.

§ 2-16.03. Assistant Housing, Building and Zoning Officer.

If created by the Common Council and funded, there shall be an Assistant Building, Housing and Zoning Officer appointed by the Housing, Building and Zoning Officer, who shall:

- A. When the Housing, Building and Zoning Officer is out of the City or temporarily unable to perform the duties of said office, perform the daily activities of said Officer, except that the power to hire and fire shall not be exercised.
- B. Make inspections or assist in making inspections in the performance of the Department's functions.
- C. Assist in the enforcement of the ordinances administered by this Department.
- D. Do such other work as directed by the Housing, Building and Zoning Officer.

§ 2-16.04. Zoning Board of Appeals.

- A. The Zoning Board of Appeals, as established by Chapter 79 of the City Code and as continued by § 16.02 of the City Charter, shall perform those duties and functions specified by said Chapter 79 and state law.
- B. The Department of Housing, Building and Zoning Enforcement shall provide all necessary administrative support for said Board.

§ 2-16.05. Housing Commission.

- A. The Housing Commission, as established by Chapter 41 of the City Code and as continued by § 16.02 of the City Charter, shall perform those duties and functions specified by said Chapter and state law.
- B. The Department of Housing, Building and Zoning Enforcement shall provide all necessary administrative support for said Commission.

ARTICLE XVII
Sealer of Weights and Measures
[Abolished 02-01-11 as L.L. #3-2011]

ARTICLE XVIII
City Court

§ 2-18.01. Governing provisions.

The City Court shall be governed by the applicable provisions of the New York State Judiciary Law and the rules and regulations of the New York State Unified Court System/Office of Court Administration.

**ARTICLE XIX
(Reserved)**

ARTICLE XX
Application of Provisions

§ 2-20.01. When effective.

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

§ 2-20.02. Amendments.

This code may be amended by a local law enacted by a majority affirmative vote of the total membership of the Common Council, subject to referendum on petition as provided in the Municipal Home Rule Law.

§ 2-20.03. Continuity of authority; completion of unfinished business.

- A. The performance of functions pursuant to the provisions of the Charter or Code shall be deemed and held to constitute a continuation thereof for the purpose of succession to all rights, powers, duties and obligations attached to such functions. Any proceedings, actions or rights of action or other business undertaken or commenced prior to the effective date of this code may be conducted and completed by the City officer or administrative unit responsible therefor under the Charter or Code.
- B. This code shall not be deemed to invalidate any obligations heretofore issued by the City or by any of its commissions, boards or agencies, and such obligations shall be and remain binding obligations of the City. In the event that any obligation shall have been issued in anticipation of the issuance of bonds by the City or by any of its commissions, boards or agencies, the City is hereby empowered to issue such bonds as legal and binding obligations of the City.

§ 2-20.04. Severability.

If any clause, sentence, paragraph, section or Article of this code shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or Article thereof directly involved in the proceeding in which such adjudication shall have been rendered.

§ 2-20.05. Construal of provisions.

This code shall be liberally construed to effectuate its objectives and purposes.

CHAPTER 3

(RESERVED)

CHAPTER 4

AIR POLLUTION

§ 4-1.	Discharge of pollutants into air prohibited	401
§ 4-2.	Discharge from boats, engines and machinery prohibited ...	401
§ 4-3.	Discharge of dirt into air prohibited	402
§ 4-4.	Enforcement	402
§ 4-5.	Penalties for offenses	402

[HISTORY: Adopted by the Common Council of the City of Dunkirk 5-23-1922 as Chapter XIII of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

GENERAL REFERENCES

Fumigation of buildings -	See Ch. 17.
Fire prevention -	See Ch. 32.
Removal of plant growth -	See Ch. 53.

§ 4-1. Discharge of pollutants into air prohibited.

It shall not be lawful within the limits of the City of Dunkirk for any person or persons, firm or corporation, or any servant, agent or employee of any person, firm or corporation, to permit or allow, or cause to be permitted or allowed, the discharge or escape into the open air of large quantities of smoke, soot, dust, gas, steam or offensive odor in such manner or in such quantities as to cause, or have a natural tendency to cause injury, detriment or annoyance to any person or persons or the public or to endanger the comfort, repose, health or safety of any person or persons or the public, or in such manner as to cause, or to have a natural tendency to cause injury or damage business or property.

§ 4-2. Discharge from boats, engines and machinery prohibited.

No person or persons, firm or corporation, owning or operating any boat, locomotive engine, other engine or any other machinery used or employed in said city, nor any servant, agent or employee of any such person, firm or corporation, shall permit or allow, or cause to be permitted or allowed, the discharge or escape into the open air of large quantities of smoke, cinders, soot,

dust, gas, steam or offensive odor in such manner or in such quantities as to cause injury, detriment or annoyance to any person or persons, or to endanger the comfort, repose, health or safety of any persons or the public, or in such manner as to cause injury or damage to business or property.

§ 4-3. Discharge of dirt into air prohibited.

No person or persons, firm or corporation shall, in the said city, permit or allow, or cause to be allowed or permitted, the escape into the open air of quantities of fine sand, dirt or particles of earth or other material in such manner as to cause, or to have a natural tendency to cause injury, detriment or annoyance to any person or person or to the public, or to endanger the comfort, repose, health or safety of any person or persons or the public, or in such manner as to cause, or to have a natural tendency to cause injury or damage to business or property.

§ 4-4. Enforcement. [Amended 10-1-1940]

It shall be the duty of the Plumbing and Sanitary Inspector to investigate all complaints made to him of violation of any of the provisions of this chapter, and it shall be the duty of the Plumbing and Sanitary Inspector and all police officers of said city to immediately report to the Common Council all persons, firms or corporations guilty of violation of this chapter, together with the names and addresses of all witnesses having knowledge concerning, or being in the possession of facts showing such violation; the Common Council, Plumbing and Sanitary Inspector or police officer shall have the right and authority at all reasonable hours to visit and inspect premises and all such machinery, boilers, furnaces or other appliances connected therewith, necessary to such inspection, for the purpose of ascertaining the kind or character of fuel used and the manner of using same, and any other fact or facts showing compliance with or violation of this chapter.

§ 4-5. Penalties for offenses.

The violation of any of the provisions of this chapter is hereby declared to be a misdemeanor, and any person, upon being convicted of such violation, shall be punishable as provided in Chapter 1, General Provisions, Article 1, of the Code of the City of Dunkirk.

CHAPTER 5

ALCOHOLIC BEVERAGES

§ 5-1.	Purpose, findings	501
	[Amended 5-31-1988 by L.L. #2-1988]	
§ 5-2.	Definitions	502
	[Amended 5-31-1988 by L.L. #2-1988]	
§ 5-3.	Open containers prohibited in public places and motor vehicles; age limit	503
	[Amended 5-31-1988 by L.L. #2-1988]	
§ 5-4.	Responsibility of licensees	504
§ 5-5.	Exceptions	504
§ 5-6.	Penalties for offenses	504
§ 5-7.	Severability	505
	[Amended 5-31-1988 by L.L. #2-1988]	
§ 5-8.	When effective	505

[HISTORY: Adopted by the Common Council of the City of Dunkirk 10-16-1979. Amendments noted where applicable.]

GENERAL REFERENCES

Parks - See Ch. 49.

- § 5-1. **Purpose; findings. [Amended 5-31-1988 by L.L. #2-1988]**
- A. **Purpose.** The purpose of this chapter is to protect and promote the safety, health and well-being of the people of the City of Dunkirk and to regulate the conduct of persons in the City of Dunkirk by prohibiting the consumption of alcoholic beverages in public places and on property owned or leased by another person without the invitation or consent of such persons.
- B. **Findings.**
- (1) The Common Council of the City of Dunkirk finds that the possession or consumption of alcoholic beverages in public streets and public places, except under certain conditions, is detrimental to the health, safety and welfare of the residents of the City of Dunkirk, causes

unsightly and unsanitary conditions, creates a nuisance and interferes with the peace and good order of said city.

- (2) The Common Council further finds that the possession or consumption of alcoholic beverages on public streets and public places is a serious, substantial and significant cause of persons (especially persons who are under the legal age for alcoholic consumption) becoming unruly, disruptive, disorderly, uncontrollable, obnoxious, offensive and of a general character detrimental to the health, welfare and peaceful orderliness of the community. In addition, the allowance of possession or consumption of alcoholic beverages on public streets and public places has been proven to be a significant and substantial cause in the congregation of persons who in turn significantly and substantially cause and promote unruly, disruptive, disorderly, uncontrollable, obnoxious, offensive and generally detrimental behavior.
- (3) The Common Council further finds that there is a significant relationship between the possession of an open or unsealed container of an alcoholic beverage on public streets or places and the general health, welfare and safety of the public and that it has been demonstrated to this Common Council that the allowance of open or unsealed containers of alcoholic beverages is the most significant and substantial factor contributing to the consumption of such alcoholic beverages.
- (4) The Common Council further finds that this chapter is necessary and proper to promote the health, welfare and safety of the general public and that the restrictions on conduct created by this chapter are not unduly harsh or restrictive and are necessary and proper pursuant to the police power of the City of Dunkirk.

§ 5-2. Definitions. [Amended 5-31-1988 by L.L. #2-1988]

For the purpose of this chapter, the following words, phrases and terms and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in plural number include the singular, words used in the singular number include the plural and words in the masculine include the feminine.

ALCOHOLIC BEVERAGE - Includes alcohol, spirits, liquor, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits,

wine or beer and capable of being consumed by a human being.

CONTAINER - Any bottle, can, glass or other receptacle suitable for or used to hold any liquid.

MOTOR VEHICLE - Every vehicle, including a snowmobile, which is or can be operated or driven upon a public highway and which is propelled by any power other than muscular power, other than a public omnibus used in the business of transporting passengers for hire.

PUBLIC PLACE - A place in the City of Dunkirk to which the public or a substantial group of persons has access and includes, but is not limited to, highways, sidewalks, parking areas, parks, playgrounds, shopping centers, schoolyards and hospital ground or other public places as defined by § 240 or the Penal Law of the State of New York.

§ 5-3. Open containers prohibited in public places and motor vehicles; age limit. [Amended]

- A. No person shall drink an alcoholic beverage or have in his or her possession any open bottle, can or other container of alcoholic beverage with the intent to consume such alcoholic beverage while such person is in a public place or on property owned or leased by another person without the invitation or consent of such person.
- B. No person shall drink an alcoholic beverage or have in his or her possession any open bottle, can or container of alcoholic beverage, with the intent to consume such alcoholic beverage, while such person is the operator of or occupant or passenger in or on a motor vehicle which is parked, standing or being operated in a public place or on the property owned or leased by another without the invitation or consent of such person.
- C. The possession of an open bottle or open container unwrapped or with the top exposed in a public place, as herein defined, shall be presumptive evidence that such open bottle or open container is intended to be consumed in a public place.
- D. An open bottle or open container in any vehicle while in or on any public sidewalk, street, highway, parking lot, public park or other public place as defined by § 5-2 of this chapter, shall be presumptive evidence that the same is in the possession of all the occupants thereof.

- E. No person less than twenty-one (21) years of age shall possess any alcoholic beverage except on property owned by him or his parents or in the capacity of his employment.

§ 5-4. Responsibility of licensees.

No person or establishment licensed to sell beer, wine, whiskey or any other alcoholic beverage, as defined by the New York State Alcoholic Beverage Control Law, shall permit consumption of same in or upon any of the public places stated in § 5-2 within twenty-five (25) feet of such person's place of business.

§ 5-5. Exceptions.

The foregoing prohibition shall not apply to:

- A. Any person drinking an alcoholic beverage or possessing an open container containing an alcoholic beverage at any block party held after receiving approval and permission of the Common Council.
- B. Any person drinking an alcoholic beverage in a motor vehicle being driven upon public highway within the city in violation of § 1227 of the New York State Vehicle and Traffic Law.
- C. Those portions of Wright Park and Point Gratiot where the consumption of alcohol is not prohibited by the provisions of §§ 49-4C, 49-4D and 49-6F of the Code of the City of Dunkirk.
- D. Those parklands or public rights-of-way which have written approval and permission of the Common Council.

§ 5-6. Penalties for offenses.

A person found guilty of a violation of this chapter shall be subject to a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or imprisonment for not more than ten (10) days, or to both such fine and imprisonment.

§ 5-7. Severability. [Amended 5-31-1988 by L.L. #2-1988]

If any clause, sentence, paragraph, subdivision, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause,

sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment is rendered.

§ 5-8. When effective.

This chapter shall take effect upon publication in the official city newspaper.

CHAPTER 6

AUCTIONS AND AUCTIONEERS

§ 6-1. License required; exception..... 601

§ 6-2. License fee; expiration; exceptions..... 602
 [Amended 6-18-1996 as L.L. #9 (Intro No. 10) 1996] [Amended 10-7-1997 as L.L #14 (Intro No. 21) 1997]

§ 6-3. False representation of goods prohibited..... 603

§ 6-4. Substitution for articles sold prohibited 603

§ 6-5. Bidding by auctioneer prohibited; mock bidding prohibited 603

§ 6-6. Auctions in public places prohibited without written permission 603

§ 6-7. Crying of auctions prohibited..... 604

§ 6-8. Disposition of license moneys 604

§ 6-9. Penalties for offenses 604

[HISTORY: Adopted by the Common Council of the City of Dunkirk 5-23-1922 as Chapter IX of the Ordinances of the City of Dunkirk. Amended 6-18-1996 as L.L. #9 (Intro No. 10) 1996. Amended 10-7-1997 as L.L. #14 (Intro No. 21) 1997. Amendments noted where applicable.]

GENERAL REFERENCES

- Hawkers and peddlers - See Ch. 39.
- Junk dealers and pawnbrokers - See Ch. 44.
- Permits - See Ch. 51.

§ 6-1. License required; exception.

No person, firm or corporation shall carry on the business of an auctioneer, or sell any personal property at public auction within the City of Dunkirk, unless such person, firm or corporation shall have procured a license as

required by this chapter. This chapter shall not be construed to prevent a public officer from selling personal property at public auction within said City under and by virtue of legal process or a mortgage.

§ 6-2. License fee; expiration; exception. [Amended 6-18-1996 as L.L. #9 (Intro No. 10) 1996] [Amended 10-7-1997 as L.L. #14 (Intro No. 21) 1997]

No person or persons, firm or corporation, except as hereinafter provided, shall offer or expose for sale at public auction or venue, at public or private places within said City, any goods, wares, merchandise or personal property of any kind without procuring a license to do so from the City Clerk.

- A. For an auction that does not take place in an auction house as hereinafter defined, the City Clerk may grant a license for an auction store sale upon the payment of Fifteen Dollars (\$15.00) for each and every day during the period for which the license is granted and the filing of a bond as described below. The time for holding such auction shall be between the hours of 7:00 A.M. and 6:00 P.M. on any day except Sunday.
- B. For an auction that takes place in an auction house, defined as a business that is established specifically for holding auctions on a regular basis in the same interior private building, the City Clerk may grant an annual license upon payment of a One Hundred Dollar (\$100.00) fee. The license period shall run from January 1st to December 31st and a new license must be obtained every January 1st, regardless of the initial date of the first license being obtained. The annual license shall be limited to the stated applicant and specific address of the auction house, it shall provide that auctions may be held in the auction house between the hours of 7:00 a.m. and 12:00 midnight, weekdays and weekends, and shall contain such further conditions as the Mayor may set.

The annual license shall be revocable upon a showing that the terms of the license have been violated by the licensee or that the surrounding area has been unreasonably disrupted by the activities of the auction house.

The Mayor may exempt the holder of this license for an auction that takes place in an auction house from the requirement of obtaining a bond as specified in Section C below for good cause shown.

- C. No license shall be granted until such person, firm or corporation applying for said license shall file with the City Clerk of the City of Dunkirk a bond in the penal sum of One Thousand Dollars (\$1,000.00), with sureties approved by the Mayor and City Attorney, conditioned for the faithful observance of the laws of the State of New York and the laws and ordinances of the City of Dunkirk, now or hereafter enacted, relating to auctions or auctioneers.
- D. Every license shall expire on December 31st following issuance and shall not be transferred without the consent of the Mayor.
- E. This section 6-2 shall not apply to selling real estate located in Dunkirk, nor to closing out sales at auction by merchants; provided such merchant shall have carried on, at the place of such sale for a period of twelve (12) months prior thereto, the business of wholesaling or retailing the same line of goods, and provided further, that such auction sale shall be similar to goods actually in stock at the commencement thereof.

§ 6-3. False representation of goods prohibited.

No auctioneer or other person shall knowingly make false representation as to the character, quality or ownership of any personal property offered for sale at public auction within said City.

§ 6-4. Substitution for articles sold prohibited.

No auctioneer or other person shall substitute any other article for the article sold to the bidder.

§ 6-5. Bidding by auctioneer prohibited; mock bidding prohibited.

No auctioneer shall bid in any personal property offered for sale by him, and no person shall act as accomplice for the purpose of making mock bids at any auction.

§ 6-6. Auctions in public places prohibited without written permission.

No person shall sell or expose for sale at public auction within the City of Dunkirk any personal property upon any sidewalk or in any public street or public place without the written permission of the Mayor. Such permits shall not be granted by the Mayor until the license provided for by § 6-2 shall have been procured.

§ 6-7. Crying of auctions prohibited.

No bellman or crier, or any instrument for the purpose of attracting the attention of the passerby, other than a sign or tag, shall be employed or be permitted to be used at or near any place of sale or auction. Such sign or tag shall bear the license number, and shall be given when the license is issued.

§ 6-8. Disposition of license moneys.

It shall be the duty of the City Clerk to pay over to the City Treasurer all moneys received for licenses granted hereunder, and report to the Common Council, at the first meeting of each month, all licenses granted during the preceding month and the amount received therefore.

§ 6-9. Penalties for offenses.

The violation of any of the provisions of this chapter is hereby declared to be a misdemeanor, and any person, upon being convicted of such violation, shall be punishable as provided in Chapter 1, General Provisions, Article I of the Code of the City of Dunkirk.

CHAPTER 7

AUTOMATIC ALARM DIALING DEVICE REGULATIONS

§ 7-1. Purpose 701
§ 7-1A. Definitions 701
§ 7-2. Emergency 911 Telephone System and Interfacing 701
§ 7-3. Penalties 702
§ 7-4. Liability 702
§ 7-5. Severability 703
§ 7-6. Effective date 703

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 2-2-1999 as L.L. #2 (Intro No. 1) 1999. Amendments noted where applicable.]

§ 7-1. Purpose.

The purpose of this local law is to promote the health, safety and general welfare of the residents of the City of Dunkirk by regulating automatic alarm dialing devices which interconnect into the City’s dispatch center and to eliminate dialing devices interconnected into the Emergency 911 Telephone System of the City. This local law seeks to ensure that police, ambulance, fire and rescue emergency personnel are available for dispatch to actual emergencies and to alleviate the hindrance of automatic dialing devices trying up the Emergency 911 Telephone System.

§ 7-1A. Definitions.

An "alarm system" shall include a device or an assembly of equipment that emits an audible, visual or similar response that is intended to alert persons outside a premise to the existence of a hazard or emergency; or that is intended to alert emergency agencies by automatically dialing an emergency agency, or that is connected to a central station or answering service for the purpose of reporting such alarms to emergency agencies.

§ 7-2. Emergency 911 Telephone System and Interfacing.

No Alarm System's automatic dialing device shall be interconnected or otherwise connected to the Emergency 911 Telephone System of the City, without the written authorization of the Chief of Police. The Chief, in his discretion, may permit automatic dialing devices to transmit signals directly to the Police Department, provided that such interconnection is in conformance with written instructions from the Chief of Police and uses designated telephone numbers and trunklines. In addition, the Chief of Police may require such automatic dialing devices to meet the following minimum standards:

1. The device shall not be the type, which shall hold the designated trunk line open after the Police Department has broken the telephone connection.
2. The device shall not dial the Police Department's designated number more than once as a result of a single activation. The device shall not repeat its message more than six (6) times after the call has been answered by the Police Department.

§ 7-3. Penalties.

- A. Any person who interconnects or otherwise connects an automatic dialing device to the Emergency 911 Telephone System of the City without the written permission of the Chief of Police shall be guilty of an offense. Persons guilty of a first offense shall be issued a warning letter stating such offense. For a second subsequent offense, such person shall be liable for a penalty of Five Hundred Dollars (\$500.00). For a third subsequent offense, such person shall be liable for a penalty of One Thousand Dollars (\$1,000.00).
- B. Any person who interconnects an automatic dialing device to the Police Department's special trunkline that does not comply with the standards set by the Chief of Police shall be guilty of an offense. Persons guilty of a first offense shall be issued a warning letter stating such offense. For a second subsequent offense, such person shall be liable for a penalty of Five Hundred Dollars (\$500.00). For a third subsequent offense, such person shall be

liable for a penalty of One Thousand Dollars (\$1,000.00).

§ 7-4. Liability.

The City of Dunkirk shall not be liable for any defects in operation of emergency alarm systems, including automatic dialing devices, for any failure to respond approximately or for any erroneous response upon receipt of any emergency alarm signal. Nor shall the City be liable for the failure or defect of any installation, operation or maintenance of equipment, the transmission of alarm signals or messages, or the relaying of such signals or messages. In the event that the City finds it necessary to disconnect a defective alarm or device, the City shall incur no liability therefrom.

§ 7-5. Severability.

If any section, subsection, sentence, clause, phrase or word of this Local Law is for any reason held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Law.

§ 7-6 Effective Date

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

CHAPTER 8

(RESERVED)

CHAPTER 9

[Editor's Note: Former Chapter 9, Bicycles, adopted 5-6-1958 as Chapter XXXI of the Ordinances of the City of Dunkirk, was repealed 6-18-1992, as amended]

(R E S E R V E D)

CHAPTER 10

(RESERVED)

CHAPTER 11

BILLBOARDS AND ADVERTISING STRUCTURES

§ 11-1.	Definitions	1101
§ 11-2.	Billboard specifications	1102
§ 11-3.	Maximum height of billboards.....	1103
§ 11-4.	Required clearance from ground	1103
§ 11-5.	Illegal and immoral bills prohibited	1103
§ 11-6.	Removal of old posters and other debris required	1103
§ 11-7.	Display of name of owner required.....	1103
§ 11.8.	Posting on public and private structures without written consent prohibited	1103
§ 11-9.	Advertising matter not to hang loose	1104
§ 11-10.	License for maintenance of billboards required.....	1104
§ 11-11.	License for erection of new billboards required	1104
§ 11-12.	Relocation of billboards without permission prohibited	1104
§ 11-13.	Fees for licenses	1105
§ 11-14.	Issuance and expiration of licenses	1105
§ 11-15.	Property owners not to permit erection of unlicensed billboards	1105
§ 11-16.	Annual inspection of billboards; condemnation and razing authorized.	1105
§ 11-17.	Police to inspect billboards and report violations	1106
§ 11-18.	Certain advertising by local businesses exempted	1106
§ 11-19.	Penalties for offenses	1106

[HISTORY: Adopted by the Common Council of the City of Dunkirk 5-23-1922 as Chapter VIII of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction -	See Ch. 15.
Unsafe buildings or structures -	See Ch. 18.
Permits -	See Ch. 51.

§ 11-1. Definitions.

BILLBOARD - Shall include any structure erected for the purpose of posting or painting advertising matter thereon.

ADVERTISING - Shall include all advertising matter, whether pasted to, nailed or fastened to or painted upon any fence, building, pole or other structure, excepting property owners advertising their own wares or merchandise on their own building or property.

PERSON - Shall mean natural "persons", corporations, partnerships, associations, joint-stock companies, societies, and all entities of every kind capable of suing and being sued.

§ 11-2. Billboard specifications.

All billboards or other advertising structures shall be erected within the building line and be properly secured, supported and braced, and shall be so constructed as not to be or become dangerous to persons or traffic. All such billboards or advertising structures shall be erected and constructed in a safe and workmanlike manner and in accordance with the following specifications:

- A. Posts to which the same are to be attached shall be not less than four by six (4 × 6) inches in size; shall be placed at least three (3) feet in the ground; shall be not farther than ten (10) feet apart; and shall extend to the top of said billboard or advertising structure. Anchor posts shall be not less than four by six (4 × 6) inches in size; each shall be placed at least three (3) feet in the ground; and there shall be one (1) such anchor post directly back of each of the posts above mentioned and to which the billboard or advertising structure shall be attached. Braces shall extend from each of the posts to which the billboard or advertising structure is to be attached; to be attached to its corresponding anchor post, which braces shall not be less than three by four (3 × 4) inches in size and shall be securely nailed at each end.
- B. All billboards or advertising structures erected in the fire limits of the City of Dunkirk shall have the entire surface, excepting capping and facing, manufactured from fireproof materials.
- C. All materials used in the erection of such billboards or advertising structures shall be free from all defects and of first quality.

§ 11-3. Maximum height of billboards.

All billboards or advertising structures hereafter erected shall not exceed in height twelve (12) feet, clear posting or painting surface, provided that this section shall not apply to any billboard or advertising structure attached to, or

advertising which may be painted upon, a building for the exclusive use of the owner in advertising goods, wares and merchandise offered by the owner of said building for sale by him.

§ 11-4. Required clearance from ground.

All billboards or advertising structures hereafter erected shall have a clear space of at least eighteen (18) inches between their lower edges and the highest point of ground immediately thereunder. For the purpose of ornamentation, two (2) narrow strips of structure, not exceeding three (3) inches in width, may be placed lengthwise across such clear space.

§ 11-5. Illegal and immoral bills prohibited.

No picture, bill, poster or advertisement of any kind, of an obscene, indecent, licentious, treasonable, illegal or immoral character shall be displayed in any advertisement painted or posted in the City of Dunkirk.

§ 11-6. Removal of old posters and other debris required.

Every person owning or maintaining a billboard or advertising structure shall take away and remove all old posters and other debris therefrom and shall not permit the same to remain on the street or be blown about by the wind or to accumulate upon the lot upon which such structure is maintained.

§ 11-7. Display of name of owner required.

Every billboard or advertising structure existing or hereafter erected shall have displayed, upon the top thereof, a strip showing the name of the person owning same or who is in possession, charge or control thereof. Such strip shall not be included in any of the heights hereinbefore specified, but may be in addition thereto.

§ 11-8. Posting on public and private structures without written consent prohibited.

No person shall paint, post, place or affix any business or commercial advertisement, or cause same to be done, on or to any curbstone, flagstone or any other portion of any street, lamppost, hitchingpost, telegraph pole, hydrant, bridge or any other structure within the limits of any street within the City of Dunkirk, and no person shall paint, post, place or affix any business or commercial advertisement, or cause same to be done, on or to any wall, window, floor, fence, gate, advertising structure, building or other object which is the property of another, without first securing the written consent of such owner thereof, provided, however, that nothing in this section shall apply to any notice required by the ordinances of Dunkirk or legal notices by public officers and

attorneys in the manner and places prescribed by law, or to circulation and distribution or any daily newspaper throughout the City.

§ 11-9. Advertising matter not to hang loose.

No paper, cloth or advertising matter shall be allowed to hang loose from any billboard or advertising structure, but the same shall be kept securely pasted or otherwise fastened to the surface thereof.

§ 11-10. License for maintenance of billboards required.

Any person maintaining within the limits of the City of Dunkirk a billboard or billboards shall, between January 1 and April 1 of each year, file with the Common Council of the City of Dunkirk an application for a license hereunder, which application shall state the full and true name of the owner or owners of such billboard or billboards, give the exact location of each billboard and the number and size of panels on each billboard.

§ 11-11. License for erection of new billboards required.

Any person contemplating the erection of a new billboard or billboards within the limits of the City of Dunkirk shall apply for the Common Council of the City of Dunkirk for permission to erect the same; said application must be accompanied by complete plans and specifications for the erection of such billboard or billboards, and shall contain a statement as to the exact location where such billboard or billboards are to be erected and maintained, also giving the approximate cost of the billboard or billboards.

§ 11-12. Relocation of billboards without permission prohibited.

No billboards or other advertising structures erected or maintained in this City shall be taken down and removed from the place where they are now located, with the intention of erecting them in a different location in the City of Dunkirk, without securing the consent of the Common Council therefore.

§ 11-13. Fees for licenses.

The following fees are hereby established for the erection, maintenance and inspection of billboards or advertising structures within the limits of the City of Dunkirk: every person erecting or maintaining a billboard or billboards in the City of Dunkirk shall pay an annual license fee of Fifty Dollars (\$50.00), and in addition thereto Fifty Cents (\$0.50) for each panel, whether of the standard size or less, erected or maintained hereunder.

§ 11-14. Issuance and expiration of licenses.

All licenses under this act, when directed by the Common Council, shall be issued by the City Clerk. The City Clerk, upon direction of the Common Council and the receipt of the license fee, together with the panel fee, shall issue a license certificate in the name of the person, firm or corporation making the application. Such license certificate shall state the date of its issue, the name of the person, firm or corporation to whom issued, and the date of its expiration, which shall be May 1 in each year, and the amount of the license fee paid therefore.

§ 11-15. Property owners not to permit erection of unlicensed billboards.

No property owner within the City of Dunkirk shall permit the erection of any billboard or advertising structure upon his property or painted upon his building or attached to the buildings, by any person, until such person shall have obtained the required license hereunder.

§ 11-16. Annual inspection of billboards; condemnation and razing authorized.

The City Engineer of the City of Dunkirk each year shall, during the month of April, inspect all billboards or advertising structures covered by this chapter and report to the Common Council the location of each, the condition of each and the number and size of the panels thereon; and all billboards or advertising structures erected or maintained in the City of Dunkirk shall be subject to inspection by the City Engineer; and in the event that the City Engineer shall find upon an inspection that any such billboard is, or is liable to become dangerous, he may condemn and raze the same forthwith

§ 11-17. Police to inspect billboards and report violations.

The Chief of Police of the City of Dunkirk shall inspect all billboards or advertising structures in the City of Dunkirk and report all violations of this chapter to the Common Council.

§ 11-18. Certain advertising by local businesses exempted.

The provisions of this chapter relating to the securing of a license shall not be deemed to apply to any person, firm or corporation having a fixed place of business in said City, who circulates advertising matter in connection with their business, or who shall erect or maintain any advertising sign on the premises where their said business is carried on; provided, that such advertising sign shall

advertise goods, wares and merchandise for sale by him only, at said place of business.

§ 11-19. Penalties for offenses.

The violation of any of the provisions of this chapter is hereby declared to be a misdemeanor, and any person, upon being convicted of such violation, shall be punishable as provided in Chapter 1, General Provisions, Article I, of the Code of the City of Dunkirk

CHAPTER 12

(R E S E R V E D)

CHAPTER 13

BINGO

§ 13-1.	Bingo games authorized.....	1301
	[Amended 9-3-1963; effective 10-3-1963]	
§ 13-2.	Conduct of games	1301
	[Amended 9-3-1963; effective 10-3-1963]	
§ 13-3.	Statutory provisions made part of chapter	1302
§ 13-4.	Approval by referendum required	1302

[HISTORY: Adopted by the Common Council of the City of Dunkirk 5-20-1958 as Chapter XXXIV of the Ordinances of the City of Dunkirk; approved by referendum 6-10-1958. Amendments noted where applicable.]

§ 13-1. Bingo games authorized. [Amended 9-3-1963; effective 10-3-1963]

The conduct of bingo games by an authorized organization within the territorial limits of the City of Dunkirk shall be lawful, subject to the provisions of this chapter and also the provisions of Article 14-H of the General Municipal Law of the State of New York.

§ 13-2. Conduct of games. [Amended 9-3-1963; effective 10-3-1963]

- A. This chapter shall be designated as the “Bingo Ordinance Chapter XXXIV of the Ordinances of the City of Dunkirk, New York.”
- B. No person, firm, association, corporation or organization, other than a license under the provisions of Article 14-H of the General Municipal Law, shall conduct such game or shall lease or otherwise make available for conducting bingo a hall or other premises for any consideration whatsoever, direct or indirect.

- C. No bingo games shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or partly, on the basis of a percentage of the receipts or net profits derived from the operation of such game.
- D. No authorized organization licensed under the provisions of Article 14-H of the General Municipal Law shall purchase or receive any supplies or equipment specifically designed or adapted for use in the conduct of bingo games from other than a supplier licensed under the Bingo Control Law or from another authorized organization.
- E. The entire net proceeds of any game of bingo and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.
- F. No prize shall exceed the sum or value of Two Hundred Fifty Dollars (\$250.00) in any single game of bingo.
- G. No series of prizes on any one (1) bingo occasion shall aggregate more than One Thousand Dollars (\$1,000.00).
- H. No person except a bona fide member of any such organization shall participate in the management or operation of such game.
- I. No person shall receive any remuneration for participating in the management or operation of any game of bingo.
- J. Games of bingo can be conducted under any license issued under this chapter on the first day of the week, commonly known and designated as Sunday.
- K. The unauthorized conduct of a bingo game and any willful violation of any provision of this chapter shall constitute and be punishable as a misdemeanor.

§ 13-3. Statutory provisions made part of chapter.

All of the provisions of sections 475 and 499 inclusive, of the General Municipal Law of the State of New York, and amendments thereto, are hereby made a part of this chapter. **[Editor's Note: The sections cited comprise all sections contained in Article 14-G of the General Municipal Law. The applicable provisions are now contained in Article 14-H of the General Municipal Law.]**

§ 13-4. Approval by referendum required.

This chapter shall not become operative or effective unless and until it shall have been approved by a majority of the qualified electors of the City of Dunkirk voting thereon.

CHAPTER 14

(R E S E R V E D)

CHAPTER 15

BUILDING CONSTRUCTION

ARTICLE I

Building Code

[Adopted 5-7-1963 by resolution]

§ 15-1.	Acceptance of State Building Construction Code.....	1502
	[Adopted 5-7-1963 by resolution]	
§ 15-2.	Certified copies to be filed	1503
§ 15-3.	Effective date	1503

ARTICLE II

Administration and Enforcement

[Adopted 10-18-1977]

§ 15-4.	Title	1503
	[Amended 3-20-1984; 2-6-1990]	
§ 15-5.	Scope.....	1503
	[Amended 3-20-1984; 2-6-1990]	
§ 15-6.	Definitions.....	1504
	[Amended 3-20-1984; 2-6-1990]	
§ 15-7.	Enforcing official	1505
	[Amended 3-20-1984; 2-6-1990]	
§ 15-8.	Powers and duties of Building Inspector	1505
§ 15-9.	Records and reports	1506
§ 15-10.	Cooperation of other departments.....	1506
§ 15-11.	Building permits required; application.....	1506
§ 15-12.	Fees	1509
§ 15-13.	Issuance of building permit or disapproval of application....	1511
	[Amended 3-20-1984; 2-6-1990]	
§ 15-14.	Stop orders	1513

§ 15-15.	Revocation of permit	1513
	[Amended 2-6-1990]	
§ 15-16.	Commencement and performance of work under permit	1514
§ 15-17.	Inspections and tests	1514
	[Amended 2-6-1990]	
§ 15-18.	Certificate of occupancy	1514
§ 15-19.	Inspection prior to issuance of certificate; records	1515
§ 15-20.	Issuance and contents of certificate.....	1516
	[Amended 2-6-1990]	
§ 15-21.	Temporary certificate of occupancy	1516
§ 15-22.	Abatement of violations; appearance tickets	1516
	[Added 2-6-1979 by L.L. #3-1978]	
§ 15-23.	Penalties for offenses.....	1517
§ 15-24.	Severability	1518
§ 15-25.	When effective.....	1518
	[Amended 2-6-1990]	

[HISTORY: Adopted by the Common Council of the City of Dunkirk: Article I, 5-7-1963 by resolution; Article II, 10-18-1977. Amendments noted where applicable.]

GENERAL REFERENCES

Billboard and advertising structures -	See Ch. 11.
Fumigation of buildings -	See Ch. 17.
Unsafe buildings and structures -	See Ch. 18.
Electrical installations -	See Ch. 28.
Fire prevention -	See Ch. 32.
Housing standards -	See Ch. 41.
Plumbing -	See Ch. 55.
Sewer use -	See Ch. 63.
Zoning -	See Ch. 79.

ARTICLE I

Building Code

[Adopted 5-7-1963 by resolution]

§ 15-1. **Acceptance of State Building Construction Code. [Editor's Note: By resolution of 9-19-1974, the Common Council adopted the following statement as the City of Dunkirk's codes policy: "It is not the intent of the Building Construction Code applicable to plumbing to limit or exclude the use of any material or system of plumbing installation which has been produced or developed**

under nationally recognized standards and certified by a recognized standards or testing agency, providing the use of such material or system complies with such standards and is in accord with acceptable health and safety criteria."]

The Common Council of the City of Dunkirk hereby accepts the applicability of the State Building Construction Code for City of Dunkirk in accordance with the provisions of § 374-a of the Executive Law.

§ 15-2. Certified copies to be filed.

The City Clerk be and hereby is instructed to file certified copy of this Article in the principal office of the State Building Code Council, Division of Housing and Community Renewal, at 25 Beaver Street, New York, New York 10004, and in the office of the Secretary of State at Albany, New York.

§ 15-3. Effective date.

This Article shall become effective May 15, 1963.

**ARTICLE II
Administration and Enforcement
[Adopted 10-18-1977]**

§ 15-4. Title. [Amended 3-20-1984; 2-6-1990]

This Article shall be known and cited as the "New York State Uniform Fire Prevention and Building Code."

§ 15-5. Scope. [Amended 3-20-1984; 2-6-1990]

- A. **Territory.** The New York State Uniform Fire Prevention and Building Code shall be effective area of the City of Dunkirk as bounded by the City lines and shall automatically become effective in any area which may be incorporated within the City lines at any time.
- B. The New York State Uniform Fire Prevention and Building Code shall apply to the construction and use of all classes of building work which in any way affect the physical safety health and protection of the persons and property of the occupants of the buildings, adjacent property, the public or any other person rightfully occupying the premises and shall apply equally, except as otherwise provided by law to the construction and use of all classes of buildings owned or occupied by any state agency or municipality.

§ 15-6. Definitions.

The following words and phrases as used in this Article shall have the following meanings, unless a different meaning is plainly required by the context:

BOARD OF REVIEW - The New York State Uniform Fire Prevention and Building Code Board of Review created by Article 18 of the Executive Law of the State of New York. [Amended 3-20-1984]

BUILDING - A combination of any materials, whether portable or fixed, which has a roof and forms a structure affording shelter for persons, animals or property. The word "building" shall be construed when used herein as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

CONSTRUCTION - The construction, reconstruction, alteration, conversion, repair, equipment or use of buildings and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

EQUIPMENT - Plumbing, heating, electrical, ventilating, conditioning and refrigerating equipment and elevators, dumbwaiters, escalators and other mechanical additions or installations.

MUNICIPALITY - Any county, City, town, village, school district, cooperative educational services district, improvement district or public authority.

NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE - The New York State Uniform Fire Prevention and Building Code provided for in § 374 of Article 18 of the Executive Law of the State of New York or any portion thereof of limited application and any modification of any amendment thereof. [Amended 3-20-1984; 2-6-1990]

OWNER - The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

PERSON - Any natural person, municipality, public benefit corporation, state agency, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any

kind. The masculine gender in referring to a person includes the feminine and neuter genders.

STATE AGENCY - Any state department, board, bureau, commission or agency of the State of New York.

§ 15-7. Enforcing official. [Amended 3-20-1984; 2-6-1990]

The administration and enforcement of this code and the New York State Uniform Fire Prevention and Building Code heretofore made applicable to the City of Dunkirk shall continue to be the responsibility of the Building Inspector; provided, however, that the portion of the New York State Uniform Fire Prevention and Building Code applicable to plumbing shall remain the responsibility of the Plumbing Inspector. In the absence of the Building Inspector or in the case of his inability to act for any reason, the Building Inspector's assistant shall be empowered to assume all powers duties of the Building Inspector and shall act in his behalf with respect to the issuance of permits and notices, the making of inspections, the keeping of records and the exercise of all powers and duties conferred upon the Building Inspector.

§ 15-8. Powers and duties of Building Inspector.

- A. Except as otherwise specifically provided by law, ordinance or regulation, or except as herein otherwise provided, the Building Inspector shall administer and enforce all the provisions of laws, ordinances and regulations applicable to the construction, enlargement, alteration, addition, repair, improvement, removal, extension, conversion and demolition of buildings and structures and the installation and use of materials and equipment therein and the location, use, occupancy and maintenance thereof.
- B. He shall have the power to adopt rules and regulations subject to the approval of the Common Council to secure the intent and purposes of this Article and regulations governing building construction.
- C. He shall receive applications and issue permits for the construction enlargement, addition, improvement, extension, erection, repair, alteration, conversion, removal and demolition of buildings or structures, or parts thereof, and shall examine the premises for which such applications have been received or for which such permits have been issued for the purpose of ensuring compliance with laws, ordinances and regulations governing building construction.
- D. He shall issue all appropriate notices or orders to remove illegal or unsafe conditions, to require the necessary safeguards during

construction or demolition and to ensure compliance during the entire course of construction or demolition with the requirements of such laws, ordinances and regulations. He shall make all inspections which are necessary or proper for the carrying out of his duties.

- E. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable laws, ordinances and regulations covering building construction, he may require the performance of tests in the field by experienced, professional persons or by accredited and authoritative testing laboratories or service bureaus or agencies.

§ 15-9. Records and reports.

- A. The Building Inspector shall keep permanent official records of all transactions and activities conducted by him, including all applications received, permits and certificates issued, inspection reports and notices and orders issued.
- B. The Building Inspector shall annually submit to the Common Council a written report and summary of all business conducted by him, including permits and certificates issued, orders and notices promulgated and inspections made.

§ 15-10. Cooperation of other departments.

The Building Inspector may request and shall receive, so far as may be necessary in the discharge of his duties, the assistance and cooperation of the Police and Fire Departments and of all municipal officials exercising any jurisdiction over the construction, use or occupancy of buildings or the installation of equipment therein.

§ 15-11. Building permits required; application.

- A. No person shall commence the erection, construction, enlargement, alteration, removal, improvement, demolition, conversion or change in the nature of the occupancy of any building or structure, or cause the same to be done, without first obtaining a separate building permit from the Building Inspector for each such building or structure, except that no building permit shall be required for the performance of ordinary repairs which are not structural in nature.
- B. Contents of application; by whom made.

- (1) Application for a building permit shall be made to the Building Inspector on forms provided by him and shall contain the following information:
 - (a) A description of the land on which the proposed work is to be done.
 - (b) A statement of the use or occupancy of all parts of the land and of the building or structure.
 - (c) The valuation of the proposed work.
 - (d) The full name and address of the owner and of the applicant and the names and addresses of their responsible officers if any of them are corporations.
 - (e) A brief description of the nature of the proposed work.
 - (f) A duplicate set of plans and specifications as set forth in Subsection C of this section.
 - (g) A statement that the work will be performed in accordance with the New York State Uniform Fire Prevention and Building Code, this chapter and all ordinances, laws, rules and regulations that may apply.
[Amended 3-20-1984; 2-6-1990]
 - (h) Such requirements and documentation thereof as the Building Inspector may deem necessary to ensure compliance with the New York State Energy Conservation Construction Code. **[Editor's Note: This legislation also provided for the renumbering of former Subsection B(1)(h) as Subsection B(1)(k).]**
 - (i) The fee to be charged and collected by the City Clerk.
 - (j) Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work with the requirements of the applicable building, zoning, plumbing and electrical law, ordinances and regulations, and such other information as may reasonably be required by the Fire Chief or Assistant Fire Chief he may designate to establish compliance of the proposed work with the

requirements of the applicable fire prevention code.
[Amended 3-20-1984]

- (k) A statement signed by the applicant for the permit authorizing the Building Inspector or his aide to enter upon the premises without a search warrant at any reasonable time during construction and thereafter until a certificate of occupancy is issued, if such certificate is required by this chapter.
 - (2) Application shall be made by the owner or lessee, or agent of either, or by the architect, engineer or builder employed in connection with the proposed work. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner or applicant that the proposed work is authorized by the owner and that the applicant is authorized to make such application.
- C. Each application for a building permit shall be accompanied by duplicate copies of plans and specifications, including a plot plan, drawn to scale, showing the location and size of all proposed new construction and all existing structures on the site; the nature and character of the work to be performed and the materials to be incorporated; the distance from lot lines; the relationship of structures on adjoining property; the widths and grades of adjoining streets, walks and alleys; and, where required by the Building Inspector, details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data. An additional plot plan indicating all the above-mentioned features and drawn to a scale of one (1) inch equals sixty (60) feet shall be required for all major new construction or alterations involving change of outside building dimensions. Plans and specifications shall bear the signature of the person responsible for the design and drawings and, where required by § 7202 or 7302, as amended, of Article 145 or 147 of the Education Law of the State of New York, the seal of a licensed professional engineer. The Building Inspector may waive the requirements for filing plans and specifications for minor alterations and issue a building permit so stating.
- D. Amendments, if any, to the application or to the plans and specifications accompanying the same shall be filed with the Building Inspector and approval shall be received from the Building Inspector prior to the commencement of such change of work.

§ 15-12. Fees.

Upon the filing of an application for a permit, the Building Inspector shall determine from the application the appropriate fee and shall enter the same on the application. Such fee is nonrefundable and shall be immediately due and payable in the office of the City Clerk. No permit shall be issued until the fee has been paid.

- A. Permit fees shall be based upon the following: [Amended 2-6-1990]
- (1) New buildings and additions.
 - (a) For residences, garages and room additions: a fee of two cents (\$0.02) per square foot of floor area, outside measure, of all floors up to one thousand five hundred (1,500) square feet, plus one cent (\$0.01) per square foot in excess of one thousand five hundred (1,500) square feet. Floor space shall not include cellars, nonhabitable attic, crawl space or carport, but shall include an accessory garage, detached or nondetached. The minimum fee shall be Ten Dollars (\$10.00).
 - (b) For commercial, business, professional, institutional, educational, fraternal, religious, recreational, hotels, motels, nursing homes, hospitals, convalescent and rest home buildings and other uses and occupancies not within Subsection A(1)(a) and (c): a fee of two cents (\$0.02) per square foot of floor area, outside measure, of all floors up to ten thousand (10,000) square feet, plus five-tenths cent (\$0.005) per square foot in excess of ten thousand (10,000) square feet. Floor space shall include garage space, occupied basements and storage areas and heating equipment structures. The minimum fee shall be Fifty Dollars (\$50.00), and the maximum fee shall be One Thousand Dollars (\$1,000.00).
 - (c) Industrial buildings, including floors used for manufacturing, processing, storing, shipping, offices and restroom: a fee of two cents (\$0.02) per square foot of floor area, outside measure, of all floors up to twenty thousand (20,000) square feet, plus five-tenths cent (\$0.005) per square foot in excess of twenty thousand (20,000) square feet. The minimum fee shall be Fifty Dollars (\$50.00), and the maximum fee shall be One Thousand Dollars (\$1,000.00).

- (2) Alterations (other than additions).
 - (a) Conversions of existing residence buildings to apartment uses: Fifteen Dollars (\$15.00) for each added housing occupancy.
 - (b) Conversions of existing residence buildings to office, business or commercial use: Twenty-Five Dollars (\$25.00).
 - (c) Fees for general remodeling shall be determined by the estimated cost of the proposed improvement. Such cost shall exclude the cost of any item where a specific fee is provided herein: up to Three Thousand Dollars (\$3,000.00), a fee of Ten Dollars (\$10.00), plus Two Dollars (\$2.00) per thousand dollars or fraction in excess of Three Thousand Dollars (\$3,000.00). The minimum fee shall be Ten Dollars (\$10.00) for residential, Fifty Dollars (\$50.00) commercial and Fifty Dollars (\$50.00) for industrial.
- (3) Miscellaneous.
 - (a) Used car sale lots: a fee of Twenty-Five Dollars (\$25.00), plus two cents (\$0.02) per square foot of floor area, outside measure, of all accessory buildings or structures.
 - (b) Open porches and patios, with or without roof, carports with two (2) sides only, swimming pools, tool sheds, play sheds: a fee of Ten Dollars (\$10.00).
 - (c) Demolition: a fee of Ten Dollars (\$10.00) per story for residential and a minimum fee of Fifty Dollars (\$50.00) for industrial for demolition of all buildings or structures.
- B. The permit fee for a building occupied in part for residential use and in part for nonresidential use shall be the sum of the two (2) occupancy fees calculated separately.
- C. In any case where construction has commenced prior to the submission of an application for a permit required by this code, the fee specified shall be double the amount otherwise payable, but the payment of such double fee shall not relieve any person from fully complying with this code, nor from any penalties prescribed herein.

- D. For the purpose of determining the fee to be charged, the use or occupancy classification of a building shall be determined in accordance with the use classification provided in the New York State Uniform Fire Prevention and Building Code. **[Amended 3-20-1984; 2-6-1990]**

§ 15-13. Issuance of building permit or disapproval of application.

- A. The Building Inspector shall examine or cause to be examined all applications for permits and the plans, specifications and documents filed therewith. He shall approve or disapprove the application within forty-five (45) days from the date of submission of the application.
- B. If the fees have been paid and the application, plot plans, plans and specifications conform to all the requirements of the applicable laws, ordinances, rules and regulations, then the application and the plot plans, plans and specifications shall be approved by the Building Inspector, and both sets of plans and specifications shall be endorsed with the word "approved." One (1) set of such approved plans shall be retained in the files of the office of the Building Inspector, and the other set shall be mailed or delivered to the applicant, together with the building permit, and shall be kept by the applicant at the building site open to inspection by the Building Inspector or his authorized representative at all reasonable times. The building permit shall be issued on a form prescribed by the Building Inspector, and he shall affix his signature thereto or cause it to be affixed thereto. With every permit there shall be issued to the applicant a card, not less than eight and one half by eleven (8 1/2 x 11) inches in size, properly filled out and bearing the permit number and signature of the Building Inspector. It shall be the duty of such applicant to display such card conspicuously on the premises where the work is being done so as to be easily seen and read from the ground.
- C. If the application, together with plans, specifications and other documents filed therewith, describes proposed work which does not conform to all of the requirements of the applicable building laws and regulations, the Building Inspector shall disapprove the same and shall return the plans and specifications to the applicant. Upon the request of the applicant, the Building Inspector shall cause such refusal, together with the reasons therefor, to be transmitted to the applicant in writing.
- D. Nothing in this section or any provision of this Article shall be construed as authorizing the Building Inspector to issue a permit if such proposed construction or use or occupancy will be in violation

of any provisions of Chapter 79 of the Code of the City of Dunkirk pertaining to zoning, and no proposed construction, use or occupancy shall commence and no building permit shall be issued unless and until the provisions of Chapter 79 shall have been complied with in every respect and the approval of the Zoning Board of Appeals, if required by Chapter 79, shall have been obtained. A refusal or denial of the Building Inspector to issue a building permit solely for lack of compliance with the provisions of Chapter 79, and any appeals from such a decision, shall be governed by the applicable provisions of Chapter 79. In the event that an application is denied solely for noncompliance with Chapter 79, the time limitation for approval or disapproval of an application specified in Subsection A of this section shall be extended, if necessary, by the length of time required to take an appeal to the Zoning Board of Appeals.

- E. Nothing in this chapter or any other chapter of the Code of the City of Dunkirk shall be construed as authorizing or empowering the Building Inspector to vary, alter or modify, in whole or in part, any provision or requirement of the New York State Uniform Fire Prevention and Building Code or exempt any person from compliance with its provisions. **[Amended 3-20-1984; 2-6-1990]**

§ 15-14. Stop orders.

Whenever the Building Inspector has reasonable grounds to believe that work on any building or structure is being prosecuted in violation of the provisions of the applicable building laws, ordinances or regulations, or not in conformity with the provisions of an application, the plans or the specifications on the basis of which a building permit was issued or in an unsafe and dangerous manner, he shall notify the owner of the property or the owner's agent or the person performing the work to suspend all work, and any such persons shall forthwith stop such work and suspend all building activities until the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by registered mail. Rescission of such stop order shall not be effective unless made in writing to the person to whom the order was directed.

§ 15-15. Revocation of permit.

The Building Inspector may revoke a building permit theretofore issued and approved in any of the following instances:

- A. When the application, plot plans, plans or specifications on which the permit is based contain a false statement or misrepresentation as to a material fact.
- B. When the permit was issued in error and should not have been issued in accordance with the applicable laws, ordinances, rules or regulations.
- C. When the work performed under the permit is not being prosecuted in accordance with the provisions of the application, plot plans, plans or specifications, or laws, ordinances, rules or regulations that may apply thereto.
- D. When the person, firm or corporation to whom a permit has been issued fails or refuses to comply with a stop order issued by the Building Inspector, his deputy or assistants.
- E. When the Building Inspector or his assistant has been denied right of entry to the premises for inspection. **[Amended 2-6-1990]**

§ 15-16. Commencement and performance of work under permit.

- A. A building permit shall be effective to authorize the commencing of work, in accordance with the application, plans and specifications on which it is based, for a period of six (6) months after the date of its issuance. For good cause, the Building Inspector may grant a maximum of two (2) extensions for periods not exceeding three (3) months each.
- B. The issuance of a building permit shall constitute authority to the applicant to proceed with the work in accordance with the approved application plus and specifications. All work shall conform to the approved application, plans and specifications and shall be in accordance with the applicable laws, ordinances, rules and regulations.

§ 15-17. Inspections and tests.

- A. The Building Inspector and his assistant, upon the showing of proper credentials and in the discharge of their duties, shall be permitted and may enter upon any building, structure or premises, without interference, at any reasonable hour. **[Amended 2-6-1990]**
- B. Whenever there are reasonable grounds to believe that any material, construction, equipment or assembly does not conform with the applicable building laws, ordinances or regulations, the Building

Inspector may require the same to be subjected to tests in order to furnish proof of such compliance. The cost of such tests shall not be at the expense of the City of Dunkirk.

§ 15-18. Certificate of occupancy.

- A. No building hereafter erected shall be used or occupied in whole or in part until a certificate of occupancy shall have been issued by the Building Inspector.
- B. No building hereafter enlarged, extended or altered or upon which work has been performed which required the issuance of a building permit shall continue to be occupied or used for more than thirty (30) days after the completion of the alteration or work unless a certificate of occupancy shall have been issued by the Building Inspector.
- C. No change shall be made in the use or type of occupancy of an existing building unless a certificate of occupancy authorizing such change shall have been issued by the Building Inspector.
- D. The owner or his agent shall make application for a certificate of occupancy. Accompanying this application and before the issuance of a certificate of occupancy there shall be filed with the Building Inspector an affidavit of the registered architect or licensed professional engineer who filed the original plan, or of the registered architect or licensed professional engineer who supervised the construction of the work, or of the superintendent of construction who supervised the work and who, by reason of his experience, is qualified to superintend the work for which the certificate of occupancy is sought. This affidavit shall state that the deponent has examined the approved plans of the structure for which a certificate of occupancy is sought, that the structure has been erected in accordance with approved plans and, as erected, complies with the law governing building construction except insofar as variations there from have been legally authorized. Such variations shall be specified in the affidavit.

§ 15-19. Inspection prior to issuance of certificate; records.

- A. Before issuing a certificate of occupancy, the Building Inspector shall examine or cause to be examined all buildings, structures and sites for which an application has been filed for a building permit to construct, enlarge, alter, repair, remove, demolish or change the use or occupancy, and he may conduct such inspections as he deems appropriate from time to time during and upon completion of the work for which a building permit has been issued.

- B. There shall be maintained in the office of the Building Inspector a record of all such examinations and inspections, together with a record of findings of violations of the law.

§ 15-20. Issuance and contents of certificate.

- A. When, after final inspection, it is found that the proposed work has been completed in accordance with the applicable building laws, ordinances and regulations and also in accordance with the application, plans and specifications filed in connection with the issuance of the building permit, the Building Inspector shall issue a certificate of occupancy upon the form provided by him. If it is found that the proposed work has not been properly completed, the Building Inspector shall refuse a certificate of occupancy and shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations.
- B. A certificate of occupancy shall be issued, where appropriate, within thirty (30) days after application therefore is made. Failure to act upon such application within thirty (30) days shall constitute approval of such application, and the building or portion thereof may thereafter be occupied as though a certificate of occupancy had been issued.
- C. The certificate of occupancy shall certify that the work has been completed and that the proposed use and occupancy are in conformity with the provisions of the applicable building laws, ordinances and regulations and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put. The fee shall be Thirty Dollars (\$30.00). [Amended 2-6-1990]

§ 15-21. Temporary certificate of occupancy.

Upon request, the Building Inspector may issue a temporary certificate of occupancy for a building or structure, or part thereof, before the entire work covered by the building permit shall have been completed, provided that such portion or portions as have been completed may be occupied safely without endangering life or the public health or welfare. A temporary certificate of occupancy shall remain effective for a period not exceeding three (3) months from its date of issuance. For good cause, the building official may allow a maximum of two (2) extensions for periods not exceeding three (3) months each.

§ 15-22. Abatement of violations; appearance tickets.

- A. Appropriate action and proceedings may be taken at law or in equity to prevent unlawful construction or plumbing work or to restrain, correct or abate a violation or to prevent illegal occupancy of a building, structure or premises or to prevent an illegal act, conduct, business or use in or about any premises. These remedies shall be in addition to penalties otherwise prescribed by law, and the imposition of the penalties herein prescribed shall not preclude the City Attorney from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion or maintenance of use or to restrain, correct or abate a violation or to prevent the occupancy of a building, structure or premises or to prevent an illegal act, conduct, business or use in or about any premises.
- B. Notwithstanding anything in Subsection A of this section, the Building Inspector shall have the power to issue an appearance ticket for legal proceedings in the City Court of Dunkirk, New York, upon failure of the responsible party to comply with a written order of the Building Inspector within the time fixed for compliance specified therein. The Building Inspector shall request the chief legal officer of the municipality to appear on behalf of the City at such proceeding. **[Added 2-6-1979 by L.L. No. 3-1978]**

§ 15-23. Penalties for offenses.

In accordance with Article 18 of the Executive Law of the State of New York:

- A. It shall be unlawful for any person to construct, alter, repair, move, equip, use or occupy any building or structure, or portion thereof in violation of any provision of this chapter or any applicable law or ordinance, as well as any regulation or rule promulgated by the Building Inspector, or to fail in any manner to comply with a notice, directive or order of the Building Inspector or to construct, alter, use or occupy any building or structure or part thereof in a manner not permitted by an approved building permit or certificate of occupancy.
- B. Any person who shall fail to comply with a written order of the Building Inspector, Fire Chief or Plumbing Inspector within the time fixed for compliance therewith, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building, who shall knowingly violate any of the applicable provisions of law or any lawful order, notice, directive, permit or certificate of the Building Inspector made thereunder shall be punishable by fine not to exceed Two Hundred

Fifty Dollars (\$250.00) or by imprisonment not to exceed thirty (30) days, or both. Each day that the violation continues shall be deemed a separate offense.

- C. Except as provided otherwise by law, such a violation shall not be a crime, and the penalty or punishment imposed therefore shall not be deemed for any purpose a penal or criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness or otherwise, of any person found guilty of such an offense.

§ 15-24. Severability.

If any term, part, provision, section, subdivision or paragraph of this Article shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions and paragraphs thereof.

§ 15-25. When effective. [Amended 2-6-1990]

This Article shall be in full force and effect immediately upon publication as provided by law, except that it shall take effect from the date of its service as against a person served personally with a certified copy thereof notwithstanding a lack of publication; to take effect January 1, 1990.

CHAPTER 16

(RESERVED)

CHAPTER 17

BUILDINGS, FUMIGATION OF

§ 17-1.	Application of chapter.....	1701
§ 17-2.	Definitions.....	1701
§ 17-3.	Permit required.....	1702
§ 17-4.	Written notification of fumigation required.....	1702
§ 17-5.	Posting of warning signs; content; illumination.....	1702
§ 17-6.	Ventilation following fumigation; notice of completion.....	1703
§ 17-7.	When effective.....	1703

[HISTORY: Adopted by the Common Council of the City of Dunkirk 12-3-1940 as Chapter XXVI-D of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

GENERAL REFERENCES

Air pollution -	See Ch.. 4.
Building construction -	See Ch. 15.
Unsafe buildings or structures -	See Ch. 18.
Fire prevention -	See Ch. 32.
Housing standards -	See Ch. 41.

§ 17-1. Application of chapter.

This chapter shall apply to fumigation in buildings, ships or other similar enclosed spaces, except greenhouses, mushroom houses, horticultural and farm fumigations and the control of burrowing animals outside of buildings.

§ 17-2. Definitions.

FUMIGANT - As used herein, shall mean and include any substance which, by itself or in combination with any other substance, emits or liberates a gas, fume or vapor used for the destruction or control of insects, fungi, vermin, germs, rodents, or other pests, and shall be

distinguished from insecticides and disinfectants which are essentially effective in the solid or liquid phases.

PERSONS - As used herein, includes corporations and copartnerships as well as individuals.

§ 17-3. Permit Required.

No person shall use any fumigant which is dangerous, noxious or poisonous to the life or health of human beings, or which constitutes a fire hazard, without obtaining a permit from the City Clerk.

§ 17-4. Written notification of fumigation required.

The holder of a "fumigant permit" shall notify, in writing, the Chief of the Fire Department and the Chief of the Police Department of the performance of a fumigation at least twenty-four (24) hours prior to the time set for the fumigation.

§ 17-5. Posting of warning signs; content; illumination.

- A. Prior to the fumigation, suitable warning signs shall be posted on all doors or entrances to the premises to be fumigated, and upon all gangplanks, ladders, etc., from the docks pier or land to the ship, as follows:

DANGER

FUMIGATED WITH

Crossbones	(State name of chemical or gas)	Crossbones
and		and
Skull		Skull

DEADLY POISON--HIGHLY TOXIC

ALL PERSONS ARE WARNED TO KEEP AWAY

- B. Such signs shall be printed in red ink on white cardboard, letters in the headlines to be at least two (2) inches in height. At night such signs shall be illuminated or so placed as to make the reading matter thereon plainly legible.

§ 17-6. Ventilation following fumigation; notice of completion.

Under no circumstances shall a person, other than those in charge of the fumigation, enter the premises which have been fumigated within four (4) hours after ventilation was started. When the above shall have been completed, the operator shall remove warning signs and notify the Chief of the Fire Department and the Chief of the Police Department that the fumigation has been completed and premises adequately ventilated.

§ 17-7. When effective.

This chapter shall take effect immediately.

CHAPTER 18

BUILDINGS OR STRUCTURES, UNSAFE

§ 18-1.	Procedure for repair or removal.....	1801
§ 18-2.	Filing of notice to repair or remove; effect; vacation.....	1802
§ 18-3.	Repair or removal by City; lien for costs.....	1803
§ 18-4.	Inconsistent ordinances repealed	1803
§ 18-5.	Effective date	1803

[HISTORY: Adopted by the Common Council for the City of Dunkirk 7-5-1966 as Chapter XXXV of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

GENERAL REFERENCES

Billboards and advertising structures -	See Ch. 11.
Building construction -	See Ch. 15.
Fire prevention -	See Ch. 32.
Housing standards -	See Ch. 41.
Removal of plant growth -	See Ch. 53.

§ 18-1. Procedure for repair or removal.

- A. The Common Council of the City of Dunkirk may after compliance with the procedural steps hereinafter set forth, order the repair or removal of any building or structure or any parts thereof, which become or are abandoned, dilapidated, deteriorated, decayed or unattractive from any cause so as to endanger the health, safety or welfare of the public.

- B. Prior to the issuance of any order to remove or repair any building or structure in the City of Dunkirk, the Common Council shall:

- (1) Direct the Building Inspector of the City to inspect the building or structure alleged to be a danger to the health, safety or welfare of the public, and to report the result of his inspection to the Common Council.
- (2) In the event the Building Inspector shall report that, in his opinion, the building or structure under consideration is a danger to the health, safety or welfare of the public and should be repaired or removed, the Common Council may direct the Building Inspector to serve a notice to repair or remove upon the owner and all other persons having an interest in such property or structure, either personally or by registered mail, addressed to his/their last known address as it appears on the current tax assessment roll of the City of Dunkirk. If service of said notice be by registered mail, a copy of the notice shall be posted upon the premises on or before the date of mailing.
- (3) Said notice to repair or remove shall contain a description of the premises. A statement of the particulars in which the building or structure is unsafe or dangerous, a statement that repair or removal of the building or structure shall commence within thirty (30) days of service of the notice, a provision for a hearing before the Building Inspector at his office in the City of Dunkirk, New York, at a time established by him, not less than three (3) nor more than ten (10) days from the services of the notice.
- (4) Said hearing shall be held for the purpose of determining whether a reasonable basis exists for the owner or interested parties to be relieved of an order to repair or remove the building or structure under consideration. The Building Inspector shall thereafter report his determination, together with his recommendation, to the Common Council, within five (5) days of said hearing.

§ 18-2. Filing of notice to repair or remove; elect; vacation.

The Building Inspector shall cause to be filed forthwith a copy of the notice to repair or remove in the office of the Clerk of Chautauqua County. Said notice shall be filed with the Clerk in the same manner as a notice of pendency, pursuant to Article 65 of the Civil Practice Law and Rules of New York State, and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this paragraph. A notice so filed shall be effective for a period of one (1) year from the date of filing; provided, however, that it may be vacated upon the order of a judge or justice of a court of record or

upon the consent of the City Attorney. The Clerk shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent or a certified copy of such order.

§ 18-3. Repair or removal by City; lien for costs.

In the event the owner shall fail to comply with the notice to repair or remove within the time therein provided or any extension thereof, the Common Council may order the repair or removal of such building or structure by the City. All costs and expenses incurred by the City in connection with the proceedings to repair or remove such building or structure, including the cost of actually repairing or removing the same, shall be assessed against the land and remain in lien thereon until discharged.

§ 18-4. Inconsistent ordinances repealed.

All ordinances previously enacted which are inconsistent herewith are hereby repealed.

§ 18-5. Effective date.

This chapter shall take effect July 10, 1966

CHAPTER 19
CABLE TELEVISION AND COMMUNICATIONS
ADVISORY BOARD

§ 19-1. **Creation** 1901

§ 19-2. **Membership; terms; officers; vacancies; quorum** 1901
 [Amended 3-20-1984 by L.L. #1-1984; Amended 6-6-1989 by L.L. #2-1989]

§ 19-3. **(Reserved)** 1902

§ 19-4. **Qualifications for membership** 1902

§ 19-5. **Compensation** 1902

§ 19-6. **Removal from office** 1902

§ 19-7. **Powers and duties** 1902

§ 19-8. **Funds for operation** 1903

§ 19-9. **When effective** 1903

[HISTORY: Adopted by the Common Council of the City of Dunkirk 10-4-1983 as Local Law No. 3-1983. Amendments noted where applicable.]

§ 19-1. Creation.

There is hereby created a board which shall be referred to and known as the “Dunkirk Cable Television and Communications Advisory Board”

§ 19-2. Membership; terms; officers; vacancies; quorum. [Amended 3-20-1984 by L.L. #1,-1984; Amended 6-6-1989 by L.L. #2-1989]

The Board shall be composed of seven (7) members appointed by the

Mayor of the City of Dunkirk for two-year terms; provided, however, that of the original seven (7) members first appointed, four (4) shall be for two-year periods and three (3) for one-year periods. Their successors shall be appointed for terms of two (2) years each. Members shall continue in office until their successors have been appointed and qualified. The Board members shall select a Chairman, Vice Chairman, Secretary and any other officers from their membership as the Board may determine. Vacancies in the Board shall be filled in the same manner as original appointments. The quorum for the transaction of business shall consist of at least four (4) Board members; provided, however, that no official action of the Board may be taken with less than the concurring vote of three (3) members of said Board.

§ 19-3. (Reserved)

§ 19-4. Qualifications for membership.

Board members shall be residents of the City of Dunkirk and shall be representative of various interests of the community, including, so far as possible, members representative of education, business, government, general citizenry and minority interest.

§ 19-5. Compensation.

Members of the Board shall serve without compensation, except for actual and necessary expenses incurred in the course of their duties and responsibilities upon prior approval by the Common Council. Such expenses may include those expenses which at the discretion of the Common Council of the City of Dunkirk are deemed to be actual and necessary in the discharge of said Board members' duties.

§ 19-6. Removal from office.

Members may be removed from office at any time by the appointing authority of the City of Dunkirk.

§ 19-7. Powers and duties.

The Dunkirk Cable Television and Communications Advisory Board shall have the following duties:

- A. Make recommendations to the Common Council of the City of Dunkirk concerning any aspect of the cable television franchise with the City of Dunkirk or any proposed franchise or amendment thereto.

- B. Review and make recommendations to the Common Council of the City of Dunkirk pertaining to public access channel programming and the use of the public access channel pursuant to the terms of the franchise agreement or any proposed franchise or amendment thereto
- C. Review and make recommendations to the Common Council of the City of Dunkirk on state and federal laws and regulations concerning cable television.
- D. Prepare and make public a written annual report on its activities and programming during the previous year.
- E. Recommended local laws, ordinances, rules and regulations and franchise amendments necessary to carry out the functions of the Advisory Board.
- F. Act as a hearing board and advisory board to the Common Council of the City of Dunkirk on items concerning cable line extension, service, access to public channels, quality or programming, ads sponsorship, underwriting rates, franchise rates and requests for increases, franchise fees, etc.
- G. Review and make recommendations to the Common Council on franchise amendments and renewals.
- H. Submit annually to the Mayor and City of Dunkirk Common Council any budgetary requests for inclusion in any subsequent year's budget.
- I. Take minutes of every meeting of the Advisory Board and file minutes of said meetings within ten (10) days with the City Clerk of the City of Dunkirk.
- J. Establish, consistent with this local law, such rules and regulations as may be necessary for the conduct of the meetings of the Advisory Board in the performance of its duties.

§ 19-8. Funds for operation.

The Common Council of the City of Dunkirk is hereby authorized to set forth, in any subsequent City budgets, such sum of money as the City Council may approve for the purpose of the operation of the Dunkirk Cable Television and Communications Advisory Board.

§ 19-9. When effective.

This local law shall take effect immediately.

CHAPTER 19A

CATS

§ 19A-1.	Purpose and intent.....	1901A
§ 19A-2.	Definitions.....	1901A
§ 19A-3.	Regulations and restrictions upon cats	1902A
§ 19A-4.	Damage, nuisance and disturbance by cats prohibited ...	1902A
§ 19A-5.	Seizure of cats at large	1902A
§ 19A-6.	Penalties for offenses	1903A
§ 19A-7.	Severability	1903A
§ 19A-8.	Effective date	1903A

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 7-6-1995 as L.L. #18 (Intro #20) 1995. Amendments noted where applicable.]

§ 19A-1. Purpose and intent.

The purpose and intent of this chapter shall be to preserve the public peace and good order in this City and to promote the general welfare and the preservation and protection of the property and the person of residents of this City by the enforcement of regulations and restrictions on activities of stray cats within the municipality.

§ 19A-2. Definitions.

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

ANIMAL CONTROL OFFICER - A person appointed by the Common Council of the City of Dunkirk for the purpose of enforcing this chapter. For purposes of this chapter, an "Animal Control Officer" shall be deemed a peace officer.

AT-LARGE - Any stray cat off the premises of the owner, except as otherwise specifically provided by this chapter.

CAT - Both male and female of the species.

CITY - The City of Dunkirk, New York.

OWNER - Includes any person who owns, keeps, harbors or has the care, custody or control of a cat. Cat owners by minors under the age of eighteen (18) years shall be deemed to be in the custody and control of the minor's parents or head of the household where such minor resides.

§ 19A-3. Regulations and restrictions upon cats.

All cats and cat owners within the City shall be subject to the following regulations and restrictions:

- A. No person owning or having the care and custody of a cat shall permit such cat to be at large within the City elsewhere than on the premises of the owner, except on the premises of another person with the knowledge and consent of such other person.
- B. The fact that a cat is at large within the City elsewhere than on the premises of the owner or the premises of another person consenting thereto shall be presumptive evidence that the cat has been permitted to be at large with the knowledge of the owner.
- C. A premise shall not contain more than three (3) adult cats regularly residing upon the premises.

§ 19A-4. Damage, nuisance and disturbance by cats prohibited.

The owner of a cat shall not permit such cat to do any of the following acts:

- A. Damage or deface property not belonging to the owner.
- B. Deposit waste or commit a nuisance on the property of a person other than that of the owner.
- C. Howl so as to disturb or annoy any person or persons.

§ 19A-5. Seizure of cats at large.

- A. Any cat found at large within the City may be seized and confined by any duly appointed Animal Control Officer, peace officer or duly authorized officer or representative of the City. Any cat which, when found at large, cannot, in the opinion of the Animal Control Officer, peace officer or duly authorized representative of the City, be safely seized may be destroyed.
- B. Any cat seized pursuant to the provisions of this chapter shall be fed, cared for and disposed of in the same manner as dogs, in accordance with the provisions of § 118 of the New York State Agriculture and Markets Law, except as cats are not licensed, the owner of record need not be determined or notified.

§ 19A-6. Penalties for offenses.

Any person violating the provisions of this chapter shall be subject to a fine and/or imprisonment the same as that provided for in Chapter 25-Dogs and as set forth in § 119 of Article 7 of the New York State Agriculture and Markets Law.

§ 19A-7. Severability.

In the event that any portion of this chapter shall be declared invalid, the remainder thereof shall not be affected thereby and shall remain in full force and effect.

§ 19A-8. Effective date.

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

CHAPTER 20

CURFEW

§ 20-1.	Purpose	2001
§ 20-2.	Definitions	2001
§ 20-3.	Hours established	2002
	[Amended on 5-16-1995 as L.L. #14-1995]	
§ 20-4.	Exceptions	2002
§ 20-5.	Enforcement	2003
	[Amended on 5-16-1995 as L.L. #14-1995]	
§ 20-6.	Penalty	2004
	[Amended on 5-16-1995 as L.L. #14-1995]	

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 8-5-1993 as L.L. No.10-1993; Amended on 5-16-1995 as L.L. #14-1995. Amendments noted where applicable.]

§ 20-1. Purpose.

A curfew is necessary to further the public health, safety, morals and general welfare of the City and specifically to further the following interests:

- A. The reduction of the incidence of juvenile criminal activity and vandalism.
- B. The protection of the public from nocturnal mischief by minors.
- C. Helping parents control their children.
- D. The protection of children from others on the street during nighttime hours.

§ 20-2. Definitions.

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

CITY - the City of Dunkirk, New York.

§ 20-3. Hours Established. [Amended on 5-16-1995 as L.L. No. 14-

1995]

It shall be unlawful for any minor under the age of seventeen (17) years to remain in or upon any public place including, but not limited to, public streets, playgrounds, buildings, vacant lots or any other place open to the public in the City, between the hours of 12:00 a.m. and 6:00 a.m. of the following day and more specifically between the hours of 10:30 p.m. and 6:00 a.m. of the following day in Point Gratiot, between the hours of 9:00 p.m. and 6:00 a.m. of the following day in Washington Park and between the hours of 11:00 p.m. and 6:00 a.m. of the following day in the remaining City parks. Hours shall be Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect.

Subject to the exceptions set forth in § 20-4 of this chapter, it shall be unlawful for the parents or guardian of any minor under the age of seventeen (17) years knowingly or negligently by insufficient control to allow such minor to congregate, loiter, wander or play in or upon any public place including but not limited to, public streets, playgrounds, buildings, vacant lots, or any other place open to the public in the City, between the hours of 12:00 a.m. and 6:00 a.m. of the following day and more specifically between the hours of 10:30 p.m. and 6:00 a.m. of the following day in Point Gratiot, between the hours of 9:00 p.m. and 6:00 a.m. of the following day in Washington Park and between the hours of 11:00 p.m. and 6:00 a.m. of the following day in the remaining City Parks as listed in Chapter 49 of the City Code. Hours shall be Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect.

§ 20-4. Exceptions.

A person under the age of seventeen (17) years shall not be considered in violation of this chapter under the following circumstances:

- A. When accompanied by a parent or legal guardian of such juvenile.
- B. When accompanied by a person at least twenty-one (21) years of age, authorized by a parent or legal guardian of such juvenile, in writing, to take such parent's place in accompanying such juvenile for a designated period of time and purpose within a specified area.
- C. In the case of emergency involving a threat to life or property.
- D. When returning home by a direct route from and within one-half (1/2) hour after the termination of school-sponsored activity or an activity of a religious or other civic association.
- E. When returning home by a direct route from the juvenile's lawful and gainful employment.

- F. If the minor is exercising First Amendment rights protected by the Constitution, such as free exercise of religion, speech or assembly, provided the minor first has given notice to the Chief of Police by delivering a written communication signed by the minor and countersigned by a parent or legal guardian of the minor which specifies when, where, in what manner and for what purpose the minor will be on the streets at night during the curfew period.
- G. Until the hour of 12:30 a.m., if the child is on the property of, or the sidewalk directly adjacent to, the building in which he or she resides, or the buildings immediately adjacent thereto, if the owner of the building does not object.

§ 20-5. Enforcement.

- A. Any police or peace officer, upon finding a minor under the age of seventeen (17) years in violation of § 20-3 of this chapter, shall ascertain the name and address of the minor and warn the minor that he/she is in violation of curfew and shall direct the minor to proceed at once to his or her home or usual place of abode. The police or peace officer shall report such action to the parents or legal guardian of the minor.
- B. If such minor under the age of seventeen (17) years refuses to heed the warning or direction given by any police or peace officer or refuses to give the police or peace officer his/her correct name and address, or if the minor has been warned on a previous occasion that he/she was in violation of curfew, such minor shall be taken to the Dunkirk Police Station and the parent or legal guardian of the minor shall be notified to come and take charge of minor.
- C. Any person, whether a child or parent or guardian, who violates this Chapter shall be issued an appropriate citation as indicated in §20-6 and/or be arrested or otherwise dealt with in accordance with the law. **[Amended 5-16-1995 as L.L. #14-1995]**

§ 20-6. Penalty. [Amended 5-16-1995 as L.L. #14-1995]

Any person, whether a child or parent or guardian, in violation of §20-3 of this chapter shall:

- A. Upon the first violation be issued a warning citation;
- B. Upon the second violation be subject to a fine of not more than Two Hundred Fifty Dollars (\$250.00) and/or sentenced to not more than fifteen (15) days in jail for each offense and/or be sentenced

to not more than one hundred (100) hours of community service.

CHAPTER 21

(R E S E R V E D)

CHAPTER 22

[Editors Note: Former Chapter 22, Department of Development, adopted 12-3-1974, was superseded by Article XIV of the City Charter, adopted 8-2-1977 as Local Law #5-1977.]

DEFENSE AND INDEMNIFICATION

§ 22-1. State law benefits conferred2201
§ 22-2. Police officers2201
 [Added 8-6-1992; Editors Note: This resolution also repealed former § 22-2. Publication: when effective.]

[HISTORY: Adopted by the Common Council of the City of Dunkirk 1-18-1983 by resolution. Amendments noted where applicable.]

§ 22-1. State law benefits conferred.

The Dunkirk Common Council hereby confers the benefits of § 18 of the New York State Public Office Law upon its officers and employees of the City of Dunkirk and agrees that the City of Dunkirk be held liable for the cost incurred under the provisions of such section.

§ 22-2. Police Officers. [Added 8-6-1992; Editors Note: This resolution also repealed former § 22-2. Publication: when effective.]

- A. In addition to the requirements of § 50-j, Subdivision 1, of the General Municipal Law, the City of Dunkirk hereby agrees to provide for the defense of any civil action or proceeding brought against a duly appointed police officer of the City of Dunkirk and shall indemnify and save harmless such police officer from any judgment of a court of competent jurisdiction whenever such action, proceeding or judgment is for punitive or exemplary damages, arising out of a negligent act or other tort of such police officer committed while in the proper discharge or his/her duties and within the scope of his/her duties and within the scope of his/her employment. The City of Dunkirk is hereby authorized and empowered to purchase insurance to cover the cost of such defense and indemnification.
- B. The determination of whether any such police officer properly discharged his/her duties within the scope of the officer's

employment shall be made in a manner which shall be promulgated by the Mayor and adopted by the Dunkirk Common Council.

CHAPTER 23

(R E S E R V E D)

CHAPTER 24

DOCK AND HARBOR USE
[Amended on 3-21-1995 as L.L. #4-1995]

ARTICLE I
General Provisions

§ 24-1. Purpose 2403
§ 24-2. Definitions; word usage..... 2403

ARTICLE II
Dock Use

§ 24-3. Dock regulations 2407
§ 24-4. Additional safety requirements for common carriers of
passengers 2409

ARTICLE III
Harbor Area

§ 24-5. General regulations..... 2411

ARTICLE IV
Administration and Enforcement

§ 24-6. Forfeiture of licenses and permits 2414
§ 24-7. Responsibility for damage..... 2414
§ 24-8. Abandoned vessels 2414

ARTICLE V
Small Vessel Launch

§ 24-9. Applicability 2416
§ 24-10. Fees and collection procedure..... 2416

ARTICLE VI
Miscellaneous Provisions

§ 24-11.	Disclaimer of liability.....	2417
§ 24-12.	Construal.....	2417

**ARTICLE VII
Penalties**

§ 24-13.	Penalties for offenses	2418
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**ARTICLE VIII
Greater Dunkirk Area Harbor Commission**

§ 24-14.	Purpose	2419
§ 24-15.	Membership	2419
§ 24-16.	Constitution and By-Laws	2420

[HISTORY: Adopted by the Common Council of the City of Dunkirk 7-20-1982; amended in its entirety 2-21-1989, 12-16-1993 and 3-21-1995. Subsequent amendments noted where applicable.]

ARTICLE I
General Provisions

§ 24-1. Purpose.

The Mayor and Common Council of the City of Dunkirk hereby declare the waters of the harbor and public facilities incident thereto to be irreplaceable valuable public resources which should be protected and enhanced. The Mayor and Council seek to protect and enhance these resources by means of this chapter by providing for the safety, health and comfort of persons using the waterways of shorelines thereof, establishing standards of safe operation and equipment, providing for the enforcement thereof, and providing penalties for the violation thereof.

§ 24-2. Definitions.

- A. The following terms, when used in this chapter, unless otherwise expressly stated or unless the context of the language or subject matter indicates that a different meaning or application was intended, shall be deemed to mean and include:

AIDS TO NAVIGATION - Buoys, beacons or other fixed objects in the water which are used to mark obstructions to navigation, or to direct navigation through safe channels.

BATHING BEACHES - Areas for swimming and similar activities designated by the Common Council.

BREAKWALL - See Breakwater

BREAKWATER - A structure designated for providing protection from wind and wave action.

CITY - The City of Dunkirk, New York.

COMMERCIAL FISHING - The ongoing business of fishing for wholesale and/or retail sale of fish to the public at large, which is engaged in to produce a profit from year to year.

DEPARTMENT - The Department of Public Works of the City.

DIRECTOR - The Director of Public Works.

DOCK - The public Dock located at the foot of Central Avenue in the City.

EAST INNER HARBOR - The part of the inner harbor east of the City Dock

EAST MIDDLE HARBOR - All the middle harbor east of a line from the northeast corner of the City Dock northerly to the outer island breakwall (United States breakwater).

FLOATING OBJECTS - Any anchored marker or platform floating on the surface of the water other than aids to navigation, and shall include, but not be limited to, floating tire breakwaters, bathing beach markers, speed zone markers, swimming or diving floats, mooring buoys, fishing buoys and ski jumps.

GREATER DUNKIRK AREA HARBOR COMMISSION - Volunteer group of seven (7) citizens appointed by the Mayor to advise Mayor and Common Council on matters relating to Greater Dunkirk Harbor Area.

HARBOR - The area being south of an imaginary line commencing with the Point Gratiot Lighthouse, running easterly to the northernmost point of Battery Park and being bounded on the south by the Lake Erie shoreline.

HARBORMASTER - Appointed by the Mayor and empowered to enforce the provisions of this chapter.

INNER HARBOR - Beginning where the east inner breakwall is connected to the lakewall at the foot of Main Street; thence westerly along the east and west inner breakwall to its westernmost point; thence northwesterly to the Niagara Mohawk Power Company thermal discharge; thence southwesterly and south along the shoreline to where it joins the lakewall; thence easterly along lakewall to point of beginning.

MIDDLE HARBOR - Beginning at the shore area of the outermost point of Battery Point; thence southwest along shoreline lakewall to the foot of Main Street; beginning where the east inner breakwall is connected to the lakewall at the foot of Main Street; thence westerly along the east and west inner breakwall of its westernmost point, thence northwesterly to the Niagara Mohawk Power Company thermal discharge; thence northeast and northwesterly along Niagara Mohawk Power Company property to where it joins the breakwall at the pierhead lights; thence across the channel to the outer island wall (United States breakwater), easterly along the center line of such wall to its easternmost point; thence eastward along an imaginary line to the point of beginning.

NO-WAKE ZONE - An area defined by the line beginning at the foot of

Main Street extending westerly along the East and West Inner Breakwater structures and an imaginary line from the northwesterly point of the West Breakwater to the southeast corner of the Niagara Mohawk Power Corporation breakwall. It includes the entire area southerly and easterly of this line to the lakefront breakwalls and the existing shoreline and a 200' radius at the end of the City Pier.

NYSDEC - New York State Department of Environmental Conservation.

OUTER HARBOR - That area being south of an imaginary line commencing with the Point Gratiot Lighthouse, running easterly to the northernmost point of Battery Park and being bounded on the south by the outer U.S. breakwater

OPERATOR - An individual who operates or navigates a vessel.

OWNER - The person actually holding title to a vessel, including a person who charters a vessel for more than thirty (30) days.

STATE - The State of New York, its departments and agencies.

VESSEL - Any floating craft:

- (1) All vessels shall belong to either a commercial or pleasure class:
 - (a) **COMMERCIAL VESSEL** - Every vessel which is used or operated for commercial or charter purposes.
 - (b) **CHARTER VESSEL** - Any vessels carrying passengers for hire.
 - (c) **PLEASURE VESSEL** - Every vessel not within the classification of commercial vessel.
 - (d) **PERSONAL WATER CRAFT** - A vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel.
- (2) Except where allowable by law, any vessels owned and operated by the State of New York or any department of the

United States Government are excluded from the application of this chapter.

WATERSKIING - Towing a person on water skis, surfboard or similar devices.

WEST INNER HARBOR - That part of the inner harbor west of the City Dock.

WEST MIDDLE HARBOR - All the middle harbor west of a line from the northeast corner of the City Dock, northerly to the outer island breakwall (United States breakwater).

WHARF - Any structure built or maintained for the purpose of providing a berthing place for vessels, excluding the City Dock.

ARTICLE II Dock Use

§ 24-3. Dock regulations.

- A. (1) Pleasure vessels shall have the right to tie up on the side of the Dock, as directed by the Harbormaster and pursuant to the supervision of the Harbormaster.
- (2) Such pleasure vessels may be allowed to maximum tie-up time of three (3) hours before a fee is imposed.

- (3) The fee charged for any pleasure vessel tying up for more than the three-hour limit shall be as follows:
 - (a) Ten Dollars (\$10.00) for the balance of a twenty-four hour period, which period shall be deemed to have commenced at the time such vessel first tied up.
 - (b) An additional Ten Dollars (\$10.00) for each twenty-four hour period or fraction thereof; however, no tie-up period shall exceed seventy-two (72) hours, except at the discretion of the Harbormaster, or due to a bona fide emergency situation as determined by the Harbormaster.
- B.
 - (1) Commercial vessels shall tie up on the side of the Dock under the direction/supervisions of the Harbormaster.
 - (2) Unless such commercial vessels are taking refuge in the harbor area, no such vessel shall be allowed to tie without a proper permit.
- C.
 - (1) A commercial vessel permit shall be available on a seasonal basis for a fee, which fee shall include the right to hook into and use the City's electrical power.
 - (2) The seasonal fee for a commercial vessel permit shall thereafter be set each year by the Dunkirk Common Council.
 - (3) If for any year the Common Council shall not specifically establish a fee for such a permit, then such permit fee for any such year shall be the same fee as charged in the year immediately prior to such year.
 - (4) Permits for such vessels shall be available at the City Clerk's office during the normal business hours.
 - (5) No such permit shall be issued without proof of liability insurance in an amount deemed sufficient by the Department of Law and a current vessel registration certificate.
 - (6) Short-term commercial use of the Dock, other than by seasonal permit, shall be allowed only by authorization of the Harbormaster and on such terms and conditions as the Harbormaster may impose for the specific short-term use as necessary to safeguard the Dock and the general health,

safety and welfare of the public

- D. All vessels which tie up shall use proper Coast Guard tie-up procedures and shall be equipped according to Coast Guard regulations.
- E. The vehicle speed limit on the Dock shall be five (5) miles per hour.
- F.
 - (1) Parking on the Dock shall only be allowed in those areas designated by stripes for such parking.
 - (2) In the event that there are no stripes, or that such stripes are not distinguishable, the parking shall be restricted to center aisle of the Dock on a twelve-month basis.
 - (3) The only vehicle permitted to park or stand on the Dock between the hours of midnight and 6:00 a.m. shall be official vehicles, vehicles of active fisherman, and vehicles of persons launching, retrieving or gaining proper access to a vessel.
 - (4) Vehicles shall not park or stand, except where specifically authorized.
 - (5) The following are prohibited on the Dock and designated parking areas for launch vehicles and vessel trailers:
 - (a) Overnight camping.
 - (b) Excessive noise, including but not limited to, any excessive volume of music from radios, stereos, and tape players.
 - (c) Parking or standing vehicles, or placing objects, in a manner that prevents the full utilization or parking and recreational areas for parking and recreation by all.
 - (d) Motor homes.
 - (6) Designated parking for launch vehicles and vessel trailers extends from Lake Shore Drive East along the western boundary of the Chadwick Bay Marina to the intersection of the Dock and lakefront breakwall, and bounded on the west by Central Avenue, and those spaces north of the traffic island, as designated.

- G. Littering on the Dock shall be a violation.
- H. (1) It shall be a violation to throw any object off the Dock, except that fishing tackle may be coast off the Dock in the normal course of fishing procedures.
(2) Emergency lifesaving equipment shall be exempted from the provisions of this subsection.
- I. It shall be a violation to store any material on the Dock unless such storage is part of a commercial use for which a commercial permit has been previously obtained.

§ 24-4. Additional safety requirements for common carriers of passengers.

In addition to or supplementing other safety rules and regulation herein recited or referenced, the following rules shall apply in the case of common carriers of passengers with respect to operations, properties or areas under the jurisdiction of the City:

- A. Vessels shall be securely moored with adequate lines in place before embarking or discharging passengers.
- B. Vessels shall have ramps and gangways meeting Coast Guard safety requirements for embarking or disembarking passengers between vessel and Dock, together with personnel to give assistance as required.
- C. Vessels shall have proper dock and navigation lighting during hours of darkness or twilight.
- D. The landing place shall have a life ring available for emergency use in addition to life rings on any vessel.

**ARTICLE III
Harbor Area**

§ 24-5. General regulations.

- A. (1) The speed limit in the middle and inner harbor shall be five (5) miles per hours, except in designated waterskiing areas.
- (2) Persons shall not create a wake in a no-wake zone.
- B. Swimming off the Dock, the inner or outer breakwalls and the western shoreline lakewall is prohibited, except in those areas so designated as swimming areas by the City of Dunkirk.
- C. Bicycles shall not be permitted on the breakwalls or footbridge which connects the easterly breakwall to North Main Street.
- D. Trolling shall be prohibited within a distance one hundred (100) feet from any point of the City Dock.
- E. Waterskiing is permitted in the east middle harbor, subject to the following restrictions:
 - (1) Tow vessels and tows shall remain not less than 200 feet

from the pier and breakwall.

- (2) All vessels and tows shall remain not less than 500 feet from the swimming areas.
- F. Duck hunting/waterfowl hunting will be allowed in the middle harbor north of the navigation channel and a parallel line 1,000 feet along the outer U.S. breakwall and outer harbor within the regulations of the United States Fish and Wildlife Service and NYSDEC.
- G. Duck hunting/waterfowl hunting is prohibited in the marked navigation channels.
- H. No person shall operate any vessels within five hundred (500) feet of any shore or beach which is clearly marked by signs, buoys or some other distinguished device as a bathing or swimming area.
- I.
 - (1) No person shall moor, tie to or anchor any vessel in any recognized passageway or channel nor to any channel marker or buoy or otherwise interfere with the full use of such passageways or channels by others, nor shall any person moor a vessel to a private dock or pier without permission.
 - (2) No vessel shall be moored or anchored at the site of any construction work or construction, repair or dredging equipment
 - (3) No vessel shall be moored or anchored in the riparian rights area of the City without permission from the Common Council.
- J. No person shall use an inflatable mattress, inner tube or similar water toy in any area where vessels are permitted to operate.
- K. Any vessel or barge, whether loaded or empty, which carries, has carried or is designated for the carriage of flammable volatile or explosive materials, except for its own fuel, shall not be docked or moored at any dock or mooring area owned by the City, until written permission has been secured from the Harbormaster and shall be thereafter docked or moored strictly in accordance with the terms of such permission
- L.
 - (1) Commercial bait fishing will be allowed by a permit issued by the City Clerk.

- (2) Application for a commercial bait fishing permit shall be made between November 1, and January 31.
- (3) Permit will expire at the end of the year that it is issued.
- (4) Permit fee shall be set forth in Chapter 31 of the Dunkirk City Code.
- (5) Application is subject to approval by Harbor Commission, Harbormaster and Common Council.
- (6) Permit is revocable at any time by Dunkirk Police Department or Harbormaster for any poor bait fishing practices, or violation of NYSDEC regulations.
- (7) Bait fishing will be limited to two (2) permitholders at any one time.
- (8) The Harbor Commission reserves the right to control the amount of bait taken by a permitholder.

ARTICLE IV
Administration and Enforcement

§ 24-6. Forfeiture of licenses and permits.

- (1) Any person violating any provision of this chapter or any rule, regulation or order issued hereunder shall be deemed to forfeit his/her license, special commercial permit or dockage permits as the case may be.
- (2) Any person submitting a false statement on any application shall also forfeit his/her license or permit.
- (3) No refund or any fee shall be made if a license or permit is forfeited.

§ 24-7. Responsibility for damage.

- (1) If any vessel causes any damage or the Dock and/or any wharf, breakwater, navigation aid or floating object in the harbor, the owner and/or the occupants of such vessel shall be responsible for any such damage.
- (2) The City Attorney is hereby authorized to utilize any remedies available under the law to ensure that such owner and/or occupant of such vessel is held liable for any such damage.

§ 24-8. Abandoned vessels.

- (1) Any vessel left in the harbor area unattended or unclaimed for more than three (3) days shall be considered abandoned, including vessels on land or in the water.

- (2) The Harbormaster may direct that any such abandoned vessel be retrieved and stored in such a place so as not to constitute a danger or obstruction to the public's health, safety or welfare.
- (3) The owner(s) of such vessel(s) shall be liable for all moving, relocation, storage and any other costs related to above action by the Harbormaster.
- (4) The City and any of its authorized representatives shall not be liable or responsible in any manner or degree for above-mentioned action by the Harbormaster.

ARTICLE V
Small Vessel Launch

§ 24-9. Applicability.

All provisions of this chapter shall apply with equal force and effect to the small vessels launch located on the west side of the Dock, with the exception of any and all provisions relating to the tie-up by vessels to the small vessel launch, which is hereby expressly prohibited.

§ 24-10. Fees and collection procedure.

Fees and collection procedures shall be as follows:

- A. Small vessel launching is governed by a set of rules and regulations as a responsibility of each individual boater to adhere to these rules and regulations. Copies may be obtained at vessel launching sites during normal business hours.
- B. Launch fees for residents and nonresidents and season passes shall be established by the Common Council, on recommendations by the Harbor Commission. If for any year the Common Council shall not specifically establish a fee, the fee shall be the same fee as charged in the year immediately prior to such year.
- C. Collection of the fees shall be conducted by representatives designated by the Mayor and Common Council.

ARTICLE VI
Miscellaneous Provisions

§ 24-11. Disclaimer of liability.

- A. The City shall not be responsible for damage or vandalism to any vehicle or vessels utilizing the Dock and/or harbor facilities.
- B. The City shall not be responsible for any property stolen from any such vehicle or vessels using such facilities.

§ 24-12. Construal.

Use of the facilities by any person shall be deemed constructive knowledge of the provisions of this chapter.

ARTICLE VII
Penalties

§ 24-13. Penalties for offenses.

Any person found guilty of violations of any of the provisions of these regulations legally promulgated hereunder, upon prosecution before the City of Dunkirk, shall be sentenced to pay a fine of not less than Fifty Dollars (\$50.00) nor more than Three Hundred Dollars (\$300.00), together with cost of prosecution, or, in default of payment of same, to undergo imprisonment not to exceed ninety (90) days.

ARTICLE VIII
Greater Dunkirk Area Harbor Commission

§ 24-14. Purpose.

The Greater Dunkirk Area Harbor Commission shall have the following functions:

- A. To act as an advisory committee to the Dunkirk Common Council specifically in relation to all of the lakefront area in the City of Dunkirk
- B. The Harbor Commission will act in an advisory capacity to help coordinate state, county and local government efforts; make recommendations in developing this area; identify potential problems; and recommend solutions.
- C. To review and make recommendations to the Harbormaster concerning his duties. To consider applications referred pursuant to Chapter 79 of the Dunkirk City Zoning Code. The Harbor Commission must review said applications and comment by means of an advisory opinion, in writing, to the Common Council within thirty (30) days. Failure to do so shall be deemed a waiver of said right of review and comment for said application.
- D. To recommend laws, ordinances, rules and regulations necessary to carry out the functions of the Harbor Commission which will protect and enhance the lakefront resources by providing for the safety, health and comfort of persons using the waterways and shorelines, establishing standards of safe operation and equipment, and providing for enforcement and penalties for violations.

§ 24-15. Membership.

The Harbor Commission shall consist of seven (7) members, said members to be appointed by the Mayor pursuant to the Dunkirk City Charter. The seven (7) initial members will be appointed as follows: three (3) board members to a term of three (3) years, three (3) board members to a term of two (2) years and one (1) board member to a term of one (1) year. The Harbormaster shall be an ex-officio member of the Commission whose one (1) year appointment is made by the Mayor. The Chairperson is appointed by the Mayor until the term of that appointed Chairperson expires. In the event of a vacancy occurring in an unexpired term, the Mayor shall appoint a new member to the Commission to complete the existing term.

§ 24-16. Constitution and By-Laws.

The Constitution and By-Laws of the Harbor Commission shall be approved by a two-thirds vote of the entire membership and shall be submitted to the Common Council for approval. Any amendments to the Constitution and By-Laws shall also require a two-thirds vote of the entire membership and shall be submitted to the Common Council for approval.

CHAPTER 25

DOGS

[Amended on 7-6-95 as L.L. #17 (Intro No. 19) 1995]

§ 25-1.	Purpose and intent.....	2501
§ 25-2.	Definitions.....	2501
§ 25-3.	Regulations and restrictions upon dogs.....	2502
§ 25-4.	Damage, nuisance and disturbance by dogs prohibited	2503
§ 25-5.	Seizure of dogs at large	2503
	[Amended 7-2-1979]	
§ 25-6.	Penalties for offenses	2503
	[Added 7-2-1979]	
§ 25-7.	Severability	2505
§ 25-8.	Effective date.....	2505
§ 25-9.	Incorporation of state law.....	2505
	[Added 7-2-1979]	
§ 25-10.	Licensing of Dogs	2505
	[Added 12-7-10]	
§ 25-11.	Liability of City Officials.....	2506
	[Added 12-7-10]	
§ 25-12.	Separability	2506
	[Added 12-7-10]	

[HISTORY: Adopted by the Common Council of the City of Dunkirk 3-4-1969 as Chapter XXVIII of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

§ 25-1. Purpose and intent.

The purpose and intent of this chapter shall be to preserve the public peace and good order in this City and to promote the general welfare and the preservation and protection of the property and the person of residents of this City by the enforcement of regulations and restrictions on activities of dogs within the municipality.

§ 25-2. Definitions.

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

ANIMAL CONTROL OFFICER - A person appointed by the Common Council of the City of Dunkirk for the purpose of enforcing this chapter.

For purposes of this chapter, an “Animal Control Officer” shall be deemed a peace officer.

AT LARGE - An unleashed dog off the premises of the owner, except as otherwise specifically provided by this chapter.

CITY - The City of Dunkirk, New York.

DOG - Both male and female of the species.

LEASH - The dog is equipped with a collar or harness to which is attached a “leash” not to exceed six (6) feet in length, constructed of materials of sufficient strength to restrain the dog, and which “leash” shall be held by a person able to control and restrain the dog.

OWNER - Includes any person who owns, keeps, harbors or has the care, custody or control of a dog. Dogs owned by minors under the age of eighteen (18) years shall be deemed to be in the custody and control of the minor’s parents or head of the household where such minor resides.

§ 25-3. Regulations and restrictions upon dogs.

All dogs and dog owners within the City shall be subject to the following regulations and restrictions:

- A. No person owning or having the care and custody of a dog shall permit such dog to be at large within the City elsewhere than on the premises of the owner, except on the premises of another person with the knowledge and consent of such other person.
- B. The owner or person having the custody and control of a dog in the City which is not on the premises of the owner or upon the premises of another person with the knowledge and consent of such person shall control and restrain such dog by a leash.
- C. The fact that a dog is at large within the City elsewhere than on the premises of the owner or the premises of another person consenting thereto shall be presumptive evidence that the dog has been permitted to be at large with the knowledge of the owner.
- D. A premise shall not contain more than three (3) adult dogs regularly residing upon the premises.

§ 25-4. Damage, nuisance and disturbance by dogs prohibited.

The owner of a dog shall not permit such dog, leashed or unleashed, to do any of the following acts:

- A. Damage or deface property not belonging to the owner.
- B. Deposit waste or commit a nuisance on the property of a person other than that of the owner.
- C. Howl or bark as to disturb or annoy any person or persons.

§ 25-5. Seizure of dogs at large.

- A. Any dog found at large within the City may be seized and confined by any duly appointing Animal Control Officer, peace officer or duly authorized officer or representative of the City. Any dog which, when found at large, cannot, in the opinion of the Animal Control Officer, peace officer or duly authorized representative of the City, be safely seized may be destroyed.
- B. Any dog seized pursuant to the provisions of this chapter shall be fed, cared for and disposed of in accordance with the provisions of § 118 of the New York State Agriculture and Markets Law. **[Amended 7-2-1979]**

§ 25-6. Penalties for offenses. [Amended 7-2-1979; Amended 12-7-2010 as L.L. #3-2010]

Any person violating the provisions of this chapter shall be subject to a fine and/or imprisonment as set forth in § 119 of Article 7 of the New York State Agriculture and Markets Law.

- A. Any person, firm or corporation violating any provision of § 25-2 of this Chapter, shall be guilty of a violation and shall be subject to penalties as set forth hereafter.
- B. Any person, firm or corporation taking part in or assisting in any violation of § 25-2 of this Chapter, shall also be subject to the penalties herein.
- C. Each day that a violation of this Chapter is committed or is permitted to exist, shall constitute a separate offense.
- D. Penalties shall be as follows:
 - 1. For the first violation by any person, owner or harborer within a three year period, such person, owner or harborer shall be

subject to a fine of not less than \$35.00 and not more than \$100.00

2. For a second violation by any person, owner or harborer within a three year period, such owner or harborer shall be subject to a fine of not less than \$60.00 and not more than \$150.00
3. For a third violation by any person, owner or harborer within a three year period, such person, owner or harborer shall be subject to a fine of not less than \$100.00 and not more than \$200.00 and/or imprisonment for a period not exceeding fifteen (15) days.

Any person taking part or assisting in any violation of this article shall also be subject to the penalties herein.

- E. If a dog seized under the provisions of Section 25 is not redeemed within the redemption time periods provided by the New York State Agriculture and Markets Law, the owner shall forfeit all title to such dog and the dog shall be sent to the SPCA. Anyone that picks up an at-large dog in the City of Dunkirk, must notify the Dog Control Officer or the Dunkirk Police Department, and surrender the dog upon request, before removing the dog from the City, subject to fine. There will be a fee of Seventeen Dollars (\$17.00) per day boarding fee, payable by the owner of the seized dog.

§ 25-7. Severability.

In the event that any portion of this chapter shall be declared invalid, the remainder thereof shall not be affected thereby and shall remain in full force and effect.

§ 25-8. Effective date.

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

§ 25-9. Incorporation of state law. [Added 7-2-1979]

Article 7 of the New York State Agriculture and Markets Law, as amended

June 5, 1978, and all subsequent amendments thereto are hereby incorporated into the Dunkirk City Code and made a part thereof.

§ 25-10. Licensing of Dogs: [Added 12-7-2010 as L.L. #3-2010]

- A. All dogs in the City of Dunkirk must be licensed with the City Clerk by the age of four (4) months and are required to present a current Certificate of Rabies at the time of licensing or the renewal of an existing license.
- B. All dog licenses for unspayed or unneutered dogs will be paid for a period of one year and will expire at the end of the month one year from the date of issue. Dog licenses for spayed or neutered dogs may be purchased for a one year, two year or three year period and will expire at the end of the month one year, two years or three years from the date of issuance as the case may be. Dog licenses are not transferrable.
- C. All new dog licenses must be purchased in person at the City Clerk's Office with proof of current rabies shot. All renewal of dog licenses may be purchased by visiting the City Clerk's Office or by regular mail. If licensing or renewing a license by mail, the appropriate fee must accompany the forms. There will be NO refund of fees for a one year license.
- D. All fees will be used in funding the administration of the Dogs Law of the City of Dunkirk
- E. This annual dog license fee shall be charged for all licenses becoming effective on or after the effective date of this local law.

§ 25-11. Liability of City Officials. [Added 12-7-2010 as L.L. #3-2010]

No officer, agent or employee of the City of Dunkirk shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this Chapter. Any suit brought against any officer, agent or employee of the City of Dunkirk as the result of any act required or permitted in the discharge of his duties under this Chapter shall be defended by the City Attorney until the final determination of the proceedings thereon.

§ 25-12. Separability. [Added 12-7-2010 as LL #3-2010]

If any section, subsection phrase, sentence or other portion of this local

law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

CHAPTER 26

(R E S E R V E D)

CHAPTER 27

(RESERVED)

CHAPTER 28

ELECTRICAL INSTALLATIONS

§ 28-1.	Definitions	2801
§ 28-2.	National Electrical Code	2802
	[Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]	
§ 28-3.	Permit required for electrical construction	2802
§ 28-4.	Electric Board of Examiners; enforcement officer	2803
	[Amended 12-14-2009 as L.L. #2 (Intro No. 3) 2009]	
§ 28-5.	License required for Master Electricians	2804
§ 28-6.	Examination; certificate; renewal; waiver of examination...	2804
§ 28-7.	Issuance of license	2806
§ 28-8.	Fee for license and renewal	2806
§ 28-9.	Insurance	2807
§ 28-10.	Revocation of license; renewal after expiration	2808
§ 28-11.	Qualifications for licensed Master Electricians	2809
§ 28-12.	Employment of unlicensed electricians.	2809
§ 28-13.	Unauthorized electrical construction work	2810
§ 28-14.	Electrical Inspectors	2810
§ 28-15.	Duties of Inspectors	2812
§ 28-16.	Violations	2812
§ 28-17.	Penalties for offenses	2813
§ 28-18.	Installations and equipment exempted	2813
§ 28-19.	No waiver or assumption of liability	2814
	[Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]	

[HISTORY: Amended on 3-4-1997 as L.L. #2 (Intro No. 1) 1997; Amended 3-5-2002 as L.L. #1 (Intro No. 2) 2002; Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004. Amended 12-14-2009 as L.L. #2 (Intro No. 3) 2009. Amendments noted where applicable.]

§ 28-1. Definitions.

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

BOARD - The Electric License Board of Examiners.

CITY - The City of Dunkirk.

ELECTRICAL CONSTRUCTION - Includes all work done and materials used in, installing and extending a system of electrical wiring or conductors for light, heat or power, and all appurtenances thereto, and all apparatus or equipment used in connection therewith, inside or attached to any building or structure, lot or premises. Rules governing “electrical construction” shall be set forth in the current edition of the National Electrical Code.

MASTER ELECTRICIAN - Includes any person engaged in, or holding himself out to the public as engaged in, the business of contracting to install or alter any electrical wiring, conductors, equipment or apparatus for the utilization of electricity supplied for light, heat or power, except a person doing personally electrical construction or repair work on his or her own property, or an electric light or power company, telephone or telegraph company or electric or steam railway company or the like which does electrical or repair work on its own property, or constructs or installs its own system.

PERSONS - Includes one (1) or more persons of either sex, natural persons, corporations, partnerships, associations, joint-stock companies, societies and all other entities of any kind capable or being sued.

§ 28-2. National Electrical Code. [Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]

All electrical installations heretofore mentioned shall be made in conformity with the requirements of the applicable edition of the National Electrical Code and applicable provisions of New York State Codes.

§ 28-3. Permit required for electrical construction.

- A. No electrical construction, as defined in this chapter, shall be started until the installer has first filed with the Code Enforcement Officer a copy of application form from an approved inspection agency of the City, excepting work done by persons not required to be licensed under § 28-5 of this chapter. [Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]
- B. The Building Inspector shall issue a permit for construction upon receipt of such application properly completed.

§ 28-4. Electric Board of Examiners; enforcement officer.

- A. (1) There is hereby created a board to be known as the “Electric Board of Examiners”, which shall consist of five (5) members, four (4) of which shall be appointed by the Mayor, subject to the approval of the Common Council. **[Amended 12-14-2009 as L.L. #2 (Intro No. 3) 2009]**
- (2) One (1) member shall be an electrical contractor, one (1) member shall be a journeyman electrician, one (1) member shall be a representative of the electrical utility servicing the City area, one (1) member shall be an electrical inspector, and one (1) member shall be the Building Inspector of the City. **[Amended 12-14-2009 as L.L. #2 (Intro No. 3) 2009]**
- B. (1) The Building Inspector of the City and the Police Chief of the City shall be designated as enforcement officer(s) of this chapter.
- (2) The Fire Chief of the City or a Fire Department representative designated by the Fire Chief, shall be an ex-officio member of the Board. **[Amended 12-14-2009 as L.L. #2 (Intro No. 3) 2009]**
- C. (1) Each of the first four (4) named members shall hold office for the term or three (3) years or until his/her successor has been appointed, unless removed from office by the Mayor for cause. **[Amended 12-14-2009 as L.L. #2 (Intro No. 3) 2009]**
- (2) All vacancies shall be filled by the Mayor, subject to the approval of the Common Council.
- (3) Any member or members may be removed by the Mayor for malfeasance of office, incapacity or negligence of duty.
- (4) Such Board shall elect its own Chairman, and the City Clerk shall act as its Secretary.
- (5) A majority shall constitute a quorum to transact the business thereof.
- (6) The Board shall meet as often as is necessary for the proper and efficient discharge of the business of such Board.
- (7) The Board shall adopt such rules and regulations for the examination of all persons who desire to engage in, or work at, the trade or business or electrical construction within the

City, and for the conduct of the business of the Board, not otherwise prescribed herein, as shall be necessary, and shall have the power to change and amend the same.

- (8) The members of the Board, except the City Clerk, Building Inspector and the Fire Chief of the City, or a Fire Department representative designated by the Fire Chief, shall be paid the salary of Fifteen Dollars (\$15.00) for each meeting attended; provided, however, that such salary shall not exceed the sum or Fifteen Dollars (\$15.00) per month.

§ 28-5. License required for Master Electricians.

- A. No person shall, within the limits of the City, engage in, carry on or work at the business of installing or making repairs, alterations, additions or changes to existing systems or electrical wiring or electrical apparatus for heat, light or power, for hire as Master Electrician as herein defined, without first having passed an examination and obtained and paid for and having in full force and effect a license as herein provided.
- B. Every holder of a Master Electrician's license within the City shall keep his/her, their or its certificate of license displayed in a conspicuous place in his/her, their or its principal place of business within the City.

§ 28-6. Examination; certificate; renewal; waiver of examination.

- A. Every person desiring to procure a certificate as herein provided shall make application to the Electrical License Board of Examiners for examination; in such form and detail as such Board may prescribe.
- B.
 - (1) In the case of a partnership, at least one (1) of the partners must pass the examination and procure a certificate as herein provided.
 - (2) Such certificate holder must supervise all electrical work done.
- C. In the case of a corporation, the certificate herein mentioned must be procured by one who is a stockholder and either President, Vice-President, Secretary or Treasurer of the corporation, and under whose supervision all electrical work is done.
- D.
 - (1) Such Board shall examine such applicants as to his/her

practical knowledge of electrical construction.

- (2) Such examination shall be made in whole or part in writing and shall be of a practical and elementary character, but sufficiently strict to test the qualifications of the applicant, and shall satisfy the Board as to the applicant's ability as an electrician and his/her familiarity with the rules and regulations governing electrical construction.
 - (3) If such Board is satisfied as to the competency of such applicant, then it shall issue a certificate to the applicant.
 - (4) Such certificate shall be valid through December 31 of the year of issue, but the same can and may be renewed without further examination if application is made to the Board for renewing the same prior to December 1 of the year in which the license is valid, and on further condition that no charges of delinquency are proven against such applicant.
- E. All renewal applications shall be reviewed by the Board, and only upon approval of the Board shall a license be renewed.
- F. (1) An applicant who has failed in his/her first examination shall not be eligible for the reexamination until after three (3) months from the date of failure.
- (2) An applicant who fails twice shall not be further eligible for reexamination until after one (1) year from the date of such second or subsequent failure.
- G. The Board is empowered to waive the examination of any person, partnership or corporation presently licensed to do electrical work in any city with a population of fifteen thousand (15,000) or upwards, and may issue a license to such person, partnership or corporation to engage in, or work at, the business, as provided in § 28-3.

§ 28-7. Issuance of license.

- A. Upon the filing of the certificate of insurance, as herein required, and the payment to the City Clerk of the license fee herein provided, the Board shall, except as herein provided, issue to the applicant a license to engage in, or work at, the business as provided in § 28-3.

- B. All licenses shall be numbered in the order in which they are issued and shall state clearly the name and address of the licensee and the fee paid and shall be countersigned by the City Clerk and the Chairman of the Board of Electrical Examiners.

§ 28-8. Fee for license and renewal. [Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]

- A. Upon the application for and prior to the issuance of license or renewal a fee shall be paid as provided in Chapter 31 Fees.
- B. All license issued shall continue in force through December 31 after issuing, unless sooner revoked by the Board.
- C. No license or certificate shall be used by any person other than the original licensee or person to whom it was issued, and any holder of such license or certificate who permits it to be used by any other person, and any person who uses such license or certificate granted to any other person shall each be guilty of a violation of this chapter.
- D. Whenever a license shall be lost or destroyed without fault upon the part of the holder, a duplicate license in lieu thereof, under the original application and bond, may be issued by the Board in its discretion, upon the filing with it of an affidavit by the licensee, setting forth the circumstances of the loss and what, if any, search has been made for its recovery.

§ 28-9. Insurance.

- A. Liability insurance.
 - (1) All Master Electricians shall procure and maintain at their own expense and without expense to the City, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided.
 - (2) Such insurance shall be procured through insurance companies authorized to do such business in the State of New York covering all operations under their contracts whether performed by them or by subcontractors.
 - (3) Before receiving a Master Electrician Certificate of Competency, and every year thereafter at the time of renewal of the Master Electrician license, a certificate or certificates of insurance in forms satisfactory to the City

showing compliance with this paragraph, shall be furnished to the City, to be kept on file in the City Clerk's Office, which certificate or certificates shall provide that the policy shall not be changed or canceled until thirty (30) days written notice has been given to the City. **[Amended 9-7-2004 by L.L. #3 (Intro No. 4) 2004]**

(4) This requirement shall apply to active Master Electrician license holders; those with inactive status are waived.

(5) The kinds and amounts of insurance are as follows:

(a) Compensation and Disability Insurance: A policy covering the obligations of the Master Electrician in accordance with Workers' Compensation and Disability Benefits Law of New York State covering all operations under contract; whether performed by the Master Electrician, or the Master Electrician's subcontractors. **[Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]**

(b) Public liability and property damage insurance:

1. The Master Electrician shall take out and maintain such public liability and property damage insurance as shall insure and protect him/her, any subcontractor performing work for him, from claims for damages for personal injury, including accidental death, as well as from claims for property damages which may arise from his/her operations.

2. (a) Sole proprietor: Public liability insurance or general comprehensive liability insurance in the amount of not less than \$300,000 per occurrence, aggregate amount \$600,000; property damage insurance in an amount not less than \$600,000 aggregate; **[Amended 3-5-2002 by L.L. #2-2002]**

(b) For any electrician with one or more employees: Public liability insurance or general comprehensive liability insurance in the amount of not less than \$600,000 per occurrence, aggregate

amount \$1.2 million; property damage insurance in an amount not less than \$600,000 aggregate. **[Amended 3-5-2002 by L.L. #2-2002]**

- (6) The City shall be named as an additional insured on the policy for purposes of coverage only, but not for payment of premium.

§ 28-10. Revocation of license; renewal after expiration.

- A. Any license may be suspended or revoked at any time by the Board if the licensee or any person performing any work under its jurisdiction willfully violates, or by reason of incompetence repeatedly violates, any statute of the State of New York or any ordinance, rules or regulations of the City of relating to the installation, maintenance, alteration or repair of electrical conductors, wiring devices, fixed appliances and equipment, or is responsible for any electrical installation which is a hazard to life or property. Whenever any license shall be so suspended or revoked, no refund of any unearned portion thereof shall be made. No license shall be granted to a person whose license has been suspended or revoked within a period of thirty (30) days from the date of such revocation. Notice of such revocation and the reason or reasons therefore, in writing, shall be served by the Board upon the person named in the application and upon filing a copy with the City Clerk of the City.
- B. A license not renewed before the expiration date automatically becomes null and void. Any license not renewed on or before the expiration date will be renewed only upon the full payment of an original license fee, but without examination. After thirty (30) days after the expiration date, the licensee shall be required to requalify and pay the full fee for a new license, subject to the conditions set forth in § 28-6.

§ 28-11. Qualifications for licensed Master Electricians.

- A. No person shall carry on the business at or from any place in the City, other than the one designated in the license therefore, without first having notified the Board of the change and having had the same endorsed on the license, nor shall such person continue to carry on, or work, at such business after his/her license has been revoked or has expired.

- B. No license shall be granted to a person under twenty-one (21) years of age. Each licensee must also be a citizen of the United States and of good moral character and reputation in the community.
- C. A Master Electrician's license shall not be granted to a person who has had less than five (5) years of experience as a journeyman electrician or the equivalent in education, in the installation and alteration of electrical wiring, conductors and equipment for light, heat and power.

§ 28-12. Employment of unlicensed electricians.

It shall be unlawful for any person to employ an unlicensed person to do any electrical construction work in the City.

§ 28-13. Unauthorized electrical construction work. [Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]

- A. An owner of an owner-occupied one or two family dwelling is permitted to do his or her own electrical construction work, provided that the premises are not either a commercial use, mixed use occupancy, or multiple dwelling, as defined in the applicable Codes of New York State.
- B. An owner of a non-owner-occupied one or two family dwelling, commercial use, mixed use or multiple dwelling is not permitted to perform his or her own electrical construction work on the premises listed in this paragraph, unless he or she is licensed under the provisions of this Chapter.

§ 28-14. Electrical Inspectors. [Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]

- A. Approval of Electrical Inspection Agencies, Companies and Inspectors.
 - (1) The electrical board shall appoint one or more inspectors as they deem necessary and such inspectors are hereby authorized and deputized as agents of the City of Dunkirk to make inspections and re-inspections of all electrical installations heretofore and hereinafter described as to approve or disapprove the same. In no event, however, will the cost or expense of such inspections and re-inspections be charged against the City of Dunkirk.

- (2) Electrical Inspection Agencies shall provide the City of Dunkirk a Certificate of Insurance a minimum coverage in the amount of One Million Dollars (\$1,000,000.00) naming the City of Dunkirk as an additional insured. Other compensation and disability forms required by NYS (New York State) shall be on file with the City of Dunkirk. **[Amended 12-14-2009 as L.L. #2 (Intro No. 3) 2009]**
- (3) Each Electrical Inspector shall be required to obtain a license issued by the City Clerk. Licenses shall expire on March 1. For the portion of the calendar year for which the license is first issued, a fee as provided in Chapter 31, Fees, shall be paid. Applications for an Electrical Inspector License shall be made in writing on a form to be provided by the City of Dunkirk.
- (4) All Electrical Inspectors shall submit to the City of Dunkirk documented credentials as being certified by a national testing agency approved by the Electrical Board for the type of inspections being performed.
- (5) There shall be an application form approved by the Electrical Board for electrical inspections. There shall be a local or toll free number to contact the inspection agency for inspection requests.
- (6) It shall be the duty of the inspector to report in writing all violations of or deviations from or omissions of the approved electrical provision of the NEC (National Electrical Code) and all approved New York State codes insofar as any of the same apply to electrical wiring to the owner and local C.E.O. (Code Enforcement Officer) of the City of Dunkirk.
- (7) When the work is completed and complies with the current code approved by New York State, a "Certificate of Compliance" shall be issued to the applicant, and C.E.O. The inspection agency shall respond to the power company within twenty four (24) hours of the final inspection for service order release.
- (8) Complimentary inspections from the inspection agency shall be provided when requested by the C.E.O. at no cost to the City of Dunkirk.

- (9) A current fee schedule of the services and inspections of the inspection agency shall be on file with the C.E.O.
 - (10) If the inspector holds a City electrical license he/she shall surrender their License in order to be allowed to perform electrical inspections in the City. Any such surrendered electrical license may be re-instated by the Board should such inspector cease to be licensed for inspections by the City of Dunkirk.
- B. In no event, however, will the cost or expense of such inspections and re-inspections be charged against the City.

§ 28-15. Duties of Inspectors.

- A. It shall be the duty of the Inspector to report in writing to the Code Enforcement Office of the City, whose duty it shall be to enforce all provisions of this Code, all violations of or deviations from, or omissions of, the electrical provisions of the applicable edition of the National Electrical Code and applicable provisions of New York State Code and of all local laws and ordinances, including Chapter 15 of the City Code, as referred to in this chapter, insofar as any of the same apply to electrical wiring. **[Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]**
- B. The Inspector shall make inspections and re-inspections of electrical installations in and on properties in the City upon the written request of an authorized official of the City, or as herein provided.
- C. The Inspector is authorized to make inspections and re-inspections of electrical wiring installations, devices, appliances and equipment in and on properties within the City where he/she deems it necessary for the protection of life and property.
- D. In the event of emergency, it is the duty of the Inspector to make the electrical inspections upon oral request of an official or officer of the City.
- E. It shall be the duty of the Inspector to furnish written reports to the proper officials of the City and owners and/or lessees of property where defective electrical installations and equipment are found upon inspection.
- F. The Inspector shall authorize the issuing of a certificate of compliance when electrical installations and equipment are in

conformity with this chapter. The Inspector shall direct that a copy of the certificate of compliance be sent to the City, to the attention of the Building Inspector.

§ 28-16. Violations.

- A. It shall be a violation of this chapter for any person, firm or corporation to install or cause to be installed, or to alter or repair, electrical wiring for light, heat or power in or on properties in the City until an application for inspection has been filed with the an approved inspection agency of the City. **[Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]**
- B. It shall be a violation of this chapter for any person, firm or corporation to connect or cause to be connected electrical wiring in or on properties, for light, heat or power, to any source of electrical energy supply, prior to the issuance of a temporary certificate or a certificate of compliance by an approved inspection agency of the City. **[Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]**
- C. The owner or agent of the owner shall file with only one inspection agency to conduct inspections for electrical construction and installations until a certificate of compliance is issued by said inspection agency after the work is completed. **[Added 9-7-2004 as L.L. #3 (Intro No. 4) 2004]**

§ 28-17. Penalties for offenses.

A violation of any of the provisions of this chapter or of any rule or regulation made pursuant thereto shall constitute a misdemeanor punishable as provided in Chapter 1, General Provisions, Article I, of the Code of the City of Dunkirk.

§ 28-18. Installations and equipment exempted.

- A. The provisions of this chapter shall not apply to the electrical installations in automotive equipment, or the installations or equipment employed by a railway, electrical or communication utility in the exercise of its function as a utility and located outdoors, or in buildings used exclusively for that purpose.
- B. This chapter shall not apply to any work involved in the manufacture, assembly, test or repair of electrical machinery apparatus, materials and equipment by a person, firm or corporation engaged in electrical manufacturing as its principal business.

- C. It shall not apply to any building which is owned or leased in its entirety by the government of the United States or the State of New York.

§ 28-19. No waiver or assumption of liability. [Amended 9-7-2004 as L.L. #3 (Intro No. 4) 2004]

This chapter shall not be construed to relieve from or lessen the responsibility of any person owning, operating, controlling or installing any electric wiring, devices, appliances or equipment for loss of life or damage to person or property caused by any defect therein, nor shall the City or an approved inspection agency of the City be deemed to have assumed any such liability by reason of any inspection made pursuant to this chapter.

CHAPTER 29

(RESERVED)

CHAPTER 30

ETHICS, CODE OF

§ 30-1. Purpose and construction of chapter..... 3001
§ 30-2. Definitions 3001
§ 30-3. Standards of conduct..... 3002
§ 30-4. Certain claims not barred 3003
§ 30-5. Distribution of Code of Ethics 3003
§ 30-6. Penalties for offenses 3003
§ 30-7. When effective 3004

[HISTORY: Adopted by the Common Council of the City of Dunkirk 9-1-1970 as Chapter XXII of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

§ 30-1. Purpose and construction of chapter.

- A. Pursuant to the provisions of § 806 of the General Municipal Law, the Common Council of the City of Dunkirk recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government. It is the purpose of this chapter to promulgate these rules of ethical conduct for the officers and employees of the City of Dunkirk. These rules shall serve as a guide for official conduct of the officers and employees of the City of Dunkirk.
- B. The rules of ethical conduct of this chapter, as adopted, shall not conflict with, but shall be in addition to, any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

§ 30-2. Definitions.

INTEREST - Means a pecuniary or material benefit accruing to a municipal officer or employee unless the context otherwise requires.

MUNICIPAL OFFICER OR EMPLOYEE - Means an officer or employee of the City of Dunkirk, 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.

§ 30-3. Standards of conduct.

Every officer or employee of the City of Dunkirk shall be to and abide by the following standards of conduct:

- A. **Gifts.** He shall not directly or indirectly solicit any gift, or accept or receive any gift, having a value of Twenty-Five Dollars (\$25.00) or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.
- B. **Confidential information.** He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.
- C. **Representation before one's own agency.** He shall not receive, or enter into any agreement, express or implied, for, compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or of any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.
- D. **Representation before any agency for a contingent fee.** He shall not receive, or enter into any agreement, express or implied, for, compensation for services to be rendered in relation to any matter before any agency of his municipality whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter; provided that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.
- E. **Disclosure of interest in legislation.** To the extent that he knows thereof, a member of the Common Council and any officer or employee of the City of Dunkirk, whether paid or unpaid, who participates in the discussion, or gives official opinion to the Common Council, on any legislation before the Common Council

shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.

- F. **Investments in conflict with official duties.** He shall not invest or hold any investment, directly or indirectly in any financial, business, commercial or other private transaction which creates a conflict with his official duties.
- G. **Private employment.** He shall not engage in, solicit, negotiate for or promise to accept private employment, or render services for private interests, when such employment or service creates a conflict with or impairs the proper discharge of his official duties.
- H. **Future employment.** He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the City of Dunkirk in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

§ 30-4. Certain claims not barred.

Nothing herein shall be deemed to bar or prevent the timely filing, by a present or former municipal officer or employee, of any claim, account, demand or suit against the City of Dunkirk, or any agency thereof, on behalf of himself or any other member of his family, arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 30-5. Distribution of Code of Ethics.

The Mayor of the City of Dunkirk shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the City of Dunkirk within thirty (30) days after the effective date of this local law. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his office or employment.

§ 30-6. Penalties for offenses.

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

§ 30-7. When effective.

This chapter shall take effect immediately.

CHAPTER 31

FEEES

ARTICLE I

Recreation Services Fee Schedule [Adopted 2-20-1992 as L.L. #1-1992]

§ 31-1.	Intent.....	3104
§ 31-2.	Fee schedule.....	3104
	[Amended 10-4-2005 as L.L. #2-2005; Amended 5-21-1992 by L.L. #4-1992; Amended 4-29-1992 as L.L. #2-1992, and by L.L. #8 (Intro No.12) 1993]	
§ 31-3.	Severability	3107
§ 31-4.	Repealer	3107

ARTICLE II

Sewer Rate Schedule [Adopted 2-5-1991 as L.L. #1-1991]

§ 31-5.	Intent.....	3108
§ 31-6.	Definitions	3108
	[Amended 10-29-1992; amended by L.L. #8 (Intro No. 12) 1993]	
§ 31-7.	Charges for treatment.....	3110
	[Amended 10-29-1992; amended by L.L. #8 (Intro No. 12) 1993]	
§ 31-8.	Sewer rent.....	3112
§ 31-9.	Sewer rent payment schedule	3113
§ 31-10.	Dispute resolution	3113
§ 31-11.	Penalties.....	3114
§ 31-12.	Additional costs.....	3114
§ 31-13.	Annual review	3115
§ 31-14.	Sewer fund	3115
§ 31-15.	Repealer	3115
§ 31-16.	Severability	3115
§ 31-17.	Fees	3116

ARTICLE III
Water Rate Schedule
[Adopted 6-18-1992 as L.L. #6-1992]

§ 31-18.	Intent.....	3121
§ 31-19.	Rate structure	3121
	[Amended 12-14-2009 as L.L. #3 (Intro No. 4) 2009; Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012]	
§ 31-19(A)	Inter-Municipal provider rate-Fredonia.....	3124
	[Amended 5-2-2000 as L.L. #1 (Intro No. 4) 2000]	
§ 31-20.	Severability	3124
§ 31-21.	Supersession of prior legislation.....	3124

ARTICLE IV
Farmers Market Fee Schedule
[Adopted 3-18-1993 as L.L. #3-1993; Amended 10-20-2006 as L.L. #3-2006]

§ 31-22.	Intent.....	3125
§ 31-23.	Fee schedule.....	3125
	[Amended 3-7-2006 as L.L. #2 (Intro No. 1) 2006]	

ARTICLE V
Dog License Fees

§ 31-24.	Intent.....	3126
§ 31-25.	Fee schedule.....	3126
	[Amended 7-2-1996 as L.L. #11 (Intro No. 12) 1996]	

ARTICLE VI
DPW - Parks Division Equipment and Facilities
[Adopted 5-7-1992 as L.L. #4-1992]

§ 31-30.	Intent.....	3127
§ 31-31.	Fee schedule.....	3127
§ 31-32.	Severability	3127

ARTICLE VII
Zoning Fees - Telecommunications Facilities
[Adopted 7-7-1998 as L.L. #2-1998]

§ 31-40.	Intent.....	3128
§ 31-41.	Fee schedule.....	3128

§ 31-42. Severability 3128

**ARTICLE VIII
Electrical License and Renewal Fees
[Adopted 9-7-2004 as L.L. #5-2004]**

§ 31-50. Intent..... 3129
§ 31-51. Fee schedule..... 3129

[HISTORY: Adopted by the Common Council of the City of Dunkirk:

Added as follows:

- Art. 6 on 5-7-1993 as L.L. #4-1992;
 - Art. 3 on 6-18-1992 as L.L. #6-1992;
 - Art. 4 on 3-18-1993 as L.L. #3-1993;
 - Art. 5 § 31-25 on 7-2-1996 as L.L. #11-1996;
 - Art. 7 on 7-7-1998 as L.L. #2-1998
 - Art. 8 on 9-21-2004 as L.L. #5-2004
- Amendments noted where applicable.]

GENERAL REFERENCES

- Sewer use - See Ch. 63.
- Waterworks - See Ch. 77.
- Dogs - See Ch. 25.
- Electrical installations - See Ch. 28.
- Parks - See Ch. 49.
- Zoning - See Ch. 79.

ARTICLE I
Recreation Services Fee Schedule
[Adopted 2-20-1992 as L.L. #1-1992]

§ 31-1. Intent.

The intent of this Article is to present fee schedules for recreation services rendered by and use of recreation facilities owned by the City of Dunkirk.

§ 31-2. Fee Schedule.

Effective December 1, 2005, the following fees are hereby established.

<u>Type</u>	<u>Fee</u>
<u>Facility Rentals</u>	
City softball fields:	
Single game	\$ 50.00
Single day	\$ 75.00
Tournament (multiple days)	\$150.00
 Picnic table, per day	 \$ 2.50
[Added 5-21-1992 by L.L. #4-1992]	
(Rental of tables is limited to Churches, Clubs and Schools)	
 Bandstand, per 8×8 section, per day	 \$ 5.00
[Added 5-21-1992 by L.L. #4-1992]	
<u>Youth Program</u>	
Sports clinics, except for swimming, sailing and tennis	\$ 10.00
Dance program	\$ 10.00
Floor hockey	\$ 10.00
Swim clinic	\$ 25.00
Sailing program	\$ 25.00
Tennis program	\$ 25.00
<u>Adult Program</u>	
League fees (basketball, football, softball, floor hockey, soccer)	
City Residents	\$ 15.00
Non-Dunkirk City Residents	\$ 20.00
Player disqualification fees	\$ 30.00
Volleyball	\$150.00
Walking	\$ 1.00
Soccer	\$ 2.00

Golf	\$ 30.00
Hockey (daily admission)	\$ 1.00

Recreation Center:**Rollerskating Program**

Youth admissions	\$ 1.00
Adult admissions	\$ 2.00

Birthday Parties

1 1/2 hours (maximum of 10 children)	\$ 40.00
Each additional child	\$ 4.00

Group Rentals (Church, scouts, family)

25 people and under	
Per hour	\$ 30.00
For 1 1/2 hours	\$ 40.00
26 - 50 people	
Per hour	\$ 35.00
For 1 1/2 hours	\$ 45.00
51 people or over	
Per hour	\$ 40.00
For 1 1/2 hours	\$ 50.00

Team Rentals (Little League, Babe Ruth, Hockey, etc.)

Teams of less than 25 people	
Per hour	\$ 15.00

Ice-Skating Program

Youth admissions	\$ 1.00
Adult admissions	\$ 2.00

Summer Camp Program

[Added 4-29-1992 as L.L. #3-1992; Amended by L.L. #8 (Intro No. 12) 1993]

City Residents

First child, per session	\$ 30.00
Each additional child, per session	\$ 20.00

Non-Dunkirk City Residents

First child, per session	\$ 40.00
Each additional child, per session	\$ 25.00

Rental of Pavilions at Point Gratiot [Amended 03-01-11 as L.L. #4-2011]

Effective April 4, 2011, the following fees are hereby established:

Large Pavilion

Entire Pavilion (capacity 216)	
City Residents	\$ 75.00
Non-Dunkirk City Residents	\$ 150.00

Lower Pavilion

Entire Pavilion (Capacity 96)	
City Residents	\$ 50.00
Non-Dunkirk City Residents	\$ 100.00

Koch's Pavilion

Entire Pavilion (Capacity 96)	
City Residents	\$ 50.00
Non-Dunkirk City Residents	\$ 100.00

NOTE: There will be no fee charged to groups of handicapped individuals or to groups of Senior Citizens who reserve the pavilions

§ 31-3. Severability.

If any provision of this Article or the application thereof to any person or circumstance shall be held invalid, the remainder of such Article or the application of such provision to any other person or circumstance shall not be affected thereby.

§ 31-4. Repealer.

All prior resolutions, motions and local laws concerning the issue of recreation service fees and recreation facility fees are hereby repealed to the extent that they are inconsistent with this legislation.

ARTICLE II

Sewer Rate Schedule [Adopted 2-5-1991 as L.L. #1-1991]

§ 31-5. Intent.

Pursuant to Public Law 92-500 (The Federal Water Pollution Control Act and Amendments thereof) and pursuant to the authority of the Sewer Rent Law of the State of New York (General Municipal Law, Sec. 450-454) and any and all amendments thereto, there is hereby established and imposed sewer rents as a means of proportioning operating and maintenance costs required to operate and maintain the sewerage system of the City of Dunkirk among the contributors who benefit by its use, and a means of proportioning debt retirement costs required to design and construct the sewerage system of the City of Dunkirk among the contributors who benefit by its use.

§ 31-6. Definitions. [Amended 1-5-1999 as L.L. #1 (Intro No. 6) 1998; Amended 6-24-1997 as L.L. #8 (Intro No.9) 1997; Amended 11-19-1996 as L.L. #19 (Intro No. 20) 1996; Amended 10-28-1996 as L.L. #18 (Intro No. 16) 1996; Amended 10-20-1992 as L.L. #11 (Intro No. 14) 1992; Amended 2-5-1991 as L.L. #1-1991]

As used in this article, the following terms shall mean and include:

SEWER RENTS - A scale of quarterly or monthly charges established and imposed by the City of Dunkirk for the use of the sewerage system or any part or parts thereof;

SEWERAGE SYSTEM - All sewer pipes and other appurtenances which are used or useful in whole or in part in connection with the collection, treatment or disposal of sewage, industrial wastes and other wastes which are owned, operated or maintained by the City of Dunkirk, including sewage pumping stations and the sewage treatment plant;

PARTS - As used in relation to the term system, all lateral sewers or all branch sewers or all interceptor sewers or all trunk sewers in any sewage treatment and disposal works with necessary appurtenances including sewage pumping stations;

WASTEWATER - The water carrying human or animal wastes from residences, building, industrial establishments or other places together with such ground water infiltration and surface water as may be present together with any liquid, gaseous, solid or other waste substance or combination thereby resulting from any process of industry, manufacturing, trade or business or from the development or recovery of

any natural resources;

INDUSTRIAL USER (IU) - Shall be defined as set forth in the City of Dunkirk Sewer Use Ordinance, Section 26, and shall mean a source of Indirect Discharge which does not constitute a “discharge of pollutants” under the regulations issued pursuant to Section 402 2 of the Act. (33 U.S.C. 1342). The IU category will include all commercial and industrial users of the City’s WWTP.

- (1) **IU (in)** – shall mean those users which are classified under the IU category as defined above and who are located within the City of Dunkirk.
- (2) **IU (out)** – shall mean those users which are classified under the IU category as defined above and who are located outside the City of Dunkirk but require the City’s WWTP services for treatment of their effluent wastewater.

SIGNIFICANT INDUSTRIAL USERS (SIU) - Shall be defined as set forth in the City of Dunkirk Sewer Use Ordinance, Section 51, and shall mean an Industrial user of the City’s wastewater disposal system who (i) has a flow or load (BOD, TSS) greater than 5% of that carried by the treatment plant receiving the waste; or (ii) manufacturing industries using, on an annual basis, more than 10,000 pounds or 1,000 gallons of raw material containing priority pollutants/substances of concern, and discharging a measurable amount of these pollutants to the sewer system from the process using these pollutants; or (iii) is subject to promulgated categorical pretreatment standards, or (iv) is found by the Director of Public Works, NYSDEC or USEPA to have a significant impact either singly or in combination with other contributing industries, on the wastewater treatment system, the quality of sludge, the system’s effluent quality or air emissions generated by the system.

- (1) **SIU (in)** – shall mean those users which are classified under the SIU category as defined above and who are located within the City of Dunkirk
- (2) **SIU (out)** – shall mean those users which are classified under the SIU category as defined above and who are located outside the City of Dunkirk but require the City WWTP services for treatment of their effluent wastewater.

WHOLLY EXEMPT PROPERTY - Property which is exempt from taxation and exempt from any special ad valorem levies and special assessments pursuant to Article 4 of the Real Property Law.

MONITORED SYSTEM - A system of measuring a user's contribution to the sewerage system at a point where the wastewater exits premises served by the sewerage system and enters the sewerage system of the City of Dunkirk.

ATTRIBUTED FLOW - A property's contribution to the sewerage system based upon the number of residents, occupants or employees of the premises serviced by the sewerage system; or in the instance of a commercial or industrial premises pursuant to an approved formula, determining said flow rate according to generally accepted engineering principles which has been tendered by the user and accepted by the City.

CFR - The Code of Federal Regulations.

§ 31-7. Charges for treatment. [Amended 10-29-1992 by L.L. #12-1993]

All wastewater discharged to the City of Dunkirk (City) WWTP for treatment shall be charged for on the basis of four major components:

- Volume – in US Gallons
- Biochemical Oxygen Demand (BOD₅) - in pounds
- Nitrate-Nitrogen (NO₃-N) – in pounds
- Total Suspended Solids (TSS) in pounds

The pollutant concentration of any wastewater shall usually be determined from representative samples discharged to the public sewers, taken by the Chief Operator or the Chief Operator's representatives, at sampling stations as described herein, at any period, or time, or at such duration and in such manner as the Chief Operator may elect, or at any place or manner mutually agreed upon between the person and the Chief Operator. The intent of any sampling procedure is to establish the pollutant concentration in the wastewater discharged during an average or typical working day. This concentration may be derived, according to the best judgment of the Chief Operator, by combining repeated sub-samplings during one day, by combination of a series of such days or by combination of a number of a multiple of series of such days.

The analyses of samples taken shall be performed in the laboratory of the Sewage Treatment Works and the surcharge and/or acceptability of the wastes shall be as determined from said analyses.

Each Significant Industrial User (SIU) will be monitored at random to determine the concentrations of the above pollutants, and the SIU will be billed on the basis of that monitored and analysis as performed by the City. Each Industrial User (IU), exempt or residential user, will be billed on the basis of water consumption only.

The rates set forth in Section 13, Schedules A to H, reflect the standard charges to users located either inside or outside the City of Dunkirk for treating the referenced pollutants discharged to the WWTP.

Sewer rents for IUs, exempt and residential users, shall be based upon the metered consumption of water on premises connected with and served by the sewerage system of the City of Dunkirk or such part or parts thereof. In those instances where it is determined to be impracticable or impossible to meter water consumption, contribution to the sewerage system or such part or parts thereof shall be by monitored system as measured by a meter approved by the Director of Public Works and installed at the expense of the property owner at a point where the sewage or industrial waste exits the premises served and enters the sewerage system of the City of Dunkirk.

Additionally, in those instances where it is determined to be impracticable or impossible to meter water consumption or to determine contribution to the sewage system by a sewage outfall meter, the Chief Operator may use the amount of water supplied to the premises as shown upon the water meter or may make measurements from the manhole in the public sewer to which the premises discharges its wastes or by any combination of the foregoing or by any other equitable method to determine the amounts of chargeable pollutants. Alternately, a contributor to the sewage system may propose a formula to determine said flow rate based on and according to generally accepted engineering principles which the City shall consider as a means by which that contributor's rate of flow might be determined.

Should the City determine that said proposed flow rate formula is equitable to both the City as well as to the contributor, the City shall approve the same and thereafter compute the sewer rate rent paid by said contributor according to said approved formula.

In making its determination, the City may utilize not only the information and data provided by the contributor, but also any other information or data or other proof generated by the City's officers, or employees, the City's consultants, the State of New York Department of Environmental Conservation and the U.S. Environmental Protection Agency.

The adoption of any formula determining flow rates shall not preclude the City thereafter from reconsidering whether or not a change or circumstances has occurred involving the contributor itself, the equity of the means by which the flow rate has been determined, the practicable effect and demands upon the sewage system or for any other factor indicating that the approved formula no longer represents a reasonable basis for determining the flow rate of the said contributor.

Any SIU requiring an allocation or permit specifying the level of flow or load into the City's wastewater disposal system shall be exempt from the charges for treatment under Section 31-7 pertaining to BOD, TSS, and nitrates only, if the following conditions have been met:

1. The SIU and the City have entered into a contractual agreement specifying rates on BOD, TSS and/or nitrates allocation and payment terms;
2. The agreement is approved by the Mayor, Common Council, and all appropriate regulatory agencies.
3. The SIU is in full compliance with the agreement. **[Added 10-21-1993 as L.L. #12 (Intro No. 17) 1993]**

§ 31-8. Sewer rent.

To provide for the operation and maintenance of the sewerage system of the City of Dunkirk and to provide for debt retirement expenses required for the design and construction of the sewerage system of the City of Dunkirk among the contributors who benefit by its use, an annual sewer rent payable by quarterly or monthly installments, which will track with the water billings of any IU and pollutant discharge of any SIU, shall be assessed to such contributors by the City of Dunkirk. Each contributor shall be notified at least annually in conjunction with a regular bill of the rate and portion of sewer rents for wastewater treatment and debt retirement.

§ 31-9. Sewer rent payment schedule.

Each contributor's annual sewer rent shall be paid in quarterly or monthly installments due and payable no later than fifteen (15) days from the billing day. Each installment shall be billed to the contributor in whose name the water account is listed with the Treasurer's office of the City of Dunkirk. Contributors who receive no water bill or are monitored or attributable contributors shall be billed quarterly and such bills shall be mailed to the owner or occupant of the real property wherein contribution is monitored or attributable. Such bills likewise shall be due and payable no later than fifteen (15) days from the billing date.

Such amount of rents and/or other charges related to water and sewer use, including all fees listed in this Chapter, as well as fees, penalties and other charges as may be levied under Chapter 63 of the City Code entitled "Sewer Use" and Chapter 77 of the City Code entitled "Waterworks" as remain unpaid shall be included with the annual tax levy, including any penalties and interest and shall be collected and enforced in the same manner and at the same time as provided by law and/or agreement for collection and enforcement of City taxes. **[Added 6-6-1995 as L.L. #16-1995]**

No statement contained in this local law shall be construed as preventing any special agreement or arrangement between the City and any industrial or commercial concern whereby an industrial or commercial waste of unusual strength or character may be accepted by the City for treatment subject to payment thereto by the industrial concern and subject where required to approval by NYS Department of Environmental Conservation and the US Environmental Protection Agency.

§ 31-10. Dispute Resolution.

A person shall have the right to dispute the pollutant concentration of the wastes discharged from a premise to a public sewer as determined herein provided the person complies with the following procedure:

- A. Prior to the beginning of any period for which the City takes measurements, the person must submit a request for sampling and gauging of wastes to the Chief Operator to be carried out by an independent consultant of recognized professional standing to be paid by the person.
- B. The independent consultant must confer with the City in order that an agreement may be reached as to the various factors which must be considered on a sampling program.
- C. The independent consultant employed by the person shall conduct the sampling and an analysis program in consultation with the City who shall be afforded an opportunity to be present during any measuring, sampling or analysis.
- D. In the event that the person disputes the computation of the pollutant concentration derived by the Chief Operator, he shall submit, within ten days after receipt of the City's computation, a letter of protest to the City of Dunkirk Director of Public Works, together with the computation of the pollutant computation determined by the person's independent consultant. The City of Dunkirk Director of Public Works shall, within thirty days, examine all information before it and may then affirm or modify the City's determination and adjust the surcharge costs accordingly, if necessary, and promptly notify the person of the decision of the City of Dunkirk Director of Public Works which decision shall be considered conclusive and final.

§ 31-11. Penalties.

All sewer rentals not paid within fifteen (15) days or the billing date as

herein provided shall have a penalty in the amount of one and one-half (1 1/2) percent per month on the unpaid principal balance added to the bill. The City Treasurer shall collect all sewer rents established hereunder and any unpaid bills including penalties shall be included in the annual tax levy against real property parcels in default notwithstanding the fact that the bill or bills were unpaid by tenants or other non-owners of the real property parcel so affected. Such amount of sewer rents together with penalties thereon as remain unpaid for a period of two (2) years shall be collected and enforced in the same manner and at the time as provided by law for collection and enforcement of real property taxes.

§ 31-12. Additional costs.

Any user of the sewerage system of the City of Dunkirk that discharges toxic wastes which cause increased treatment and handling costs will be required to pay such costs pursuant to 40 CFR 35.929-1(c), and/or pursuant to the City of Dunkirk Sewer Use Ordinance or any amendments thereto.

§ 31-13. Annual review.

The City of Dunkirk shall review annually or at such earlier time as may be determined to be necessary, the wastewater contributions and the total cost of operation and maintenance and revise this local law as needed to meet the requirements of 40 CFR 35.929-2(b)(1) through (3), or any amendments thereto or State, County or local legislation or regulations relating thereto; or should it be determined that the revenues raised herein are not sufficient to meet the needs of the City of Dunkirk in maintaining its sewage facilities and sewer treatment operations.

§ 31-14. Sewer fund.

All revenues derived from the sewer rents hereby imposed shall be credited to a sewer fund established by the City of Dunkirk. Moneys in such funds shall be used only in the manner and for the purposes specified and in the order required by the Sewer Rent Law of the State of New York.

§ 31-15. Repealer.

All local laws or ordinances or parts of local laws or ordinances in conflict herewith are hereby repealed, except that all other portions of the City of Dunkirk Sewer Ordinance shall remain in full force and effect.

§ 31-16. Severability.

Should any clause, sentence, paragraph, subdivision, section or other part of this local law be adjudicated by any court of competent jurisdiction to be valid,

such judgment, decree or order shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph subdivision, section or other part thereof directly involved in the controversy in which such judgment, decree or order shall have been rendered and to this end the provisions of each section of this local law are hereby declared to be severable.

§ 31-17. Fees. [Amended 2-5-1991 as L.L. #1-1991; Amended 10-20-1992 as L.L. #11 (Intro No. 14) 1992; Amended 10-28-1996 as L.L. #18 (Intro No. 16) 1996; Amended 11-19-1996 as L.L. #19 (Intro No. 20) 1996; Amended 6-24-1997 as L.L. #8 (Intro No.9) 1997; Amended 1-5-1999 as L.L. #1 (Intro No. 6) 1998; Amended 12-14-2009 as L.L. #4 (Intro No. 5) 2009]

Universal agreement regarding the precise allocation of cost for various levels of collection or treatment components is not possible. In the past, the City determined that the total expenditures for its sewage treatment facilities and the cost of operation and maintenance shall be paid from the sewer rents authorized.

The general principles and considerations included in the City's deliberations involve the historic investments made by the City's General Fund in the development of the system, the demands on the system posed by high volume and load contributing commercial and/or industrial users, and the need for the equitable sharing of the expenses of the system, with tax exempt contributors to the sewer system.

Since a major portion of this prior long term debt, shared by the General Fund, has now been satisfied, it has been determined that the expenditures for the operation of the wastewater system shall now be paid from the sewer rents herein resolved.

See next page:

§ 31-17(A) SEWER RENTS: IN-CITY USER FEE SCHEDULE. [Amended 12-3-2002 as L.L. #3 (Intro No. 3) 2002; Amended 5-20-03 as L.L. #3-2003; Amended 12-14-2009 as L.L. #4 (Intro No. 5) 2009; Amended 12-21-2010 as L.L. #4 (Intro No. 4) 2010]

RATES WILL BE EFFECTIVE AS FOLLOWS:

FOR THOSE ACCOUNTS BILLED ON A QUARTERLY BASIS, THE FOLLOWING RATES WILL TAKE EFFECT NOVEMBER 1, 2010 AND WILL BE FULLY REFLECTED IN THE THREE (3) MONTH BILLING CYCLE ENDING JANUARY 31, 2011. [Amended 12-14-2009 as L.L. #3 (Intro No. 4) 2009; Amended 12-21-2010 as L.L. #4 (Intro No. 4) 2010]

AND

FOR THOSE ACCOUNTS BILLED ON A MONTHLY BASIS, THE FOLLOWING RATES WILL TAKE EFFECT JANUARY 1, 2011 AND WILL BE FULLY REFLECTED IN THE MONTHLY BILLING CYCLE ENDING JANUARY 31, 2011. [Amended 12-14-2009 as L.L. #3 (Intro No. 4) 2009; Amended 12-21-2010 as L.L. #4 (Intro No. 4) 2010]

I. SIGNIFICANT INDUSTRIAL USER (Permit level of less than 250 lb per day)

Charge (\$) (monthly) = Volume + Loading

<u>Volume</u>	Less than 4,000,000 gallons	\$4.75/1,000 gallons
	4,000,000 and greater	\$1.60/1,000 gallons
<u>Loading Gallons</u>	BOD ₅	\$0.25 lb
	TSS	\$0.14 lb
	NO ₃ -N	\$0.51 lb

#BOD₅ calculated on loading (#) of daily permit level

Permit Charge: \$1.52 times daily permit level. [Twenty-five percent (25%) daily permit level times twenty-five cents (\$0.25) per pound times thirty and four-tenths (30.4) days per month.]

II. SIGNIFICANT INDUSTRIAL USER (Permit level of 500 lbs or greater per day)

[Amended 12-20-11 as L.L. #9-2011]

Charge (\$) (monthly) = Volume + Loading + Permit Charge

<u>Volume</u>	Less than 4,000,000 gallons	\$4.75/1,000 gallons
	4,000,000 and greater	\$1.60/1,000 gallons
<u>Loading Gallons</u>	BOD ₅	\$0.25 lb
	TSS	\$0.14 lb
	NO ₃ -N	\$0.51 lb

BOD₅ calculated on loading (#) that exceeds twenty-five percent (25%) of daily permit level

Permit Charge: \$1.52 times daily permit level. [Twenty-five percent (25%) daily permit level times twenty-five cents (\$0.25) per pound times thirty and four-tenths (30.4) days per month.]

III. **INDUSTRIAL USER**

Charge (\$) (monthly) = Volume

<u>Volume</u>	Less than 4,000,000 gallons	\$4.75/1,000 gallons
	4,000,000 and greater	\$1.60/1,000 gallons

IV. **COMMERCIAL USER**

Charge (\$) (monthly) = Volume

<u>Volume</u>	Less than 4,000,000 gallons	\$4.75/1,000 gallons
	4,000,000 and greater	\$1.60/1,000 gallons

V. **EXEMPT USER**

Charge (\$) (monthly) = Volume

<u>Volume</u>	Less than 4,000,000 gallons	\$4.75/1,000 gallons
	4,000,000 and greater	\$1.60/1,000 gallons

VI. **RESIDENTIAL USER**

Charge (\$) (monthly) = Volume

<u>Volume</u>	Less than 4,000,000 gallons	\$4.75/1,000 gallons
	4,000,000 and greater	\$1.60/1,000 gallons

§ 31-17(B) **SEWER RENTS – OUT-OF-CITY USER FEE SCHEDULE. (Industrial User)** [Amended 5-20-03 as L.L. #3-2003]

I. **SIGNIFICANT INDUSTRIAL USER (Permit level of less than 250 lb per day)**

Volume calculated upon metered water consumption unless user has outflow metering, as directed by the Department of Public Works, Waste Water Treatment Facility.

Charge (\$) (monthly) = Volume + Loading

<u>Volume</u>	Two Hundred Percent (200%) of In-City User charge, per Schedule 31-17(A)(I)	
<u>Loading</u>	BOD ₅	\$0.32 lb
	TSS	\$0.14 lb
	NO ₃ -N	\$0.51 lb
#BOD ₅	calculated on loading (#) of daily permit level	

Permit Charge: \$1.52 times daily permit level. [Twenty-five percent (25%) daily permit level times thirty-two cents (\$0.32) per pound times thirty and four-tenths (30.4) days per month.]

II. **SIGNIFICANT INDUSTRIAL USER (Permit level of 250 lb or greater per day)**

Charge (\$) (monthly) = Volume + Loading + Permit Charge

<u>Volume</u>	Two Hundred Percent (200%) of In City User charge, per Schedule 31-17(A)(II)	
<u>Loading</u>	BOD ₅	\$0.32 lb
	TSS	\$0.14 lb
	NO ₃ -N	\$0.51 lb

*Less a 250 mg/L exemption
BOD₅ calculated on loading (#) that exceeds twenty-five percent (25%) of daily permit level

Permit Charge: \$1.52 times daily permit level. [Twenty-five percent (25%) daily permit level times thirty-two cents (\$0.32) per pound times thirty and four-tenths (30.4) days per month.]

III. **INDUSTRIAL USER**

Charge (\$) (monthly) = Volume

Volume Two Hundred Percent (200%) of In City Significant Industrial user charge, per Schedule 31-17(A)(III)

IV. COMMERCIAL USER

Charge (\$) (monthly) = Volume

Volume Two Hundred Percent (200%) of In City user charge, per Schedule 31-17(A)(IV)

V. Exempt User

Charge (\$) (monthly) = Volume

Volume Two Hundred Percent (200%) of In City user charge, per Schedule 31-17(A)(V)

VI. RESIDENTIAL USER

Charge (\$) (monthly) = Volume

Volume Two Hundred Percent (200%) of In City user charge, per Schedule 31-17(A)(VI)

ARTICLE III

**Water Rate Schedule
[Adopted 6-18-1992 as L.L. #6-1992]**

§ 31-18. Intent.

The intent of this local law is to increase the amount of revenues received by the City for the water services which it provides, in order to more accurately reflect the cost of providing those services.

§ 31-19. Rate structure. [Amended 10-27-1993 as L.L. #11 (Intro No.15) 1993; Amended 6-6-1995 as L.L. #16-1995; Amended 10-28-1996 as L.L. #17 (Intro No. 17) 1996; Amended 12-3-2002 as L.L. #4-2002; Amended 12-12-2006 as L.L. #12-2006; Amended 12-14-2009 as L.L. #3 (Intro No. 4) 2009; Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012]

The following constitutes the rate structure for water services provided by the City of Dunkirk.

**EFFECTIVE JANUARY 1, 2013
[Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012]**

FOR ACCOUNTS BILLED QUARTERLY (fully-reflected in the three-month billing cycle ending March 31, 2013):

QUARTERLY

	<u>CITY RATE</u>	<u>SUBURBAN RATE</u>
Minimum up to 5,000 gallons	\$33.75	\$59.07
Next 15,000 gallons	\$ 3.14 per 1,000 gal.	\$ 5.50 per 1,000 gal.
Next 23,980,000 gallons	\$ 2.44 per 1,000 gal.	\$ 4.27 per 1,000 gal.
All over 24,000,000 gallons	\$ 1.27 per 1,000 gal.	\$ 2.22 per 1,000 gal.

METER RATES [Amended 12-3-2002 as L.L. #4-2002]

1"	\$ 25.00	\$ 43.75
1.5"	\$ 60.00	\$ 105.00
2"	\$ 125.00	\$ 218.75
3"	\$ 250.00	\$ 437.50
4"	\$ 375.00	\$ 656.25
6"	\$ 437.50	\$ 765.63
8"	\$ 500.00	\$ 875.00
10"	\$ 562.50	\$ 984.38

**MAXIMUM METER CHARGE
PER CUSTOMER**

\$1,800.00

\$3,150.00

FOR ACCOUNTS BILLED MONTHLY (fully-reflected in the one-month billing cycle ending January 31, 2013): **[Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012]**

MONTHLY

CITY RATE

SUBURBAN RATE

Minimum up to 2,000 gallons	\$11.25	\$19.69
Next 5,000 gallons	\$ 3.14 per 1,000 gal.	\$ 5.50 per 1,000 gal.
Next 7,993,000 gallons	\$ 2.44 per 1,000 gal.	\$ 4.27 per 1,000 gal.
All over 8,000,000 gallons	\$ 1.27 per 1,000 gal.	\$ 2.22 per 1,000 gal.

METER RATES [Amended 12-3-02 as L.L. #4-2002]

1"	\$ 8.33	\$ 14.58
1.5"	\$ 20.00	\$ 35.00
2"	\$ 41.67	\$ 72.92
3"	\$ 83.33	\$ 145.83
4"	\$ 125.00	\$ 218.75
6"	\$ 145.83	\$ 255.21
8"	\$ 166.67	\$ 291.67
10"	\$ 187.50	\$ 328.13

**MAXIMUM METER CHARGE
PER CUSTOMER**

\$ 600.00

\$1,050.00

EFFECTIVE JANUARY 1, 2014

FOR ACCOUNTS BILLED QUARTERLY (fully-reflected in the three-month billing cycle ending March 31, 2014): **[Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012]**

QUARTERLY

CITY RATE

SUBURBAN RATE

Minimum up to 5,000 gallons	\$45.00	\$78.75
Next 15,000 gallons	\$ 3.14 per 1,000 gal.	\$ 5.50 per 1,000 gal.
Next 23,980,000 gallons	\$ 2.44 per 1,000 gal.	\$ 4.27 per 1,000 gal.
All over 24,000,000 gallons	\$ 1.27 per 1,000 gal.	\$ 2.22 per 1,000 gal.

METER RATES [Amended 12-3-2002 as L.L. #4-2002]

1"	\$ 25.00	\$ 43.75
1.5"	\$ 60.00	\$ 105.00
2"	\$ 125.00	\$ 218.75
3"	\$ 250.00	\$ 437.50
4"	\$ 375.00	\$ 656.25
6"	\$ 437.50	\$ 765.63
8"	\$ 500.00	\$ 875.00
10"	\$ 562.50	\$ 984.38

<u>MAXIMUM METER CHARGE PER CUSTOMER</u>	\$1,800.00	\$3,150.00
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FOR ACCOUNTS BILLED MONTHLY (fully-reflected in the one-month billing cycle ending January 31, 2014): **[Amended 11-05-2012 as L.L. #1 (Intro No. 1) 2012]**

MONTHLY

	<u>CITY RATE</u>	<u>SUBURBAN RATE</u>
Minimum up to 2,000 gallons	\$15.00	\$26.25
Next 5,000 gallons	\$ 3.14 per 1,000 gal.	\$ 5.50 per 1,000 gal.
Next 7,993,000 gallons	\$ 2.44 per 1,000 gal.	\$ 4.27 per 1,000 gal.
All over 8,000,000 gallons	\$ 1.27 per 1,000 gal.	\$ 2.22 per 1,000 gal.

METER RATES [Amended 12-3-2002 as L.L. #4-2002]

1"	\$ 25.00	\$ 43.75
1.5"	\$ 60.00	\$ 105.00
2"	\$ 125.00	\$ 218.75
3"	\$ 250.00	\$ 437.50
4"	\$ 375.00	\$ 656.25
6"	\$ 437.50	\$ 765.63
8"	\$ 500.00	\$ 875.00
10"	\$ 562.50	\$ 984.38

<u>MAXIMUM METER CHARGE PER CUSTOMER</u>	\$ 600.00	\$1,050.00
---	-----------	------------

Such amount of rents and/or other charges related to water and sewer use,

including all fees listed in this Chapter, as well as all fees, penalties and other charges as may be levied under Chapter 63 of the City Code entitled "Sewer Use" and Chapter 77 of the City Code entitled "Waterworks" as remain unpaid shall be included with the annual tax levy, including any penalties and interest and shall be collected and enforced in the same manner and at the same time as provided by law and/or agreement for collection and enforcement of City taxes. **[Amended 6-6-95 as L.L. #16-1995]**

§ 31-19 (A) Inter-Municipal Provider Rate - Fredonia. [Amended 5-2-2000 as L.L. #1 (Intro No. 4) 2000]

Pursuant to a contract authorized by Common Council resolution, an inter-municipal water rate for the Village of Fredonia may be authorized at a rate of \$1.40 per thousand gallons, billed monthly, and to include a monthly demand/meter charge as appropriate in the 31-19 Suburban Rate monthly meter rate schedule. This rate shall terminate no later than December 31, 2000.

§ 31-20. Severability.

If any provision of this local law or the application thereof to any person or circumstance shall be held invalid, the remainder of such local law or the application of such provision to any other person or circumstance shall not be affected thereby.

§ 31-21. Supersession of prior legislation.

This local law supersedes all prior Dunkirk Common Council legislation establishing water rates.

ARTICLE IV

**Farmers Market Fee Schedule
[Amended 3-18-1993 as L.L. #3-1993]**

§ 31-22. Intent.

It is the intent of this local law to increase certain fees at the Farmers Market, in order to facilitate placement of certain amenities at the Market.

§ 31-23. Fee schedule. [Amended 3-7-2006 as L.L. #2 (Intro No. 1) 2006]

Effective April 1, 2006, the following fees are hereby established:

Annual	-	\$100.00 per ten foot space
Monthly	-	\$ 25.00 per ten foot space

ARTICLE V

Dog License Fees

§ 31-24. Intent.

It is the intent of this local law to increase license fees for dogs in the City of Dunkirk in order to add a local portion to the fee mandated by the State of New York.

§ 31-25. Fee schedule [Amended 2-15-05 as L.L. #1-2005; Amended 7-2-96 as L.L. #11 (Intro No. 12) 1996]

The following fees are hereby established:

Total Annual Fee for License for Unspayed or Unneutered Dog -	\$20.50
Total Annual Fee for any Senior Citizen age 65 or older for License for Unspayed or Unneutered Dog -	\$15.50
Total Annual Fee for License for Spayed or Neutered Dog -	\$12.50
Total Annual Fee for any Senior Citizen age 65 or older for License for Spayed or Neutered Do -	\$ 7.50

ARTICLE VI

**DPW-Parks Division Equipment and Facilities
[Added 5-4-1992 as L.L. #4-1992]**

§ 31-30. Intent.

The intent of this local law is to update the fee schedule for picnic table and bandstand rentals.

§ 31-31. Fee schedule.

Effective immediately, the following fees are hereby established:

Picnic table rental - \$2.50 per day

Bandstand rental, per 8×8 section - \$5.00 per day

§ 31-32. Severability.

If any provision of this local law or the application thereof to any person or circumstance shall be held invalid, the remainder of such local law or the application of such provision to any other person or circumstance shall not be affected thereby.

ARTICLE VII

Zoning Fees - Telecommunication Facilities [Adopted 7-7-1998 as L.L. #2-1998]

§ 31-40. Intent.

The intent of this local law is to establish the fee schedule for the issuance of permits in accordance with Chapter 79 of the Dunkirk City Code entitled "ZONING Article XXVI, § 79-26160 – Regulation of Telecommunication Facilities Located In the City Of Dunkirk."

§ 31-41. Fee schedule.

Effective immediately, the following fees are hereby established:

1.	Special Tower Permit	-	\$2,500.00
2.	Site Plan Review	-	\$ 500.00
3.	Co-User Permit/Existing Structure	-	\$1,000.00

§ 31-42. Severability.

If any provision of this local law or the application thereof to any person or circumstance shall be held invalid, the remainder of such local law or the application of such provision to any other person or circumstance shall not be affected thereby.

ARTICLE VIII

**Electrical License and Renewal Fees
[Adopted 9-21-04 as L.L. #5-2004]**

§ 31-50. Intent.

It is the intent of this local law to establish a fee schedule in the City of Dunkirk for the issuance of electrical licenses pursuant to Chapter 28 Electrical Installations.

§ 31-51. Fee Schedule.

Effective immediately, the following fees are hereby established:

- | | | | |
|----|--|---|----------|
| 1. | Master Electrician initial license | - | \$150.00 |
| 2. | Yearly renewal of Master Electrician license | - | \$ 75.00 |

CHAPTER 32

FIRE PREVENTION

**ARTICLE I
General Provisions**

§ 32-1. Intent and compliances3207
[Amended 7-3-1973]

§ 32-2. Application; exceptions3207

§ 32-3. Providing reasonable safety required; evidence of compliance3207

§ 32-4. Authority to enter premises3207

§ 32-5. Inspections of buildings and premises authorized3208

§ 32-6. Order to eliminate dangerous or hazardous conditions authorized.....3208

§ 32-7. Service of orders; content of orders3209

§ 32-8. Final order3209

§ 32-9. Permits for hazardous materials and processes; revocation3209

§ 32-10. Definitions3210

§ 32-11. Liability for damages not assumed3210

**ARTICLE II
Automobile Wrecking Yards, Junkyards and
Waste-Material Handling Plots**

§ 32-12. Conformity to all other requirements3212

§ 32-13. Permit required3212

§ 32-14. Location restricted3212

§ 32-15. Burning operations restricted3212

§ 32-16. Construction and protection requirements3212

**ARTICLE III
Bowling Establishments**

§ 32-17. Conformity to all other requirements3213

§ 32-18. Permit required for pin refinishing and lane resurfacing3213

§ 32-19. Regulations for lane resurfacing operations3213

§ 32-20. Regulations for pin refinishing operations.....3213

**ARTICLE IV
Dry-Cleaning Plants**

§ 32-21. Definitions3215

§ 32-22. Permit required; change in class of solvents regulated3216

§ 32-23. Operation of Class I systems.....3216

§ 32-24.	Operation of Class II systems.....	3216
§ 32-25.	Operation of Class III systems.....	3217
§ 32-26.	Operation of Class IV system	3217
§ 32-27.	Heating equipment	3218

ARTICLE V

Explosives, Ammunition and Blasting Agents

§ 32-28.	Scope of Article; exceptions.....	3219
§ 32-29.	Definitions	3219
§ 32-30.	Permit required	3220
§ 32-31.	General requirements.....	3221
§ 32-32.	Storage of explosives.....	3222
§ 32-33.	Transportation of explosives.....	3223
§ 32-34.	Use and handling of explosives	3224
§ 32-35.	Storage of blasting agents and supplies.....	3225
§ 32-36.	Mixing of blasting agents.....	3225
§ 32-37.	Transportation of blasting agents.....	3225

ARTICLE VI

Fire Protection Equipment

§ 32-38.	Survey of premises and specification of equipment authorized.....	3226
§ 32-39.	Maintenance of equipment required	3226

ARTICLE VII

Flammable and Combustible Liquids

§ 32-40.	Scope of Article.....	3227
§ 32-41.	Definitions	3227
§ 32-42.	Certain storage of flammable or combustible liquids prohibited	3229
	[Added 7-7-1970]	
§ 32-43.	Permit require	3229
	[Amended 7-7-1970; effective 7-15-1970]	
§ 32-44.	Design and construction of tanks	3229
§ 32-45.	Installation of outside aboveground tanks.....	3231
§ 32-46.	Container size and construction	3238
§ 32-47.	Storage of closed containers inside buildings	3238
§ 32-48.	Storage of closed containers outside buildings.....	3244
§ 32-49.	Dispensing systems at automotive service stations	3244

ARTICLE VIII

Flammable and Combustible Liquid Tank Vehicles

§ 32-50.	Scope of Article.....	3247
§ 32-51.	Definitions	3247
§ 32-52.	Permit required	3247
§ 32-53.	Tank vehicle design.....	3247
§ 32-54.	Static protection	3248
§ 32-55.	Protection against damage from collision or overturn	3248
§ 32-56.	Marking of vehicles	3248
§ 32-57.	Fire control.....	3248
§ 32-58.	Ignition sources prohibited.....	3249
§ 32-59.	Parking and garaging	3249

**ARTICLE IX
Garages**

§ 32-60.	Conformity to all applicable requirements of code	3250
§ 32-61.	Permit required	3250
§ 32-62.	Cleaning with flammable liquids	3250
§ 32-63.	Handling of gasoline and oils	3250

**ARTICLE X
Hazardous Chemicals**

§ 32-64.	Scope of Article.....	3251
§ 32-65.	Definitions	3251
§ 32-66.	Permit required	3252
§ 32-67.	General requirements for hazardous chemicals.....	3253
§ 32-68.	Storage of oxidizing materials.....	3253
§ 32-69.	Radioactive materials	3253
§ 32-70.	Unstable (reactive) liquids	3253
§ 32-71.	Highly toxic materials	3257
§ 32-72.	Poisonous gases	3257
§ 32-73.	Corrosive liquids	3258

**ARTICLE XI
Liquefied Petroleum Gases**

§ 32-74.	Scope of Article.....	3259
§ 32-75.	Definition	3259
§ 32-76.	Installation permits required; reports of installations.....	3259
§ 32-77.	Inspection of installations authorized	3260
§ 32-78.	Maximum installations at one location	3260
	[Amended 1-17-1984]	
§ 32-79.	Pressures inside buildings	3260
§ 32-80.	Containers inside buildings.....	3261
§ 32-81.	Marking of cargo vehicles.....	3261
§ 32-82.	Parking and garaging of tank vehicles	3261

**ARTICLE XII
Lumberyards and Woodworking Plants**

§ 32-83.	Permit required	3262
§ 32-84.	Open yard storage	3262
§ 32-85.	Operational fire hazards in lumberyards	3262
§ 32-86.	Woodworking plants	3263

**ARTICLE XIII
Oil-Burning Equipment**

§ 32-87.	Scope of Article.....	3264
§ 32-88.	Definitions	3264
§ 32-89.	Permit required	3264
§ 32-90.	Installation and use of equipment.....	3264
§ 32-91.	Installation of fuel oil tanks.....	3265
§ 32-92.	Piping materials and design	3266
§ 32-93.	Piping installation	3267
§ 32-94.	Oil pumps	3268
§ 32-95.	Valves	3269
§ 32-96.	Means for manually stopping required	3269

**ARTICLE XIV
Manufacture of Organic Coatings**

§ 32-97.	Scope of Article.....	3270
§ 32-98.	Definition	3270
§ 32-99.	Permit required	3270
§ 32-100.	Location restrictions	3270
§ 32-101.	Storage of raw materials and finished products.....	3271
§ 32-102.	Process buildings.....	3272
§ 32-103.	Process piping and pumps	3272
§ 32-104.	Raw materials in process areas	3273
§ 32-105.	Electrical equipment and static and lightning protection	3273
§ 32-106.	Fire control and detection.....	3273

**ARTICLE XV
Places of Assembly**

§ 32-107.	Definitions	3274
§ 32-108.	Permit required	3274
§ 32-109.	Standards for decorative material.....	3274
§ 32-110.	Motion picture screens	3275
§ 32-111.	Exit doors	3275

§ 32-112.	Aisles	3275
§ 32-113.	Plan of exitways and aisles required	3275
§ 32-114.	Use, marking and lighting of exitways.....	3276
§ 32-115.	Number of occupants permitted.....	3276
§ 32-116.	Fire control	3276

**ARTICLE XVI
General Precautions Against Fire**

§ 32-117.	Outdoor fires prohibited; food preparation excepted	3277
§ 32-118.	Smoking of food products restricted	3277
§ 32-119.	Smoking prohibited under certain conditions	3277
§ 32-120.	Use of torches for removing paint	3278
§ 32-121.	Deposit of hot ashes and other dangerous materials	3278
§ 32-122.	Accumulations of waste materials	3278
§ 32-123.	Handling of readily combustible materials.....	3278
§ 32-124.	Storage of readily combustible materials.....	3279
§ 32-125.	Flammable decorative materials in mercantile and institutional occupancies prohibited	3279
§ 32-126.	Open flames, lights and equipment capable of igniting flammable materials restricted.....	3279
§ 32-127.	Maintenance of chimneys, heating appliances and incinerators	3280

**ARTICLE XVII
Welding or Cutting**

§ 32-128.	Scope of Article.....	3281
§ 32-129.	Definition	3281
§ 32-130.	Permit required for welding or cutting; exceptions.....	3281
§ 32-131.	Welding and cutting equipment	3282
§ 32-132.	Fire control	3282

**ARTICLE XVIII
Enforcement, Appeals and Penalties**

§ 32-133.	Enforcing official; rules and regulations authorized	3284
§ 32-134.	Appeals from orders	3284
§ 32-135.	Fire Prevention Code Appeals Board.....	3284
§ 32-136.	Meetings and compensation.....	3284
	[Amended 3-4-1969]	
§ 32-137.	Penalties for offenses	3285
§ 32-138.	Conflicting ordinances repealed	3285

§ 32-139. Severability.....3285
§ 32-140. Effective date3286

[HISTORY: Adopted by the Common Council of the City of Dunkirk 2-7-1967 as Chapter X of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

General References

Air pollution -	See Ch. 4.
Building construction -	See Ch. 15.
Fumigation of buildings -	See Ch. 17.
Unsafe buildings or structures -	See Ch. 18.
Public dock -	See Ch. 24.
Electrical installations -	See Ch. 28.
Fireworks display -	See Ch. 34.
Housing standards -	See Ch. 41.
Junk dealers -	See Ch. 44.
Removal of plant growth -	See Ch. 53.
Plumbing -	See Ch. 55.
Sewers -	See Ch. 63.
Zoning -	See Ch. 79.

ARTICLE I
General Provisions

§ 32-1. Intent and compliance. [Amended 7-3-1973]

It is the intent of this code to prescribe regulations consistent with nationally recognized good practice for the safeguard, to a reasonable degree, of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises. Compliance with standards of the National Fire Protection Association shall be deemed to be prima facie evidence of compliance with this intent.

§ 32-2. Application; exceptions.

- A. The provisions of this code shall apply equally to new and existing conditions, except that existing conditions not in strict compliance with the terms of this code shall be permitted to continue where the exceptions do not constitute a distinct hazard to life or property, in the opinion of the Chief of the Fire Department.
- B. Nothing contained in this code shall be construed as applying to the transportation of any article or thing shipped under the jurisdiction of and in compliance with the regulations prescribed by the Interstate Commerce Commission, nor as applying to the military forces of the United States.

§ 32-3. Providing reasonable safety required; evidence of compliance.

All matters within the intent of this code, not covered in detail by this code, shall provide reasonable safety to persons and property. Compliance with the Fire Prevention Code, Edition of 1965, recommended by the American Insurance Association, shall be evidence of compliance with this intent.

§ 32-4. Authority to enter premises.

- A. The Chief of the Fire Department or any inspector thereof may, at all reasonable hours, enter any building or premises for the purpose of making any inspection or investigation which, under the provisions of this code, he or they may deem necessary to be made.
- B. The Chief of the Fire Department or any inspector thereof shall be permitted by the owner, lessee, manager or operator of any building or premise to enter and inspect their building or premise at the time and for the purpose stated in this section.

§ 32-5. Inspections of buildings and premises authorized.

It shall be the duty of the Chief of the Fire Department to inspect or cause to be inspected by the Fire Department officers or members, all buildings and premises, except the interiors of dwellings, as often as may be necessary, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, endanger life from fire, or any violations of the provisions or intent of this code and of any other ordinance affecting the fire hazard.

§ 32-6. Orders to eliminate dangerous or hazardous conditions authorized.

Whenever any of the officers, members or inspectors of the Fire Department, as mentioned in § 32-5, shall find in any building or upon any premises dangerous or

hazardous conditions or materials as follows, he or they shall order such dangerous conditions or materials to be removed or remedied in such manner as may be specified by the Chief of the Fire Department:

- A. Dangerous or unlawful amounts of combustible or explosive or otherwise hazardous materials.
- B. Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible or explosive or otherwise hazardous materials.
- C. Dangerous accumulations of rubbish, wastepaper, boxes, shavings or other highly flammable materials.
- D. Accumulations of dust or waste material in air-conditioning or ventilating systems, or of grease in kitchen or other exhaust ducts.
- E. Obstructions to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the operations of the Fire Department or egress of occupants in case of fire.
- F. Any building or other structure which, for want of repairs, lack of sufficient fire escapes or other exit facilities, automatic or other fire alarm apparatus or fire extinguishing equipment, or by reason of age or dilapidated condition, or from any other cause, creates a hazardous condition.

§ 32-7. Service of orders; content of orders.

The service of orders for the correction of violations of this code shall be made upon the owner, occupant or other person responsible for the conditions, either by delivering a copy of same to such person or by delivering the same to and leaving it with any person in charge of the premises, or in case no such person is found upon the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance of said premises. Whenever it may be necessary to serve such an order upon the owner of premises, such order may be served either by delivering to and leaving with the said person a copy of the said order or, if such owner is absent from the jurisdiction of the officer making the order, by sending such copy by registered mail to the owner's last known post office address as it appears on the tax assessment roll of the City. Such order shall specify the alleged violation and shall provide for compliance within ten (10) days of the date of service of the notice, unless the Fire Chief shall declare the alleged violation to be of such potentially dangerous nature to the safety and welfare of the public as to require immediate remedy.

§ 32-8. Final order.

Any order for the correction of violations of this code shall become a final order if

written request for a hearing is not made in accordance with § 32-134 within ten (10) days after service of the order. This section shall not apply to any order declared to require immediate remedy by the Fire Chief, which order shall be deemed a final order.

§ 32-9. Permits for hazardous materials and processes; revocation.

- A. A permit shall constitute permission to maintain, store or handle materials, or to conduct processes, which produce conditions hazardous to life or property, or to install equipment used in connection with such activities. Such permit does not take the place of any license required by law. It shall not be transferable, and any change in use or occupancy of premises shall require a new permit.
- B. Before a permit may be issued, the Chief of the Fire Department or his assistants shall make or cause to be made such inspections or tests as are necessary to assure that the provisions of this code are complied with.
- C. The Chief of the Fire Department may revoke a permit or approval issued if any violation of this code is found upon inspection or in case there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

§ 32-10. Definitions

The terms defined in this section shall have the meaning indicated and shall apply to all Articles in this code. Terms defined in subsequent Articles of this code shall apply only to the Articles in which they appear.

APPROVED - Means accepted by the Chief of the Fire Department as a result of his investigation and experience or by reason of test, listing or approval by Underwriters' Laboratories, Inc., the National Bureau of Standards, the American Gas Association Laboratories or other nationally recognized testing agencies.

AUTOMATIC FIRE ALARM SYSTEM - Means a system which automatically detects a fire condition and actuates a fire alarm signal device.

FIRE-RESISTANCE RATING - Means the time in hours that the material or construction will withstand the standard fire exposure as determined by a fire test made in conformity with the Standard Methods of Fire Tests of Building Construction and Materials ASTM E119, 1961 Edition, UL Inc. 263, 1959 Edition as amended 1962, or NFPA No. 251, 1963 Edition.

I.C.C. CONTAINER - Means any container approved by the Interstate Commerce Commission for shipping any liquid, gaseous or solid material of a flammable, toxic or other hazardous nature.

OWNER - Includes his duly authorized agent or attorney, a purchaser, devisee, fiduciary and a "person" having a vested or contingent interest in the property in question.

PERSON - Includes corporation and co-partnership as well as individual.

§ 32-11. Liability for damages not assumed.

This code shall not be construed to hold the municipality responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein, or failure to inspect or reinspect, or the permit issued as herein provided or by reason of the approval or disapproval of any equipment authorized herein.

ARTICLE II
Automobile Wrecking Yards, Junkyards
and Waste-Material Handling Plants

§ 32-12. Conformity to all other requirements.

Automobile wrecking yards, junkyards and waste-material handling plants shall conform to all other applicable requirements of this code as well as the following provisions.

§ 32-13. Permit required.

A permit shall be obtained to conduct or maintain any automobile wrecking yard, junkyard or waste-material handling plant.

§ 32-14. Location restricted.

No automobile wrecking yard, junkyard or waste-material handling plant shall be located as to seriously expose adjoining or adjacent properties.

§ 32-15. Burning operations restricted.

The burning of wrecked or discarded automobiles or any parts thereof, or junk or any waste materials shall be done only in designated open spaces or incinerator enclosure approved for burning purposes by the Chief of the Fire Department.

§ 32-16. Construction and protection requirements.

- A. Handling and storage of large quantities of wastepaper, rags or other combustible materials shall not be in a building of wood frame or ordinary construction, unless the building is sprinklered. Vertical openings shall be enclosed in an approved manner.
- B. Picking rooms shall be separated from storage rooms by construction having a fire-resistance rating of not less than one (1) hour, with each door opening provided with an approved fire door. Picking rooms shall be provided with exhaust systems of sufficient capacity to adequately remove dust and lint.

ARTICLE III
Bowling Establishments

§ 32-17. Conformity to all other requirements.

Bowling establishments shall conform to all other applicable requirements of this code as well as the following provisions.

§ 32-18. Permit required for pin refinishing and lane resurfacing.

A permit shall be required for bowling pin refinishing and bowling lane resurfacing operations involving the use and application of flammable or combustible liquids or materials.

§ 32-19. Regulations for lane resurfacing operations.

Resurfacing operations shall not be carried on while the establishment is open for business. The Chief of the Fire Department shall be notified when bowling lanes are to be resurfaced. Proper ventilation shall be provided. Heating, ventilating or cooling systems employing recirculating of air shall not be operated during resurfacing operations or within one hour following the application of flammable finishes. All electric motors or other equipment in the area which might be a source of ignition shall be shut down and all smoking and use of open flames prohibited during the application of flammable finishes and for one (1) hour thereafter.

§ 32-20. Regulations for pin refinishing operations.

- A. Pin refinishing involving the application of flammable finishes shall be done only in a special room meeting the requirements of § 32-47B; such room shall not be located below grade, nor shall it have communication with any pits, wells, pockets or basements.
- B. All power tools in such special rooms shall be effectively grounded. A substantial metal box or other receptacle approved by the Chief of the Fire Department shall be provided for lathes and sanding or buffing machines for catching dust thrown off during operations. Contents shall be removed daily and disposed of safely.
- C. Storage of flammable or combustible liquids in such special rooms shall not exceed a combined aggregate of sixty (60) gallons in original metal containers, or in approved safety containers not exceeding five (5) gallons

individual capacity. A metal waste can with self-closing cover shall be provided for all waste materials and rags; contents shall be removed daily. Smoking shall be prohibited at all times in refinishing rooms.

ARTICLE IV
Dry-Cleaning Plants

§ 32-21. Definitions.

DRY CLEANING - shall mean the process of removing dirt, grease, paints and other stains from wearing apparel, textiles, fabrics, rugs or other materials by the use of nonaqueous liquids (solvents), and it shall include the process of dyeing clothes or other fabrics or textiles in a solution of dye colors and nonaqueous liquid solvents.

SOLVENT CLASSIFICATION - shall mean a method for classifying solvents as follows:

- A. Class I solvents shall mean flammable liquids having a flash point below one hundred degrees Fahrenheit (100° F.).
- B. Class II solvents shall mean flammable liquids having a flash point at or above one hundred degrees Fahrenheit (100° F.) and below one hundred forty degrees Fahrenheit (140° F.).
- C. Class III solvents shall mean combustible liquids having a flash point at or above one hundred forty degrees Fahrenheit (140° F.).

SYSTEM CLASSIFICATION - shall mean that dry-cleaning plants or systems are classified as follows:

- A. Class I systems shall mean those utilizing Class I solvents.
- B. Class II systems shall mean those utilizing Class II solvents, or systems utilizing Class II solvents which do not comply with Class III or Class IV systems.
- C. Class III system shall mean those employing equipment listed by Underwriters' Laboratories, Inc., utilizing Class III solvents.
- D. Class IV systems shall mean those utilizing solvents which are nonflammable (will not support combustion), or nonflammable at ordinary temperatures and only moderately flammable at higher temperatures.

§ 32-22. Permit required; change in class of solvents regulated.

- A. No person shall engage in the business of dry cleaning without a permit

which shall prescribe the class of system to be used.

- B. No change shall be made in the solvent used in the equipment, to a solvent in a more hazardous class, unless permission for such change shall first have been obtained from the Chief of the Fire Department.

§ 32-23. Operation of Class I systems.

- A. New dry-cleaning plants or systems utilizing Class I solvents shall be prohibited.
- B. Existing dry-cleaning plants or systems utilizing Class I solvents may be continued in use, provided the quantity of Class I solvent that is stored and handled is not increased.

§ 32-24. Operation of Class II systems.

- A. Class II systems shall be located in buildings having walls of masonry or noncombustible construction, and wall finish shall be plain or plastered without furring or concealed spaces. Floors of dry-cleaning sections shall be of fire-resistive material and without pits, wells or pockets, and, where located over a basement, floor shall be vapor- and liquidtight. Roof and floors above grade floor, if of combustible material, shall have the ceilings over the dry-cleaning areas protected by cement or gypsum plaster on metal lath, or equivalent material having a fire-resistance rating of not less than one (1) hour. Dry-cleaning buildings shall not be closer than ten (10) feet to the line of adjoining property, except that, if exposing walls are blank walls having a fire-resistance rating of at least four (4) hours, the building may be located on the property line.
- B. Dry-cleaning operations shall be restricted to the lowest floor of a building, but shall not be located on any floor below grade nor in the same building with other occupancies. Operations incidental to the dry-cleaning business, such as laundering, pressing and ironing, may be in a communicating building or located on the same floor with the dry-cleaning plant, provided the dry-cleaning operations are separated therefrom by noncombustible partitions having a fire-resistance rating of not less than two (2) hours and the communicating openings are protected by approved fire doors.
- C. Door openings on stairs or elevators leading from a dry-cleaning area to a basement, or opening into a room having openings or stairs to basement, shall be provided with noncombustible sills or ramps raised at least six (6) inches. Approved self-closing fire doors shall be provided at such openings. Enclosures shall be of material equivalent to the floor material but having a fire-resistance rating of not less than one (1) hour.

- D. Rooms in which articles are hung up to dry shall be constructed with noncombustible walls, partitions and ceilings having a fire-resistance rating of not less than (2) hours. Entrances to drying rooms shall be provided with approved self-closing fire doors. If the drying room is in a separate building, it shall conform in all respects to provisions for a dry-cleaning building.
- E. A mechanical system of ventilation shall be installed in dry-cleaning areas and drying rooms. The mechanical system of ventilation shall have sufficient capacity to insure complete and continuous change of air every six (6) minutes and shall be provided with means for remote control. The system shall operate automatically when any dry-cleaning equipment is in use.

§ 32-25. Operation of Class III systems.

Class III systems, if located in the same building with other occupancies, shall be separated from the remainder of the building vertically and horizontally by material having a fire-resistance rating of not less than one (1) hour, with openings protected by approved fire doors, except that such separation shall not be required for operations incidental to or in connection with the dry-cleaning business, such as laundering, scouring, scrubbing, drying, pressing or ironing, and the requirement for such separation may be waived at the discretion of the Chief of the Fire Department, based upon a consideration of such factors as type of building construction, nature of occupancy, storage and operating capacity of the system and extent of private fire protection provided.

§ 32-26. Operation of Class IV systems.

- A. Class IV systems shall be subject to the requirements for permit in § 32-22, but shall be exempt from all other provisions of this Article.
- B. Self-service dry-cleaning plant utilizing only solvents approved for Class IV dry-cleaning installations may be installed, subject to the approval of the Chief of the Fire Department.
- C. Spotting operations using flammable or combustible liquids shall not be permitted where self-service dry-cleaning equipment is installed.

§ 32-27. Heating equipment.

- A. Where Class II systems are used, heating shall be by steam or hot water only. Where Class III systems are used, heating shall be by any approved means which does not involve any open flame or ignition source in the dry-cleaning area. Steam and hot water pipes, and radiators for heating and drying purposes, shall be at least one (1) inch from all woodwork and shall be protected by substantial metal screens arranged so as to prevent combustible goods or materials from coming in contact with pipes and

radiators.

- B. For Class II or III systems, boilers shall be located in a detached building or in a boiler room cut off from the dry-cleaning room by partitions of noncombustible material having a fire-resistance rating of not less than two (2) hours, and without openings. For Class II systems, openings into such boiler rooms shall be at least ten (10) feet from any exterior openings into the cleaning room.

ARTICLE V
Explosives, Ammunition and Blasting Agents

§ 32-28. Scope of Article; exceptions.

- A. This Article shall apply to the manufacture, possession, storage, sale, transportation and use of explosives, blasting agents, pyrotechnics and ammunition, except as provided in Subsection B.
- B. Nothing in this Article shall be construed as applying to:
 - (1) The armed forces of the United States or the state militia.
 - (2) Explosives in forms prescribed by the official United States Pharmacopoeia.
 - (3) The sale or use of fireworks. [Editor's Note: See Ch. 34, Fireworks Displays]
 - (4) The possession, transportation and use of small arms ammunition or special industrial explosive devices.

- (5) The possession, storage, transportation and use of not more than twenty (20) pounds of smokeless propellant and one thousand (1,000) small arms primers for hand loading of small arms ammunition for personal use.
- (6) The manufacture, possession, storage and use of not more than fifteen (15) pounds of explosives or blasting agents, exclusive of smokeless propellants in educational, governmental or industrial laboratories for instructional or research purposes when under direct supervision of experienced competent persons.
- (7) The transportation and use of explosives or blasting agents by the United States Bureau of Mines, the Federal Bureau of Investigation, the United States Secret Service or police and Fire Departments acting in their official capacity.

§ 32-29. Definitions.

BLASTING AGENT - Shall mean any material or mixture, consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an "explosive," in which none of the ingredients are classified as "explosives," provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated by means of a "No. 8 test blasting cap" when unconfined. Materials or mixtures classified as nitro carbo nitrates by Interstate Commerce Commission Regulations, 1965 Edition, shall be included in this definition.

EXPLOSIVE - Shall mean any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term "explosive" includes all materials classified as Class A, Class B, or Class C explosives by Interstate Commerce Commission Regulations, 1965 Edition, and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonant fuse, instantaneous fuse, igniter cord and igniters, "small arms ammunition," small arms ammunition primers, smokeless propellant, cartridges for propellant-actuated power devices and cartridges for industrial guns, and "pyrotechnics."

EXPLOSIVE MATERIAL - Shall mean any quantity of Class A, Class B or Class C explosives, and any other chemical compounds or mixtures thereof, used as the propelling or exploding material in any cartridge or other explosive device.

PYROTECHNICS - Shall mean any special fireworks which are manufactured and designed primarily for producing visible and audible pyrotechnic effect by a combustible explosion, and which are of such composition so as to be included under Class B explosives, as defined by the Interstate Commerce Commission

Regulations, 1965 Edition.

SMALL ARMS AMMUNITION - Shall mean any shotgun, rifle, pistol or revolver cartridge and cartridges for propellant-actuated power devices and industrial guns.

TEST BLASTING CAP NO. 8 - Shall mean one containing (2) grams of a mixture of eighty percent (80%) mercury fulminate and twenty percent (20%) potassium chlorate, or a cap of equivalent strength.

§ 32-30. Permit required.

Permits shall be obtained:

- A. To manufacture, possess, store, sell or otherwise dispose of explosives, blasting agents or small arms ammunition.
- B. To transport explosives or blasting agents.
- C. To use explosives or blasting agents.
- D. To operate a terminal for handling explosives or blasting agents.
- E. To deliver to or receive explosives or blasting agents from a carrier at a terminal between the hours of sunset and sunrise.
- F. To transport blasting caps or electric blasting caps on the same vehicle with explosives.

§ 32-31. General requirements.

- A. The manufacture of any explosives, blasting agents, including small arms ammunition, and pyrotechnics, as herein defined, shall be prohibited unless such manufacture is authorized by the Chief of the Fire Department. This shall not apply to hand loading of small arms ammunition prepared for personal use when not for resale.
- B. The storage of explosives and blasting agents is prohibited within the limits established by law as the limits of the district in which such storage is to be prohibited, except for:
 - (1) Temporary storage for use in connection with approved blasting operations.
 - (2) Wholesale and retail stocks of small arms ammunition, fuses, lighters, fuse igniters and safety fuses (not including cordeau detonant fuses) in quantities involving less than five hundred (500)

pounds of explosive material; and explosive-actuated power devices, when employed in construction operations in highly populated areas, in quantities involving less than fifty (50) pounds of explosive material.

- C. The Chief of the Fire Department may limit the quantity of explosives, blasting agents or ammunition to be permitted at any location.
- D. No person shall sell or display explosives or blasting agents on highways, sidewalks, public property or in places of public assembly.
- E. The Chief of the Fire Department may designate the location and specify the maximum quantity of explosives or blasting agents which may be loaded, unloaded, reloaded or temporarily retained at each terminal where such operations are permitted.
- F. Shipments of explosives or blasting agents delivered to carriers shall comply with Interstate Commerce Commission Regulations, 1965 Edition.
- G. Carriers shall immediately notify the Chief of the Fire Department when explosives or blasting agents are received at terminals.

§ 32-32. Storage of explosives.

- A. Explosives, including special industrial explosive materials and any newly developed and unclassified explosive, shall be stored in magazines which comply with this Article. This shall not be construed as applying to the materials covered in § 32-31B(2).
- B. Class I magazines shall be used for the storage of explosives when quantities are in excess of fifty (50) pounds of explosive material.
- C. Class I or Class II magazines shall be used for the storage of explosives in quantities of fifty (50) pounds or less of explosive material, except that a Class II magazine may be used for temporary storage of a larger quantity of explosives at the site of blasting operations, where such amount constitutes not more than one (1) day's supply for use in current operations.
- D. Class I and Class II magazines shall be located away from inhabited buildings, passenger railways, public highways and other magazines in accordance with the American Table of Distances for Storage of Explosives, 1955 Edition, except as provided in Subsection E.
- E. The Chief of the Fire Department may authorize the storage of up to fifty (50) pounds of explosives and five thousand (5,000) blasting caps in wholesale and retail hardware stores or other approved establishments.

Explosives and blasting caps shall be stored in separate Class II magazines, at approved locations on the first floor not more than ten (10) feet from an entrance. A distance of ten (10) feet shall be maintained between the magazines. Their location shall not be changed without approval of the Chief of the Fire Department.

- F. At the site of blasting operations, a distance of at least one hundred fifty (150) feet shall be maintained between Class II magazines and the blast area when the quantity of explosives temporarily kept therein is in excess of twenty-five pounds, and at least fifty (50) feet when the quantity of explosives is twenty-five (25) pounds or less.
- G. Property upon which Class I magazines are located shall be posted with signs reading "Explosives-Keep Off."
- H. Class II magazines shall be painted red and shall bear lettering in white on all sides and top at least three (3) inches high, "Explosives -- Keep Fire Away."

§ 32-33. Transportation of explosives.

- A. Explosives shall not be transported on public conveyances.
- B. Vehicles used for transporting explosives shall be strong enough to carry the load without difficulty and shall be in good mechanical condition. If vehicles do not have a closed body, the body shall be covered with a flame-proof and moistureproof tarpaulin or other effective protection against moisture and sparks. Such vehicles shall have tight floors, and exposed spark-producing metal on the inside of the body shall be covered with wood or other nonsparking material to prevent contact with packages of explosives. Packages of explosives shall not be loaded above the side of open-body vehicles.
- C. Explosives may be loaded into and transported in a truck, truck with semitrailer, truck with full trailer, truck tractor with semitrailer, or truck-tractor with semitrailer and full trailer. Explosives shall not be transported on any pole trailer.
- D. Every vehicle when used for transporting explosives shall be equipped with not less than one (1) approved-type fire extinguisher, suitable for use on flammable liquid fires, filled and ready for immediate use and located near driver's seat.
- E. Only those dangerous articles authorized to be loaded with explosives by Interstate Commerce Commission Regulations, 1965 Edition, shall be carried in the body of a vehicle transporting explosives.

- F. Every vehicle transporting explosives shall be marked or placarded on both sides, front and rear, with the word "Explosives" in letters not less than three (3) inches high on contrasting background.
- G. Blasting caps or electric blasting caps shall not be transported over the highways of the municipality on the same vehicle with other explosives, except by permission of the Chief of the Fire Department.
- H. Vehicles transporting explosives shall not be left unattended at any time within the municipality.
- I. Vehicles transporting explosives shall be routed to avoid congested traffic and densely populated areas.

§ 32-34. Use and handling of explosives.

- A. Blasting operations shall be conducted during daylight hours, except when authorized at other times by the Chief of the Fire Department.
- B. Wherever blasting is being conducted in the vicinity of gas, electric, water, fire alarm, telephone, telegraph or steam utilities, the blaster shall notify the appropriate representatives of such utilities at least twenty-four (24) hours in advance of blasting, specifying the location and intended time of such blasting. Verbal notice shall be confirmed with written notice. In an emergency this time limit may be waived by the Chief of the Fire Department.
- C. Due precautions shall be taken to prevent accidental discharge of electric blasting caps from current induced by radio or radar, transmitters, lightning, adjacent power lines, dust storms or other sources of extraneous electricity.

§ 32-35. Storage of blasting agents and supplies.

- A. Blasting agents or oxidizers, when stored in conjunction with explosives, shall be stored in accordance with § 32-32. The quantity of blasting agents or oxidizers shall be included when computing the total quantity of explosives for determining distance requirements.
- B. Buildings used for the storage of blasting agents separate from explosives shall be located away from inhabited buildings, passenger railways and public highways, in accordance with the American Table of Distances for Storage of Explosives, 1955 Edition.

- C. Semitrailers or full trailers may be used for temporarily storing blasting agents, provided they are located away from inhabited buildings, passenger railways and public highways, in accordance with the American Table of Distances for Storage of Explosives, 1955 Edition.

§ 32-36. Mixing of blasting agents.

- A. Buildings or other facilities used for mixing blasting agents shall be located away from inhabited buildings, passenger railways and public highways, in accordance with the American Table of Distances for Storage of Explosives, 1955 Edition.
- B. Not more than one (1) day's production of blasting agents, or the limit determined by the American Table of Distances for Storage of Explosives, 1955 Edition, whichever is less, shall be permitted in or near the building or other facility used for mixing blasting agents. Larger quantities shall be stored in separate buildings or magazines.

§ 32-37. Transportation of blasting agents.

- A. Blasting agents shall be transported in accordance with the requirements for explosives in § 32-33, when transported in the same vehicle with explosives.
- B. Every vehicle transporting blasting agents shall be marked or placarded on both sides, front and rear, with the word "Dangerous," and also the words "Blasting Agents," in letters not less than three (3) inches high on a contrasting background.

**ARTICLE VI
Fire Protection Equipment**

§ 32-38. Survey of premises and specification of equipment authorized.

The Chief of the Fire Department shall survey each commercial and industrial establishment, mercantile, educational and institutional occupancy, place of assembly, hotel, multifamily house and trailer camp, and shall specify suitable fire-detecting devices or extinguishing appliances which shall be provided in or near boiler rooms, kitchens of restaurants, clubs and like establishments, storage rooms involving considerable combustible material, rooms in which hazardous manufacturing processes are involved, repair garages and other places of a generally hazardous nature. Such devices or appliances may consist of automatic fire alarm systems, automatic sprinkler or water spray systems, standpipe and hose, fixed or portable fire extinguishers of a type suitable for the probable class of fire, or suitable asbestos blankets, manual or automatic covers, or carbon dioxide or other special fire extinguishing systems. In special hazardous processes or storage, appliances of more than one (1) type or special systems may be required.

§ 32-39. Maintenance of equipment required.

Sprinkler systems, standpipe systems, fire alarm systems and other fire protective or extinguishing systems or appliances which have been installed in compliance with any permit or order or because of any law or ordinance shall be maintained in operative condition at all times, and it shall be unlawful for any owner or occupant to reduce the effectiveness of the protection so required; except this shall not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary to make tests, repairs, alterations or additions. The Chief of the Fire Department shall be notified before such tests, repairs, alterations or additions are started, unless the work is to be continuous until completion.

**ARTICLE VII
Flammable and Combustible Liquids**

§ 32-40. Scope of Article.

This Article shall apply to liquids with a flash point below two hundred degrees Fahrenheit (200° F.) and to liquids with flash points above two hundred degrees Fahrenheit (200° F.) which, when heated, assume the characteristics of liquids with flash points below two hundred degrees Fahrenheit (200° F.) except as provided in § 32-2B.

§ 32-41. Definitions.

BOILING POINT - Shall mean the "boiling point" of a "liquid" at a pressure of fourteen point seven (14.7) pounds per square inch (absolute). Where an accurate "boiling point" is unavailable for the material in question or for mixtures which do not have a constant "boiling point," for purposes of this classification the initial point of a distillation as determined by applicable test procedures and apparatus specified in ASTM D-86, Standard Method of Test for Distillation of Petroleum Products, 1962 Edition, may be accepted in lieu of the "boiling point" of the "liquid."

FLASH POINT OF THE LIQUID - Shall mean the minimum temperature at which it

gives off vapor sufficient to form an ignitable mixture with the air near the surface of the "liquid" or within the vessel used, as determined by applicable test procedures and apparatus as follows:

- A. Except for fuel oils and certain viscous materials, the "flash point of a liquid" having a flash point at or below one hundred seventy-five degrees Fahrenheit (175° F.) shall be determined in accordance with the applicable provisions of ASTM D-56, Standard Method of Test for Flash Point by the Tag Closed Tester, 1961 Edition.
- B. Except for fuel oils, the "flash point of liquids" having a flash point above one hundred seventy-five degrees Fahrenheit (175° F.) shall be determined in accordance with the applicable provisions of ASTM D-92, Standard Method of Test for Flash Point by the Cleveland Open Cup Tester, 1957 Edition.
- C. The flash point of fuel oils and certain viscous materials having a flash point at or below one hundred seventy-five degrees Fahrenheit (175° F.) shall be determined in accordance with the applicable provisions of ASTM D-93, Standard Method of Test for Flash Point by the Pensky-Martens Closed Tester, 1962 Edition.

LIQUID - Shall mean, when not otherwise identified, both "flammable and combustible liquids."

COMBUSTIBLE LIQUID - Shall mean any "liquid" having a flash point at or above one hundred forty degrees Fahrenheit (140° F.) and below two hundred degrees Fahrenheit (200° F.), and shall be known as Class III liquids.

FLAMMABLE LIQUID - Shall mean any "liquid" having a flash point below one hundred forty degrees Fahrenheit (140° F.) and having a vapor pressure not exceeding forty (40) pounds per square inch (absolute) at one hundred degrees Fahrenheit (100° F.). "Flammable liquids" shall be divided into two (2) classes of "liquids" as follows:

- A. Class I liquids shall include those having flash points below one hundred degrees Fahrenheit (100° F.) and may be subdivided as follows:
 - (1) Class IA shall include those having flash points below seventy-three degrees Fahrenheit (73° F.) and having a boiling point below one hundred degrees Fahrenheit (100° F.).
 - (2) Class IB shall include those having flash points below seventy-three degrees Fahrenheit (73° F.) and having a boiling point at or above one hundred degrees Fahrenheit (100° F.).

- (3) Class IC shall include those having flash points at or above seventy-three degrees Fahrenheit (73° F.) and below one hundred degrees Fahrenheit (100° F.).
- B. Class II liquids shall include those having flash points at or above one hundred degrees Fahrenheit (100° F.) and below one hundred forty degrees Fahrenheit (140° F.).

UNSTABLE (REACTIVE) LIQUID – Shall mean any “liquid” which will vigorously and energetically react, is potentially explosive, will polymerize, decompose instantaneously, undergo uncontrollable auto-reaction or can be exploded by heat, shock, pressure or combinations thereof. Examples are organic peroxides and nitromethane.

VAPOR PRESSURE - Shall mean the pressure, measured in pounds per square inch (absolute), exerted by a volatile "liquid," as determined by applicable test procedures and apparatus specified in ASTM D323, Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method), 1958 Edition.

§ 32-42. Certain storage of flammable or combustible liquids prohibited. [Added 7-7-1970]

The storage of Class IA and IB liquids in or outside of a dwelling, other place of human habitation or private garage in excess of ten (10) gallons is prohibited. Such prohibition shall not, however, apply to the following:

- A. Storage or use of flammable or combustible liquids in a fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant, or mobile heating plant.
- B. Storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than thirty (30) days.

§ 32-43. Permit required. [Amended 7-7-1970; effective 7-15-1970]

A permit shall be obtained for any of the following:

- A. Storage, handling or use of Class II or III liquids in excess of twenty-five (25) gallons in a building, or in excess of sixty (60) gallons outside of a building, except for fuel oil used in connection with burning equipment.
- B. For the manufacturing, processing, blending or refining of flammable or combustible liquids.
- C. For the storage of flammable or combustible liquids in stationary tanks.

§ 32-44. Design and construction of tanks.

A. Materials.

- (1) Tanks shall be built of steel except as provided in subsection A(2) through A(5) below.
- (2) Tanks may be built of noncombustible materials other than steel if required by the properties of the flammable or combustible liquid stored.
- (3) Tanks built of materials other than steel shall be designed to specifications embodying principles recognized as good engineering design for the material used, and shall be approved by the Chief of the Fire Department.
- (4) Unlined concrete tanks may be used for storing flammable or combustible liquids having a gravity of forty degrees (40°) API or heavier. Concrete tanks with special lining may be used for other services, providing the design is in accordance with sound engineering practice.
- (5) Tanks may have combustible or noncombustible linings.
- (6) Special engineering consideration shall be required if the specific gravity of the liquid to be stored exceeds that of water, or if the tanks are designed to contain flammable or combustible liquids at a liquid temperature below zero degrees Fahrenheit (0° F.)

B. Fabrication.

- (1) Tanks may be of any shape or type consistent with sound engineering design.
- (2) Metal tanks shall be welded, riveted and caulked, brazed or bolted, or constructed by use of a combination of these methods. Filler metal used in brazing shall be nonferrous metal or an alloy having a melting point above one thousand degrees Fahrenheit (1,000° F.) and below that of the metal joined.

C. Atmospheric tanks.

- (1) Tanks designed for underground service not exceeding two thousand five hundred (2,500) gallons capacity may be used aboveground.
- (2) Low-pressure tanks and pressure vessels may be used as

atmospheric tanks.

(3) Atmospheric tanks shall not be used for the storage of Class IA liquids.

D. **Low-pressure tanks.** The normal operating pressure of the tank shall not exceed the design pressure of the tank. Atmospheric tanks built according to Underwriters' Laboratories, Inc. standards may be used for operating pressures not exceeding one (1) pound per square inch gauge, and shall be limited to two point five (2.5) pounds per square inch gauge under emergency venting conditions. Pressure vessels may be used as low-pressure tanks.

E. **Pressure vessels.** The normal operating pressure of the vessel shall not exceed the design pressure of the vessel.

§ 32-45. Installation of outside aboveground tanks.

A. **Restricted locations.** The storage of Class I liquids in aboveground tanks outside of buildings is prohibited within the limits established by law as the limits of the districts in which such storage is to be prohibited.

B. **Location with respect to property lines.**

Every aboveground tank for the storage of flammable or combustible liquids, except those liquids with boilover characteristics and unstable liquids, operating at pressures not in excess of two point five (2.5) pounds per square inch gauge and equipped with emergency venting which will not permit pressures to exceed two point five (2.5) pounds per square inch gauge, shall be located in accordance with Table 32-45B(1).

<u>TABLE 32-45B(1)</u>

Type of Tank	Protection	Minimum distance in feet from property line which may be built upon, including the opposite side of a public way	Minimum distance in feet from nearest side of any public way
Floating roof	Protection for exposures*	1/2 times diameter of tank but need not exceed 90 feet	1/6 times diameter of tank but need not exceed 30 feet
	None	Diameter of tank but need not exceed 175 feet	1/6 times diameter of tank but need not exceed 30 feet
Vertical with weak roof to shell seam	Approved form or inerting system on the tank	1/2 times diameter of tank but need not exceed 90 feet and shall not be less than 5 feet	1/6 times diameter of tank but need not exceed 30 feet and shall not be less than 5 feet
	Protection for exposures*	Diameter of tank but need not exceed 175 feet	1/3 times diameter of tank but need not exceed 60 feet
	None	2 times diameter of tank but need not exceed 350 feet	1/3 times diameter of tank but need not exceed 60 feet
Horizontal and vertical with emergency relief venting to limit pressures to 2.5 psig	Approved inerting system on the tank or approved foam system on vertical tanks	1/2 times Table 32-45B(4), but shall not be less than 5 feet	1/2 times Table 32-45B(4), but shall not be less than 5 feet
	Protection for exposures	Table 32-45B(4)	Table 32-45B(4)
	None	2 times Table 32-45B(4)	Table 32-45B(4)

*Protection for exposures shall mean fire protection for structures on property adjacent to tanks. When acceptable to the Chief of the Bureau of Fire Prevention, such structures located within the jurisdiction of any public fire department or within or adjacent to plants having private fire brigades shall be considered as having adequate protection for exposures.

- (2) Every aboveground tank for the storage of flammable or combustible liquids, except those liquids with boilover characteristics and unstable liquids, operating at pressures exceeding two point five (2.5) pounds per square inch gauge, or

equipped with emergency venting which will permit pressures to exceed two point five (2.5) pounds per square inch gauge, shall be located in accordance with Table 32-45B(2).*

<u>TABLE 32-45B(2)</u>			
Type of Tank	Protection	Minimum distance in feet from property line which may be built upon, including the opposite side of a public way	Minimum distance in feet from nearest side of any public way
—	Protection for exposures*	1 1/2 times Table 32-45B(4), but shall not be less than 25 feet	1 1/2 times Table 32-45B(4), but shall not be less than 25 feet
Any Type	None	3 times Table 32-45B(4), but shall not be less than 50 feet	1 1/2 times Table 32-45B(4), but shall not be less than 25 feet

*Special consideration may be given to tanks equipped with automatic depressuring systems.

- (3) Every aboveground tank for the storage of unstable liquids shall be located in accordance with Table 32-45B(3), except that unstable liquids that are unstable (reactive) chemicals, such as organic peroxides and nitromethane, shall, in addition to complying with the applicable provisions of this Article VII, comply with § 32-07A through C as applicable.

<u>TABLE 32-45B(3)</u>			
Type of Tank	Protection	Minimum distance in feet from property line which may be built upon, including the opposite side of	Minimum distance in feet from nearest side of any

	a public way		public building
Horizontal and vertical tanks with emergency relief venting to permit pressure not in excess of 2.5 psig	Tank protected with any one of the following: Approved water spray, approved inerting, approved insulation and refrigeration, approved barricade	Table 32-45B(4), but not less than 25 feet	Not less than 25 feet
	Protection for exposures	2 1/2 times Table 32-45B(4), but not less than 50 feet	Not less than 100 feet
	None	5 times Table 32-45B(4) but not less than 100 feet	Not less than 100 feet
Horizontal and vertical tanks with emergency relief venting and refrigeration, to permit pressure over 2.5 psig	Tank protected with any one of the following: Approved water spray, approved inerting, approved insulation, approved refrigeration, approved barricade	2 times Table 32-45B(4) but not less than 50 feet	Not less than 50 feet
	Protection for exposures	4 times Table 32-45B(4), but not less than 100 feet	Not less than 100 feet
	None	8 times Table 32-45B(4), but not less than 150 feet	Not less than 150 feet

(4) Reference table for minimum distance used in Tables 32-45B(1) through 32-45B(3) inclusive shall be as follows:

Capacity tank (gallons)	TABLE 32-45B(4)	
	Minimum distance in feet which may be built upon, including the	from property line Minimum distance in feet from

	opposite side of a public way	nearest side of any public way
275 or less	5	5
276 to 750	10	5
751 to 12,000	15	5
12,001 to 30,000	20	5
30,001 to 50,000	30	10
50,001 to 100,000	50	15
100,001 to 500,000	80	25
500,001 to 1,000,000	100	35
1,000,001 to 2,000,000	135	45
2,000,001 to 3,000,000	165	55
3,000,001 or more	175	60

- (5) Where two (2) tank properties of diverse ownership have a common boundary, the Chief of the Fire Department may, with the written consent of the owners of the two (2) properties, substitute the distances provided in Subsection C for the minimum distances set forth in Subsection B.
- (6) Where end failure of horizontal pressure tanks and vessels may expose property, the tank shall be placed with the longitudinal axis parallel to the nearest important exposure

C. Spacing (shell-to-shell) between aboveground tanks.

- (1) The distance between any two (2) flammable or combustible liquid storage tanks shall not be less than three (3) feet.
- (2) Except as provided in Subsection C(3), the distance between adjacent tanks shall not be less than one-sixth (1/6) the sum of their diameters, except when the diameter of one (1) tank is less than one-half (1/2) the diameter of the adjacent tank, the distance between the two (2) tanks shall not be less than one-half (1/2) the diameter of the smaller tank.
- (3) For unstable liquids, the distance between such tanks shall not be less than one-half (1/2) the sum of their diameters.

D. Drainage, dikes and walls for aboveground tanks.

- (1) Drainage and diked area. The area surrounding a tank or a group of tanks shall be provided with drainage as in Subsection D(2) or shall be diked as provided in Subsection D(3).

- (2) Drainage. A slope of not less than one percent (1%) away from the tank toward the drainage system shall be provided. The drainage system shall terminate in vacant land or other area, or in an impounding basin having a capacity not smaller than that of the largest tank served.
- (3) Diked areas.
 - (a) The volumetric capacity of the diked area shall not be less than the greatest amount of liquid that can be released from the largest tank within the diked area, assuming a full tank. The capacity of the diked area enclosing more than one (1) tank shall be calculated by deducting the volume of the tanks other than the largest tank below the height of the dike.
 - (b) Walls of the diked area shall be of earth, steel, concrete or solid masonry designed to be liquid-tight and to withstand a full hydrostatic head.

Earthen walls three (3) feet or more in height shall have a flat section at the top not less than two (2) feet wide. The walls of the diked area shall be restricted to an average height of six (6) feet above interior grade.

- (c) Each diked area containing two (2) or more tanks shall be subdivided, preferably by drainage channels or at least by intermediate curbs in order to prevent spills from endangering adjacent tanks within the diked areas, as follows:
 - [1] When storing normally stable liquids in vertical cone roof tanks constructed with weak roof-to-shell seam or approved floating roof tanks, one (1) subdivision for each tank in excess of ten thousand (10,000) barrels and one (1) subdivision for each group of tanks [no tank exceeding ten thousand (10,000) barrels capacity] having an aggregate capacity not exceeding fifteen thousand (15,000) barrels.
 - [2] When storing normally stable liquids in tanks not covered in § 32-45D(3)(c)[1], one (1) subdivision for each tank in excess of one hundred thousand (100,000) gallons [two thousand five hundred (2,500) barrels] and one (1) subdivision for each group of tanks [no tank exceeding one hundred thousand (100,000) gallons capacity] having an aggregate capacity not

exceeding one hundred fifty thousand (150,000) gallons [three thousand five hundred seventy (3,570) barrels].

[3] When storing unstable liquids in any type of tank, one (1) subdivision for each tank, except for tanks installed with approved drainage.

[4] The drainage channels or intermediate curbs shall be located between tanks so as to take full advantage of the available space, with due regard for the individual tank capacities. Intermediate curbs, where used, shall not be less than eighteen (18) inches in height.

E. **Testing.** All tanks, whether shop-built or field-erected, shall be strength-tested before they are placed in service. The American Society of Mechanical Engineers code stamp, American Petroleum Institute monogram or the label of the Underwriters' Laboratories, Inc. on a tank shall be evidence of compliance with this strength test.

§ 32-46. Container size and construction.

A container shall not exceed sixty (60) gallons individual capacity and shall be made of metal, except that:

- A. Plastic or glass containers having an individual capacity of not more than one (1) pint may be used for flammable and combustible liquids.
- B. Plastic or glass containers having an individual capacity of not more than one (1) gallon may be used for medicines, beverages, foodstuffs and toiletries that are flammable or combustible liquids.
- C. Plastic or glass containers having an individual capacity of not more than one (1) gallon may be used for flammable and combustible liquids whose chemical purity would be contaminated by metal containers.

§ 32-47. Storage of closed containers inside buildings.

- A. Section 32-47 shall apply to the storage of flammable or combustible liquids in drums or other portable closed containers, not exceeding sixty (60) gallons individual capacity, inside buildings. This section shall not apply to the storage of closed containers in bulk plants, service stations, refineries, chemical plants and distilleries, nor shall this section apply to areas where containers are opened for dispensing, mixing or handling.
- B. Inside storage rooms shall comply with the following general construction

requirements: Walls, floors and ceilings shall be of noncombustible material having a fire resistance rating of not less than one (1) hour. Openings to other rooms or buildings shall be provided with noncombustible liquid tight sills or ramps at least six (6) inches in height and with approved fire doors arranged to close doors automatically in case of fire. A permissible alternate to either sills or ramps is open trenches covered with steel grating which drain to a safe location. Where other portions of the building or other properties are exposed, windows shall be protected in an approved manner. Wood at least one (1) inch nominal thickness may be used for shelving, racks, dunnage, scuff boards, floor overlays and similar installations. Proper ventilation shall be provided. Heating shall be restricted to low-pressure steam or hot water or to electric units. Electrical wiring and equipment located in inside storage rooms using Class I liquids, shall be approved for Class I, Division 1 hazardous locations; for Class II and III liquids, shall be approved for general use.

- C. The quantity of flammable liquid in an inside storage room shall not exceed the quantity specified in this subsection, except as provided in Subsection D.
- (1) If not protected by an approved automatic fire extinguishing system:
 - (a) Five hundred fifty (550) gallons total of Class I, II and III liquids, of which not more than
 - (b) Two hundred seventy-five (275) gallons may be of Class I liquids, of which not more than
 - (c) Sixty (60) gallons may be of Class IA liquid.
 - (2) If protected by an approved automatic fire extinguishing system:
 - (a) One thousand one hundred (1,100) gallons total of Class I, II and III liquids, of which not more than
 - (b) Five hundred fifty (550) gallons may be of Class I liquids, of which not more than
 - (c) Two hundred seventy-five (275) gallons may be of Class IA liquid.
- D. The quantity of flammable or combustible liquid in an inside storage room may be increased to that permitted by this subsection, provided the construction is as provided in Subsection B, but with walls, floors and ceiling of noncombustible material having a fire-resistance rating of not less than two (2) hours.

- (1) If not protected by an approved automatic fire extinguishing system, shall contain not more than
 - (a) One thousand one hundred (1,100) gallons total of Class I, II and III liquids, of which not more than
 - (b) Five hundred fifty (550) gallons may be of Class I liquid, of which not more than
 - (c) Two hundred seventy-five (275) gallons may be of Class IA liquid.
 - (2) If protected by an approved automatic fire extinguishing system, shall not contain more than:
 - (a) Eleven thousand (11,000) gallons total of Class I, II and III liquids, of which not more than
 - (b) Two thousand seven hundred fifty (2,750) gallons may be of Class I liquid, of which not more than
 - (c) Five hundred fifty (550) gallons may be of Class IA liquid;
 - (d) These amounts may be increased to not more than one (1) day's supply where daily consumption exceeds the above limits.
- E. Storage cabinets may be used where it is desired to keep more than ten (10) gallons of flammable or combustible liquids inside buildings. No individual container shall exceed five (5) gallons capacity, and not over fifty (50) gallons shall be stored in any one (1) cabinet.
- F. Flammable or combustible liquids (including stock for sale) shall not be stored near exits, stairways or areas normally used for the safe egress of people.
- G. The storage of flammable or combustible liquids in closed containers shall comply with the following occupancy schedule, except that the Chief of the Fire Department may impose a quantity limitation or require greater protection where, in his opinion, unusual hazard to life or property is involved, or he may authorize increase of these amounts where the type of construction, fire protection provided or other factors substantially reduce the hazard.
- H. Dwellings and apartment houses containing not more than three dwelling

units and accompanying attached or detached garages. Storage other than fuel oil for oil burner service shall be prohibited, except that which is required for maintenance or equipment operation, which shall not exceed ten (10) gallons. Such flammable or combustible liquid shall be stored in metal closed containers or safety cans.

- I. Assembly and business occupancies, apartment houses containing more than three dwelling units, and hotels. Storage other than fuel oil for oil burner service shall be prohibited, except that which is required for maintenance and operation of building and operation of equipment. Such storage shall be kept in closed metal containers stored in a storage cabinet, or in safety cans, or in an inside storage room not having a door that opens into that portion of the building used by the public.
- J. Educational and institutional occupancies. Storage other than fuel oil for oil burner service shall be limited to that required for maintenance, demonstration, treatment and laboratory work. Flammable or combustible liquids in the laboratories and at other points of use shall be in containers not larger than one (1) quart, or in safety cans or in storage cabinets.
- K. Mercantile occupancies. In rooms or areas accessible to the public, storage shall be in closed containers and limited to quantities needed for display and normal merchandising purposes. Where the aggregate quantity of additional stock exceeds fifty (50) gallons, it shall be stored in rooms or portions of buildings that comply with the construction provisions of Subsection B.
- L. General purpose and public warehouses. Storage shall be in accordance with Table 32-47 in fire-resistive buildings or in portions of fire-resistive buildings cut off by standard fire walls from combustible materials other than liquids, except as may be required by other portions of this code. Noncombustible material creating no hazard to the flammable or combustible liquids may be stored in the same area as the liquids.
- M. Flammable or combustible liquid warehouses or storage buildings. Storage shall be in accordance with Table 32-47. Storage buildings shall be of fire-resistive or non-combustible material. If storage building is located thirty (30) to fifty (50) feet from a building or line of adjoining property that may be built upon, the exposing wall shall be a noncombustible blank wall having a fire-resistance rating of not less than two (2) hours. If storage building is located ten (10) to thirty (30) feet from a building or line of adjoining property that may be built upon, the exposing wall shall be a blank wall having a fire-resistance rating of not less than three (3) hours. If storage building is less than ten (10) feet from the line of adjoining property that can be built upon, the exposing wall shall be a blank wall having a fire-resistance rating of not less than four (4) hours. In particular installations, the distances between

the storage building and other buildings may be altered at the discretion of the Chief of the Fire Department, after consideration of the height, size and character of construction and occupancy of the exposed buildings. At the discretion of the Chief of the Fire Department, approved Class A fire doors may be installed in an approved manner on the otherwise blank walls.

§ 32-48. Storage of closed containers outside buildings.

- A. Section 32-48 shall apply to the storage of flammable or combustible liquids in drums or other portable closed containers, not exceeding sixty (60) gallons individual capacity, outside of buildings in areas used solely for such storage. This section shall not apply to storage of flammable or combustible liquids in drums or portable closed containers in bulk plants, service stations and refineries.
- B. Drums shall not be stored outside on building platforms or between buildings or in locations adjacent thereto, in such a manner that they would contribute to the spread of fire.
- C. Storage of over one hundred (100) drums of Class I liquids shall be limited to groups of one hundred (100) drums, located at least sixty (60) feet from the nearest building or line of adjoining property that may be built upon, and each group shall be separated by at least forty (40) feet. Storage of over three hundred (300) drums of Class II or III liquids shall be limited to groups of three hundred (300) drums, located at least fifty (50) feet from nearest

building or line of adjoining property that may be built upon, and each group shall be separated by at least thirty (30) feet. These distances may be reduced fifty percent (50%) if sprinklers and drainage away from exposures are provided. In particular installations, the distances to buildings may be altered at the discretion of the Chief of the Fire Department, after consideration of the height, size and character of construction and occupancy of the exposed buildings.

§ 32-49. Dispensing systems at automotive service stations.

A. **Location.** Dispensing devices at automotive service stations shall be so located that all parts of the vehicle being served will be on the premises of the service station.

(1) Inside location. Approved dispensing units may be located inside garages upon specific approval of the Chief of the Fire Department. The dispensing area shall be separated from motor vehicle repair areas in a manner approved by the Chief of the Fire Department. The dispensing unit and its piping shall be protected against physical damage from vehicles either by mounting on a concrete island or by equivalent means, and shall be located in a position where it cannot be struck by a vehicle descending a ramp or other slope out of control. The dispensing areas shall be provided with an approved mechanical or gravity ventilation system. A clearly identified switch, readily accessible in case of fire or physical damage to any dispensing unit, shall be provided to shut off the power to dispensing units. When dispensing units are located below grade, only approved mechanical ventilation shall be used, and the entire dispensing area shall be protected by an approved automatic sprinkler system. The ventilating system shall be electrically interlocked with the gasoline dispensing units so that the dispensing units cannot be operated unless the ventilating fan motors are engaged.

B. **Dispensing units.**

(1) Class I liquids shall be transferred from underground tanks by means of fixed pumps so designed and equipped as to allow control of the flow and to prevent leakage or accidental discharge. Class I liquids shall not be transferred from any storage tank by any equipment or procedure which subjects the shell of the storage tank to pressures above its allowable working pressure. Air or gas pressure shall not be used for this purpose.

(2) Supplemental means shall be provided outside of the dispensing device whereby the source of power may be readily disconnected in

the event of fire or other accident.

- (3) Dispensing devices for Class I liquids shall be of approved type.
- (4) Class I liquids shall not be dispensed by pressure from drums, barrels and similar containers. Approved pumps taking suction through the top of the container or approved self-closing faucets shall be used.

C. **Automatic dispensing units.** The installation and use of unattended coin-operated dispensing devices for Class I liquids is prohibited.

D. **Delivery nozzles.**

- (1) Manual nozzles. The dispensing of Class I liquid into the fuel tank of a vehicle or into a container shall be under the control of a competent attendant at all times. The use of any device which permits the dispensing of Class I liquids when the hand of the operator of the discharge nozzle is removed from the nozzle control lever is hereby forbidden, except when using an automatic nozzle at an automotive service station as provided in Subsection D(2).
- (2) Automatic nozzles with latch-open devices. In lieu of being held open by hand, an approved automatic nozzle may be used for dispensing Class I liquid into the fuel tank of a vehicle. Such a nozzle shall have the latch-open device as an integral part of the assembly and shall shut off the liquid reliably and positively when the gasoline tank is filled, when it falls from the filling neck of an automobile tank, when it is subject to rough usage such as dropping or lack of proper lubrication, or when an automobile is driven away while the nozzle is still in the tank. A competent attendant shall be in the immediate vicinity of the vehicle being filled by such an approved nozzle.

E. **Dispensing containers.** No delivery of any Class I liquids shall be made into portable containers unless the container has a tight closure with screwed or spring cover and is fitted with a spout or so designed that the contents can be poured without spilling.

ARTICLE VIII
Flammable and Combustible Liquid Tank Vehicles

§ 32-50. Scope of Article.

This Article shall apply to tank motor vehicles to be used for the transportation of asphalt or normally stable flammable and combustible liquids with a flash point below two hundred degrees Fahrenheit (200° F.).

§ 32-51. Definitions.

CARGO TANK - Shall mean any container having a liquid capacity in excess of one hundred (100) gallons, used for the carrying of flammable or combustible "liquids" or asphalt and mounted permanently or otherwise upon a "tank vehicle." The term "cargo tank" does not apply to any container used solely for the purpose of supplying fuel for the propulsion of the "tank vehicle" upon which it is mounted.

LIQUID - See § 32-41, third definition.

TANK VEHICLE - Shall mean any vehicle, other than railroad tank cars and boats, with a "cargo tank" mounted thereon or built as an integral part thereof, used for the transportation of flammable or combustible "liquids." "Tank vehicles" include self-propelled vehicles, and full trailers and semitrailers without motive power and with wheels carrying either part or all of the load.

§ 32-52. Permit required.

No person shall engage in the business of delivering flammable or combustible liquids from tank vehicles without a permit.

§ 32-53. Tank vehicle design.

- A. The material used in the construction of the cargo tanks shall be compatible with the chemical characteristics of the flammable or combustible liquid to be transported.

- B. Any tank vehicle designed or used for transporting materials at liquid temperatures above ambient temperature shall have a red warning sign permanently attached to the vehicle containing at least the following: "Maximum allowable cargo temperature is degrees F." This maximum allowable cargo temperature shall be specified by the manufacturer of the vehicle.

§ 32-54. Static protection.

- A. Cargo tanks and vehicle chassis shall be electrically bonded.
- B. Provision shall be made in the tank structure of the vehicle for the bonding of the vehicle to the fill pipe during truckloading operations.

§ 32-55. Protection against damage from collision or overturn.

- A. Draw-off valves or faucets projecting beyond the frame at the rear of a tank vehicle shall be adequately protected against collision by bumpers or similar means.
- B. On tank vehicles constructed hereafter, all closures for filling openings shall be protected from damage in the event of overturning of the tank vehicle, by being enclosed within the body of the tank or a dome attached thereto, or by the use of suitable metal guards securely attached to the tank or the frame of the tank vehicle.

§ 32-56. Marking of vehicles.

Every tank vehicle used for the transportation of any flammable liquid, regardless of the quantity being transported, or whether loaded or empty, shall be conspicuously and legibly marked on each side and the rear thereof in letters at least three (3) inches high on a background of sharply contrasting color, optionally as follows:

- A. With a sign or lettering on the motor vehicle with the word "Flammable."
- B. With the common name of the flammable liquid being transported.

§ 32-57. Fire control.

- A. Each tank vehicle shall be provided with at least one (1) portable fire extinguisher having at least a 12-B, C rating, or when more than one (1) is provided, each extinguisher shall have at least a 6-B rating.
- B. Fire extinguishers shall be kept in good operating condition at all times, and they shall be located in an accessible place on each tank vehicle.

§ 32-58. Ignition sources prohibited.

- A. Smoking by tank vehicle drivers, helpers, repairmen or other personnel is prohibited while they are driving, making deliveries, filling or making any repairs to tank vehicles.
- B. Open flames shall not be used near manholes or vents.

§ 32-59. Parking and garaging.

- A. Except in an emergency, no tank vehicle shall be left unattended on any street, highway, avenue or alley provided, that this shall not prevent a driver from the necessary absence from the truck in connection with the delivery of his load, except that during actual discharge of the liquid some responsible person shall be present at the vehicle, nor shall it prevent stops for meals during the day or night if the street is well lighted at point of parking.
- B. Tank vehicles containing flammable or combustible liquids shall not be parked out-of-doors at any one (1) point for longer than one (1) hour, except off the streets and at least twenty-five (25) feet from any building used for assembly, institutional or residential occupancy.
- C. Tank vehicles shall not be parked or garaged in any buildings other than those specifically approved for such use by the Chief of the Fire Department.

**ARTICLE IX
Garages**

§ 32-60. Conformity to all applicable requirements of code.

Garages shall conform to all applicable requirements of this code as well as to the provisions of this Article.

§ 32-61. Permit required.

A permit shall be required for any person using any building, shed or enclosure as a place of business for the purpose of servicing or repairing any motor vehicle therein.

§ 32-62. Cleaning with flammable liquids.

No Class I liquid shall be used in any garage for washing parts or removing grease or dirt, unless in a special closed machine approved for the purpose, or in a separate well-ventilated room enclosed by walls having a fire-resistance rating of not less than two (2) hours, with openings therein protected by approved fire doors or fire windows and with no opening from such room to any upper or lower story.

§ 32-63. Handling of gasoline and oils.

- A. The fuel tanks of motor vehicles shall be filled directly through hose from approved pumps attached to approved portable tanks or drawing from underground storage tanks. Storage and handling of flammable or combustible liquids shall conform to Article VII. The transfer of gasoline in any garage shall not be made in any open container.
- B. Garage floors shall drain to oil separators or traps discharging to sewer. Contents of oil separators or traps of floor drainage systems shall be collected at sufficiently frequent intervals and removed from the premises to prevent oil from being carried into the sewers. Self-closing metal cans shall be used for all oily waste or waste oils.

**ARTICLE X
Hazardous Chemicals**

§ 32-64. Scope of Article.

This Article shall apply to materials not otherwise covered in this code which are highly flammable, or which may react to cause fires or explosions, or which by their presence create or augment a fire or explosion hazard, or which because of their toxicity, flammability or liability to explosion render firefighting abnormally dangerous or difficult; also to materials and formulations which are chemically unstable and which may spontaneously form explosive compounds or undergo spontaneous or exothermic reactions of explosive violence or with sufficient evolution of heat to be a fire hazard. Hazardous chemicals shall include such materials as corrosive liquids, flammable solids,

highly toxic materials, oxidizing materials, poisonous gases, radioactive materials and unstable chemicals, as defined in § 32-65.

§ 32-65. Definitions.

CORROSIVE LIQUID - Shall mean and include those acids, alkaline caustic liquids and other "corrosive liquids" which, when in contact with living tissue, will cause severe damage of such tissue by chemical action, or, in case of leakage, will materially damage or destroy other containers of other hazardous commodities by chemical action and cause the release of their contents, or are liable to cause fire when in contact with organic matter or with certain chemicals.

FLAMMABLE SOLID - Shall mean and include a solid substance, other than one classified as an explosive, which is liable to cause fires through friction, through absorption of moisture, through spontaneous chemical changes or as a result of retained heat from manufacturing or processing. Examples are: white phosphorus, nitrocellulose, metallic sodium and potassium, and zirconium powder.

HIGHLY TOXIC MATERIAL - Shall mean a material so toxic to man as to afford an unusual hazard to life and health during firefighting operations. Examples are: parathion, TEPP (tetraethyl phosphate), HETP (hexaethyl tetraphosphate) and similar insecticides and pesticides.

OXIDIZING MATERIAL - Shall mean and include substances that yield oxygen readily to support combustion. Examples are: chlorates, permanganates, peroxides and nitrates.

POISONOUS GAS - Shall mean and include any noxious gas of such nature that a small amount of the gas in air is dangerous to life. Examples are: chlorine, cyanogen, fluorine, hydrogen cyanide, nitric oxide, nitrogen tetroxide and phosgene.

RADIOACTIVE MATERIAL - Shall mean and include any material or combination of material that spontaneously emits ionizing radiation.

UNSTABLE (REACTIVE) CHEMICAL - Shall mean any substance, other than one classified as an explosive or blasting agent, which will vigorously and energetically react, is potentially explosive, will polymerize, decompose instantaneously undergo uncontrollable autoreaction or can be exploded by heat, shock, pressure or combinations thereof. Examples are: organic peroxides, nitromethane and ammonium nitrate.

§ 32-66. Permit required.

A. A permit shall be required for the storage or handling of more than fifty-five

(55) gallons of corrosive liquids, or more than five hundred (500) pounds of oxidizing materials, or more than ten (10) pounds of organic peroxides, or more than five hundred (500) pounds of nitromethane, or one thousand (1,000) pounds or more of ammonium nitrate, ammonium nitrate fertilizers and fertilizer mixtures defined in § 32-70D(1), or any amount of highly toxic material or poisonous gas.

- B. A permit shall be required for the storage or handling at any installation of more than one (1) microcurie of radium not contained in a sealed source, or more than one (1) millicurie of radium or other radioactive material in a sealed source or sources, or any amount of radioactive material for which a specific license from the United States Atomic Energy Commission is required.
- C. Before authorizing the issuance of any permit, the Chief of the Fire Department may require the applicant to submit, in writing, confidential information on a hazardous chemical, evaluating the fire and explosion hazard.

§ 32-67. General requirements for hazardous chemicals.

- A. The manufacture, storage, handling and use of hazardous chemicals shall be safeguarded with such protective facilities as public safety requires.
- B. The Chief of the Fire Department may require the separation or isolation of any chemical that, in combination with other substances, may bring about a fire or explosion or may liberate a flammable or poisonous gas. The Chief of the Fire Department may require separation from other storage facilities, dwellings, places of assembly, educational occupancies, railroads and public highways when the quantity stored constitutes a material hazard. Limitations on storable quantities shall be considered with regard to proximity of these exposures and congested commercial and industrial districts.

§ 32-68. Storage of oxidizing materials.

Packaged oxidizing materials shall be stored in dry locations and separated from stored organic and other combustible materials. Bulk oxidizing materials shall not be stored on or against wooden surfaces.

§ 32-69. Radioactive materials.

- A. Durable, clearly visible signs warning of radiation dangers shall be placed at all entrances to areas or rooms where radioactive materials are used or stored. In addition, each container in which radioactive materials are used, stored or transported shall bear a durable, clearly visible, appropriate warning sign.
- B. When not in use, radioactive materials shall be kept in adequately shielded fire-resistant containers of such design that the gamma radiation will not exceed two hundred (200) milliroentgens per hour or equivalent at any point of readily accessible surface.

§ 32-70. Unstable (reactive) liquids.

A. Unstable (reactive) liquids.

- (1) Unstable (reactive) chemicals shall not be stored in the same building with, or in close proximity to, explosives and blasting agents, except that ammonium nitrate may be stored with explosives and blasting agents in accordance with Article V.
- (2) Unstable chemicals that are unstable (reactive) liquids, such as organic peroxides and nitromethane, shall, in addition to complying with the applicable provisions of this Article X, comply with the applicable provisions of Article VII.

B. Organic peroxides.

- (1) Organic peroxides of fifty (50) pounds or more shall be stored in a detached, well-isolated, ventilated and unheated storage building constructed of materials having a fire-resistance rating of not less than two (2) hours, with a noncombustible floor and a lightweight insulated roof. If not adequately protected by a fast-acting deluge-type automatic sprinkler system, the storage building shall be located the following minimum distances from flammable liquid storage, combustible materials in the open and from any other building or highway:

Weight of Organic Peroxide (pounds)	Distance (feet)
50 to 100	75

100	to	500	100
500	to	1,000	125
1,000	to	3,000	200
3,000	to	5,000	300

- (2) stock supplies stored inside production buildings shall be limited to fifty (50) pounds at any one (1) time.

C. Nitromethane.

- (1) Nitromethane storage shall be in a suitable, isolated outdoor area, with no hazardous processing in the vicinity of the storage area.
- (2) Nitromethane shall be stored in the drums in which it is received, or in an underground tank with suitable corrosion protection and a minimum of two (2) feet of earth over the tank, or in barricaded tanks above ground. If the drum storage is not adequately protected by a fast-acting deluge-type automatic sprinkler system, the storage of two thousand (2,000) pounds or more shall be located the following minimum distances from inhabited buildings.

<u>Pounds Over</u>	<u>Weight</u>	<u>Pounds not over</u>	<u>Number of Drums</u>	<u>Distance (feet)</u>
Beginning at		2,000	4	100
2,000 to	10,000		20	200
10,000 to	20,000		40	300
20,000 to	40,000		80	400
40,000 to	80,000		160	500

D. Ammonium nitrate.

- (1) Ammonium nitrate in the form crystals, flakes, grains or prills shall include technical grade, fertilizer grade, nitrous oxide grade, dynamite grade and other mixtures containing sixty percent (60%) or

more ammonium nitrate; but shall not include blasting agents.

- (2) Ammonium nitrate storage areas shall be separated by a space of thirty (30) feet, with sills or curbs, or by approved-type walls of not less than one-hour fire-resistance rating, from stocks of organic chemicals, corrosive liquids, flammable compressed gases, flammable and combustible materials, such as coal, sawdust, charcoal or flour, where storage of such materials is permitted with ammonium nitrate. Walls referred to in this subsection need extend only to the underside of the roof. All flooring in storage and handling area shall be of noncombustible material and shall be without drains, traps, pits or pockets into which any molten ammonium nitrate could flow and be confined in event of fire.
- (3) Ammonium nitrate shall not be accepted for storage where the temperature of the product exceeds one hundred thirty degrees Fahrenheit (130° F.)
- (4) Bagged ammonium nitrate exceeding sixty (60) tons total weight shall be stored in a well-ventilated building of fire-resistive or noncombustible construction, or in buildings of other types of construction equipped with an approved automatic sprinkler system.
- (5) Bagged ammonium nitrate of two thousand five hundred (2,500) tons or more shall be stored in a well-ventilated building of fire-resistive or noncombustible construction, or in buildings of other types of construction equipped with an approved automatic sprinkler system.
- (6) Sprinkler protection shall be required for the storage of less than two thousand five hundred (2,500) tons of bagged ammonium nitrate where the location of the storage building or industrial occupancy, or the presence of other stored materials, may present a special hazard.
- (7) Bulk storage of ammonium nitrate shall be permitted only after due consideration has been given to location in regard to heavily populated and built-up centers, including marine terminals and other waterfront facilities, and after specific approval by the Chief of the Fire Department.
- (8) Bulk storage of ammonium nitrate shall be in an isolated location; when outdoors, in covered open piles; or in bins in warehouses, away from incompatible materials; or in silo-type or other detached outdoor enclosed structures. Explosives and blasting agents shall not be used to break up or loosen caked ammonium nitrate.

- (9) Height or depth of pile, when stored in bulk, shall be limited by the pressure-setting tendency of the product.
- (10) All electrical wiring and equipment shall be approved for the purpose and, where necessary designed to minimize damage from corrosion by any means, including ammonium nitrate dust.
- (11) Exposed ignition sources, such as open lights, flames and smoking, shall be prohibited at all storage and bulk handling facilities.
- (12) All points of entry to commercial warehouses storing ammonium nitrate shall be identified with a prominently displayed, durable sign worded "Ammonium Nitrate," with letters at least two (2) inches high in colors contrasting with the background, with a caution notice about open lights, flames and smoking near such storage areas.

§ 32-71. Highly toxic materials.

- A. Highly toxic materials shall be separated from other chemicals and combustible and flammable substances by stowage in a room or compartment separated from other areas by walls and floor and ceiling assemblies having a fire-resistance rating of not less than one (1) hour. The storage room shall be provided with adequate drainage facilities and natural or mechanical ventilation to the outside atmosphere.
- B. Legible warning signs and placards stating the nature and location of the highly toxic materials shall be posted at all entrances to areas where such materials are stored or used.

§ 32-72. Poisonous gases.

- A. Storage of poisonous gases shall be in rooms of at least one hour fire-resistant construction and having natural or mechanical ventilation adequate to remove leaking gas. Such ventilation shall not discharge to a point where the gases may endanger any person.
- B. Legible warning signs stating the nature of hazard shall be placed at all entrances to locations where poisonous gases are stored or used.

32-73. Corrosive liquids.

Satisfactory provisions shall be made for containing and neutralizing or safely flushing away leakage of corrosive liquids which may occur during storage or handling.

ARTICLE XI
Liquefied Petroleum Gases

§ 32-74. Scope of Article.

This Article shall apply to all storage and handling of liquefied petroleum gas and the installation of all equipment pertinent to systems for such uses.

§ 32-75. Definition.

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

LIQUEFIED PETROLEUM GAS - Any material which is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or isobutane) and butylenes.

§ 32-76. Installation permits required; reports of installations.

- A. A permit shall be obtained for each installation of liquefied petroleum gas employing a container or an aggregate of interconnected containers of over two hundred (200) pounds' capacity and for each permanent installation, irrespective of size of containers, made at buildings in which people congregate for civic, political, educational, religious, social or recreational purposes. Such buildings shall include schools, churches, hospitals, institutions, hotels and restaurants, each having a capacity of twenty (20) or more persons. **[Amended 1-17-1984]**
- B. Where the nature of adjoining occupancy, proximity of adjacent buildings or unusual conditions indicate the need, the Chief of the Fire Department may require the submittal of plans prior to making the installation, and if compliance with the requirements of this code is shown by said plans, a permit shall be issued.
- C. Installers shall maintain a record of all installations for which a permit is not required by Subsection A (but not including installation of gas-burning appliances and replacing of portable cylinders), and have it available for inspection by the Chief of the Fire Department.

§ 32-77. Inspection of installations authorized.

It shall be the duty of the Chief of the Fire Department to inspect a reasonable number of liquefied petroleum gas installations to determine if the provisions of this Article are being complied with.

§ 32-78. Maximum installations at one location. [Amended 1-17-1984]

Within the limits established by law restricting the bulk storage of liquefied petroleum gas for the protection of heavily populated or congested commercial areas, the aggregate capacity of any one (1) installation shall not exceed two hundred (200) pounds capacity, except that in particular installations this capacity limit may be altered at the discretion of the Chief of the Fire Department, after consideration of special features, such as topographical conditions, nature of occupancy and proximity to buildings, capacity of proposed tanks, degree of private fire protection to be provided and facilities

of the local Fire Department.

§ 32-79. Pressures inside buildings.

- A. Gas for fuel purposes in either the liquid or vapor phase shall not be piped into any building at pressures in excess of a gauge of twenty (20) pounds per square inch, except as follows:
 - (1) Buildings used exclusively to house equipment for vaporization, pressure reduction, gas mixing, gas manufacturing or distribution.
 - (2) Buildings or portions of buildings separated from other portions by walls, partitions and floor and ceiling assemblies of noncombustible material having a fire-resistance rating of not less than two (2) hours, used exclusively to house internal-combustion engines or industrial processes.
 - (3) Buildings or portions of buildings separated from other portions by walls, partitions and floor and ceiling assemblies of noncombustible material having a fire-resistance rating of not less than two (2) hours, used exclusively for research and experimental laboratories.
 - (4) Buildings, structures or equipment under construction or repair.
- B. Portable containers shall not be taken into buildings except as provided in § 32-80.

§ 32-80. Containers inside buildings.

Containers and first-stage regulating equipment shall be located outside of buildings other than buildings especially provided for this purpose, except containers and regulating equipment may be used indoors under the following conditions:

- A. If temporarily used for demonstration purposes and the container has a maximum water capacity of twelve (12) pounds.
- B. If used with a completely self-contained gas hand torch or similar equipment and the container has a maximum water capacity of two and one-half (2 1/2) pounds.
- C. In industrial applications where oxygen is not required.
- D. In use as a motor fuel.
- E. In storage awaiting use or resale.

§ 32-81. Marking of cargo vehicles.

Every tank vehicle used for the transportation of liquefied petroleum gas shall be marked on each side and rear thereof, on a sharply contrasting background, with "FLAMMABLE COMPRESSED GAS" or "FLAMMABLE GAS" in block letters at least three (3) inches high, and, in block letters at least two (2) inches high, "LIQUEFIED PETROLEUM GAS" or "BUTANE" or "PROPANE" as appropriate.

§ 32-82. Parking and garaging of tank vehicles.

The parking and garaging of tank vehicles used for the transportation of liquefied petroleum gases shall be in accordance with § 32-59.

**ARTICLE XII
Lumberyards and Woodworking Plants**

§ 32-83. Permit required.

No person shall store in excess of one hundred thousand (100,000) board feet of lumber without a permit.

§ 32-84. Open yard storage.

- A. Lumber shall be piled with due regard to stability of piles, and in no case higher than twenty (20) feet.
- B. Driveways between and around lumber piles shall be at least fifteen (15) feet wide and maintained free from accumulation of rubbish, equipment or other articles or materials. Driveways shall be so spaced that a maximum grid system unit of fifty by one hundred fifty (50 x 150) feet is produced.
- C. Permanent lumber storage, operating under a permit, shall be surrounded with a suitable fence at least six (6) feet high, unless storage is within a building.

§ 32-85. Operational fire hazards in lumberyards.

- A. The burning of shavings, sawdust and refuse materials shall be permitted only under boilers, in furnaces or in incinerators or refuse burners safely

constructed and located. Stacks shall be provided with approved spark arresters having openings not greater than three-fourths-inch, or other effective means provided which will eliminate the danger from sparks, such as an expansion chamber, baffle walls or other effective arrangement. At boiler or other points where sawdust or shavings are used as fuel, a storage bin of noncombustible construction with raised sill shall be provided.

- B. Smoking shall be prohibited except in specified safe locations in buildings. Large "No Smoking" signs shall be painted on exterior building walls and on signs erected at driveways' edges. "No Smoking" signs shall be posted throughout all buildings, except in specific locations designated as safe for smoking purposes.

§ 32-86. Woodworking plants.

- A. Sawmills, planing mills and other woodworking plants shall be equipped with refuse removal systems which will collect and remove sawdust and shavings as produced; or suitable metal or metal-lined bins, provided with normally closed covers or automatically closing covers, shall be installed at or near such machines, and shavings and sawdust shall be swept up and deposited in such bins at sufficiently frequent intervals as to keep the premises clean.
- B. Firefighting equipment, either portable fire appliances or small hose supplied from a suitable water system, shall be provided near any machine producing shavings or sawdust.

ARTICLE XIII
Oil-Burning Equipment

§ 32-87. Scope of Article.

This Article applies to oil-burning equipment, except combustion engines, oil lamps and portable devices such as blowtorches, melting pots and weed burners.

§ 32-88. Definitions.

FUEL OIL - Shall mean kerosene or any hydrocarbon oil specified in accordance with ASTM D-396, Specifications for Fuel Oils, 1963 Edition, and having a flash point not less than one hundred degrees Fahrenheit (100° F.).

OIL-BURNING EQUIPMENT - shall mean an oil burner of any type, together with its tanks, piping, wiring, controls and related devices, and shall include all oil burners, oil-fired units and heating and cooking appliances, but exclude those exempted by § 32-87.

§ 32-89. Permit required.

A single permit shall be required for the initial installation of an oil burner and a fuel oil tank used in connection therewith that is in excess of twenty-five (25) gallons in a building or in excess of sixty (60) gallons outside of a building. A separate permit shall be required for the replacement of either the oil burner or a fuel oil tank connected to an oil burner.

§ 32-90. Installation and use of equipment.

- A. Approved oil-burning equipment shall be used.
- B. The installation shall be such as to provide reasonable accessibility for cleaning heating surfaces, removing burners, replacing motors, controls, air filters, draft regulators and other working parts, and for adjusting, cleaning

and lubricating parts requiring such attention.

- C. After installation of the oil-burning equipment, operation tests shall be conducted to make certain that the burner is operating in a safe and acceptable manner and that all safety devices function properly.
- D. The grade of fuel oil used in a burner shall be that for which the burner is approved and as stipulated by the manufacturer. Crankcase oil or any oil containing gasoline shall not be used.

§ 32-91. Installation of fuel oil tanks.

- A. An unenclosed, inside fuel oil supply tank shall have a capacity of not more than five hundred fifty (550) gallons. Not more than one (1) five-hundred-fifty-gallon tank or two (2) tanks of aggregate capacity of five hundred fifty (550) gallons or less shall be connected to one (1) oil-burning appliance, and the aggregate capacity of such tanks installed in the lowest story, cellar or basement of a building shall not exceed one thousand one hundred (1,100) gallons unless separation is provided for each five hundred fifty (550) gallons of tank capacity. Such separation shall consist of an unpierced masonry wall or partition extending from the lowest floor to the ceiling above the tank or tanks, and shall have a fire-resistance rating of not less than two (2) hours.
- B. A supply tank larger than five hundred fifty (550) gallons capacity shall be enclosed when installed inside of a building as follows:
 - (1) The walls of tank enclosures shall be constructed of solid masonry units or poured concrete construction having a fire-resistance rating of not less than three (3) hours and bonded to the floor. The floor shall be of concrete or other fire-resistive construction. The top shall be of reinforced concrete at least five (5) inches thick, or equivalent fire-resistive construction, except that where the floor or roof construction above the enclosure is concrete or other fire-resistant construction, the walls may be extended to and bonded to the underside of the construction above in lieu of a separate top. At least fifteen (15) inches clearance shall be left around the tank for the purpose of inspection and repair.
 - (2) Each tank enclosure shall be provided with an approved self-closing fire door and a noncombustible liquidtight sill or ramp at least six (6) inches high. If the sill or ramp is more than six (6) inches high, the walls to a height corresponding to the level of oil that will be retained shall be built to withstand the lateral pressure due to the liquid head.
- C. Stoves which are designed for barometric feed shall not be connected to

separate oil supply tanks.

- D. Non-flue-connected stoves shall be equipped with integral tanks of capacity not more than two (2) gallons.
- E. Gravity oil supply tanks installed in conversion range oil burners shall not exceed one (1) six-gallon metal tank or two (2) three-gallon glass bottles.
- F. Supply or storage tanks inside of buildings located above the lowest story, cellar or basement shall not exceed sixty (60) gallons capacity and the total capacity of tanks so located shall not exceed sixty (60) gallons, except as provided in Subsections A and B.
- G. Oil supply tanks other than those furnished as an integral part of the stove or range shall not be located within five (5) feet, horizontally, of any fire or flame; except that tanks not over six (6) gallons capacity may be within this distance, but not within two (2) feet of the stove or range in which the burner is installed, provided the temperature rise of the oil supply at this distance is not excessive when the burner is operated at full capacity.

§ 32-92. Piping materials and design.

- A. All piping shall be wrought-iron, steel or brass pipe, or brass or copper tubing. Aluminum tubing shall not be used between the fuel oil tank and the burner unit. Approved flexible metal hose may be used to reduce the effect of jarring and vibration or where rigid connections are impracticable, and shall be installed in full compliance with its approval.
- B. Piping used in the installation of oil burners and appliances other than conversion range oil burners shall be not smaller than three-eighths-inch iron pipe size or three-eighths-inch OD tubing. Copper or brass tubing shall have thirty-five thousandths (0.035) inch nominal and thirty-two thousandths (0.032) inch minimum wall thickness.
- C. Piping between conversion range oil burners and tanks shall be standard steel, wrought-iron or brass pipe not smaller than one-fourth (1/4) inch in size or brass or copper tubing not less than five-sixteenths (5/16) inch OD, with a wall thickness not less than forty-nine thousandths (0.049) inch.
- D. Pipe shall be connected with standard fittings and tubing with fittings of approved type. Connectors shall not be used inside of buildings or above ground outside of buildings. If used below ground outside of buildings, connectors shall be of approved type and installed in accordance with their approval. All threaded joints and connections shall be made tight with suitable lubricant or pipe compound. Unions requiring gaskets or packing, right and left couplings, and sweat fittings employing solder having a melting

point of less than one thousand degrees Fahrenheit (1,000° F.) shall not be used in oil lines. Cast-iron fittings shall not be used.

§ 32-93. Piping installation.

A. Fill and return piping.

- (1) A fill pipe on a tank larger than sixty (60) gallons shall terminate outside of a building at least two (2) feet from any building opening. Every fill terminal shall be equipped with a tight metal cover.
- (2) A return line from a burner or pump to a supply tank shall enter the top of the tank.
- (3) An auxiliary tank installed in the supply piping between a burner and its main fuel supply tank shall be filled by pumping from storage tanks.

B. Supply connections.

- (1) All piping, except the burner supply line from a tank having a capacity not over five hundred fifty (550) gallons and the cross-connection between two (2) such tanks having an aggregate capacity of five hundred fifty (550) gallons or less, shall be connected into the top of the supply tank.
- (2) The burner supply connection to tank or tanks having a capacity of more than five hundred fifty (550) gallons shall be connected to the top of the tank, except in commercial and industrial installations the burner supply connection may be below the liquid level, but each such connection shall be provided with an internal or external shutoff valve located as close as practicable to the shell of the tank. External valves and their connections to the tank shall be of steel.
- (3) A transfer pump may be used to deliver oil from a supply tank to a burner or to an auxiliary tank. Except in commercial, industrial or centralized oil distribution installations, such a pump shall be connected to tankage having a capacity of not more than five hundred fifty (550) gallons, or to two (2) tanks having an aggregate capacity of not over five hundred fifty (550) gallons.
- (4) The pressure at the oil supply inlet to an appliance shall not be greater than three (3) pounds per square inch.
- (5) Where supply tanks are set below the level of the burner, the oil piping shall be so laid as to pitch toward the supply tank without

traps.

(6) Pressurized tank feed shall not be used.

(7) All tanks in which a constant oil level is not maintained by an automatic pump shall be equipped with an approved method of determining the oil level.

C. **Vent piping.** Vent pipes shall terminate outside of buildings not less than two (2) feet measured vertically or horizontally from any window or other building opening. Vent terminals shall terminate in a weatherproof vent cap which shall have a minimum free open area equal to the cross-sectional area of the vent pipe. If the static head of the vent pipe filled with oil exceeds ten (10) pounds per square inch, the tank shall be designed for the maximum static head which will be imposed.

§ 32-94. Oil pumps.

A. An oil pump not a part of an approved burner shall be a positive-displacement type which automatically shuts off the oil supply when stopped.

B. An automatic pump not an integral part of a burner shall be an approved type installed in full compliance with its approval.

§ 32-95. Valves.

A. Readily accessible manual shutoff valves shall be installed at each point where required to properly control the flow of fuel in normal operation and where required to avoid oil spillage during servicing. The valve shall be installed to close against the supply.

B. Where a shutoff is installed in the discharge line of an oil pump not an integral part of a burner, a pressure-relief valve shall be connected into the discharge line between the pump and the shutoff valve and arranged to return surplus oil to the supply tank or to bypass it around the pump, unless the pump includes an internal bypass.

C. Where oil is supplied to a burner requiring uniform flow by gravity feed and a constant-level valve is not incorporated in the burner assembly, or the oil is not supplied by an automatic pump, a constant-level valve shall be installed in the supply line at the gravity tank or as close thereto as practicable, to insure uniform delivery of oil to the burner. The vent opening of such constant-level valve shall be connected by piping or tubing to the outside of the building, unless the constant-level valve is provided with an anti-flooding device. Vent piping or tubing of constant-level valves shall not

be connected to tanks or tank vents.

§ 32-96. Means for manually stopping required.

Oil burners, other than oil stoves with integral tanks, shall be provided with some means for manually stopping the flow of oil to the burner. Such device or devices shall be placed in a convenient location at a safe distance from the burner.

**ARTICLE XIV
Manufacture of Organic Coatings**

§ 32-97. Scope of Article.

- A. This Article shall apply to processes manufacturing protective and decorative finishes or coatings, (paints) for industrial, automotive, marine, transportation, institutional, household or other purposes, and the handling of flammable and combustible liquids, certain combustible solids and potential dust explosion conditions.
- B. This Article shall not apply to processes manufacturing nonflammable or water thinned coatings, or operations applying coating materials.

§ 32-98. Definition.

ORGANIC COATING - Shall mean a liquid mixture of binders, such as alkyd, nitrocellulose, acrylic or oil, and flammable and combustible solvents, such as hydrocarbon, ester, ketone or alcohol, which, when spread in a thin film, convert to a durable protective and decorative finish.

§ 32-99. Permit required.

A permit shall be required for any organic coating manufacturing operation making more than one (1) gallon of an organic coating on any working day.

§ 32-100. Location restrictions.

- A. Each organic coating manufacturing operation within fifty (50) feet of the line of adjoining property that may be built upon or public thoroughfare shall have the exposing wall constructed as indicated in the schedule below:

<u>Distance in Feet from Line of Adjoining Property That May Be Built Upon or Public Thoroughfare</u>	<u>Fire-Resistance Rating of Exposing Wall</u>
Less than 10	At least 4 hours
10 to 30	At least 3 hours
Over 30 but less than 50	At least 2 hours

When approved automatic sprinkler systems are installed, a fifty-percent reduction in the distances to property lines and the fire-resistance ratings of the exposing walls may be made.

- B. An organic coating manufacturing operation shall not be located in the same building with other occupancies. Operations incidental to or in connection with organic coating manufacturing shall not be classed as "other occupancies" for the purpose of this provision.
- C. An organic coating manufacturing operation shall be accessible from at least one (1) side for the purpose of fire control.

§ 32-101. Storage of raw materials and finished products.

- A. The storage, handling and use of flammable and combustible liquids shall be permitted in accordance with Article VII.
- B. Tank storage for flammable and combustible liquids inside of buildings shall be permitted only in storage areas at or above grade which are detached from the processing area or cut off from the processing area by noncombustible material having a fire-resistance rating of not less than two (2) hours, and openings shall be equipped with approved fire doors.
- C. Tank car and tank vehicle loading and unloading stations for Class I liquids shall be separated from the processing area, other plant buildings, nearest line of adjoining property that may be built upon or public thoroughfare by a clear distance of not less than twenty-five (25) feet.
- D. Finished products that are flammable or combustible liquids shall be stored outside of buildings, in a separate building or in a separate room cut off from the processing area by a noncombustible wall or partition having a fire-resistance rating of not less than two (2) hours, and openings shall be

equipped with approved fire doors.

- E. The nitrocellulose storage shall be in a separate building or in a room cut off by noncombustible material having a fire-resistance rating of not less than two (2) hours, and openings shall be equipped with approved fire doors. The nitrocellulose storage shall be used for no other purpose. Approved electrical wiring and equipment shall be installed in such rooms or buildings.
- F. Nitrocellulose shall be stored only in closed containers. Barrels shall be stored on end and, if tiered, not more than two (2) high. Barrels or other containers of nitrocellulose shall not be opened in the main storage building but at the point of use or other location set aside for the purpose.

§ 32-102. Process buildings.

- A. Buildings shall be of fire-resistive or noncombustible material, without load-bearing walls and without basements or pits. The first floor shall be at or above grade.
- B. Raw-material and finished stock storage buildings shall be limited to one (1) story in height and either detached or cut off from manufacturing building by noncombustible material having a fire-resistance rating of not less than two (2) hours, and openings shall be equipped with approved fire doors.
- C. Stairway enclosures and structures housing elevators shall be enclosed by noncombustible walls having a fire-resistance rating of not less than two (2) hours, and be equipped with approved fire doors.
- D. Structures in which Class I liquids or finely divided flammable solids are processed shall be provided with explosion venting.
- E. Enclosed buildings in which Class I liquids are processed or handled shall be ventilated at a rate of not less than one-half (1/2) cubic foot per minute per square foot of solid floor area.
- F. Heating in hazardous areas, if required, shall be provided by indirect means. Ignition sources shall not be used within the building.

§ 32-103. Process piping and pumps.

- A. All piping, valves and fittings shall be designed for the working pressures and structural stresses to which they may be subjected. They shall be of steel or other material approved for the service intended.
- B. The transfer of large quantities of flammable and combustible liquids shall be through piping by means of pumps. The use of compressed air as a

transfer medium shall be prohibited.

- C. Before being placed in service, all piping shall be free of leaks when tested to not less than one and one-half (1 1/2) times the working pressure or a minimum of not less than five (5) pounds per square inch gauge at the highest point in the system. Tests shall continue for a minimum of thirty (30) minutes.

§ 32-104. Raw materials in process areas.

- A. The amount of nitrocellulose brought into the operating area shall not exceed that required for a shift.
- B. Organic peroxides brought into the operating area shall be in the original shipping container and shall not exceed the quantity required for a shift. When in the operating area, the peroxide shall not be placed in locations exposed to ignition sources, heat or mechanical shocks.

§ 32-105. Electrical equipment and static and lightning protection.

- A. Approved electrical wiring and equipment within storage or processing areas shall be used.
- B. All equipment such as tanks, machinery and piping, where an ignitable mixture may be present, shall be bonded and connected to a ground.

§ 32-106. Fire control and detection.

- A. Important manufacturing and storage buildings shall be protected by an approved sprinkler system or an approved water spray system.
- B. An adequate supply of portable fire extinguishers suitable for flammable liquid fires shall be provided.
- D. Standpipe and hose shall be provided in important operating buildings.
- E. A suitable fire alarm system shall be provided.

**ARTICLE XV
Places of assembly**

§ 32-107. Definitions.

DECORATIVE MATERIAL - Shall include all such materials as curtains, draperies, streamers, surface coverings applied over the building interior finish for decorative, acoustical or other effect, and also cloth, cotton batting, straw, vines, leaves, trees

and moss used for decorative effect, but it shall not include floor coverings, ordinary window shades, nor materials one-fortieth (1/40)* of an inch or less in thickness applied directly to and adhering tightly to a noncombustible base.

PLACE OF ASSEMBLY - Shall mean a room or space used for assembly or educational occupancy for one hundred (100) or more occupants, or which has a floor area of one thousand five hundred (1,500) square feet or more used for such purposes. Such room or space shall include any similar occupied connecting room or space in the same story, or in a story or stories above or below, where entrance is common to the rooms or spaces.

§ 32-108. Permit required.

No place of assembly as defined in § 32-107 shall be maintained, operated or used as such without a permit, except that no permit shall be required for any place of assembly used solely as a place of religious worship.

§ 32-109. Standards for decorative material.

- A. No decorative material shall be used which as applied will ignite and allow flame to spread over the surface, or allows burning particles to drop when exposed to a match flame test applied to a piece removed from the material and tested in a safe place. The piece shall be held in a vertical position and the bottom edge exposed to a flame from a common match held in a horizontal position one-half (1/2) inch underneath the piece and at a constant location for a minimum of fifteen (15) seconds.

***NOTE:** May be measured by folding a piece to five (5) thicknesses and measuring to see if the thickness of five (5) layers exceeds one-eighth (1/8) inch.

- B. Treatments used to accomplish this flameproofing shall be renewed as often as may be necessary to maintain the flameproof effect.
- C. Pyroxylin-coated fabric used as a decorative material in accordance with Subsections A and B, or as a surface covering on fixed furnishings, shall be limited as follows: Such fabrics containing one and four-tenths (1.4) ounces or more of cellulose nitrate per square yard shall not be used in excess of a total amount equivalent to one (1) square foot of fabric surface to fifteen (15) cubic feet of room volume. Each square foot of such fabric which contains one and seven-tenths (1.7) ounces or more of cellulose nitrate per square yard shall be counted as two (2) square feet in making this computation.

§ 32-110. Motion picture screens.

In places of assembly, no motion picture screen or screen masking shall be used which will ignite and allow flame to spread over the surface when exposed to the match flame test described in § 32-109A.

§ 32-111. Exit doors.

During the period of occupancy, no exit door shall be locked, bolted or otherwise fastened or obstructed by any means so that the door cannot be opened from the inside by the use of the ordinary door latch or knob or by pressure on the door or on a panic-release device.

§ 32-112. Aisles.

In each room where chairs, or tables and chairs, are used, the arrangement shall be such as will provided for ready access by aisles to each exit doorway. Aisles leading directly to exit doorways shall have not less than thirty-six (36) inches clear width which shall not be obstructed by chairs, tables or other objects.

§ 32-113. Plan of exitways and aisles required.

A plan showing the capacity and location of exitways and of aisles leading thereto shall be submitted for approval to the Chief of the Fire Department, and an approved copy shall be kept on display in the premises.

§ 32-114. Use, marking and lighting of exitways.

- A. No part of a stairway, whether interior or exterior, nor of a hallway, corridor, vestibule, balcony or bridge leading to an exitway, shall be used for any purpose which will interfere with its value as an exitway.
- B. In rooms accommodating more than one hundred (100) persons, required exit doorways, other than those normally used for entrance, shall be plainly marked by approved exit signs sufficiently illuminated when the floor area is occupied, to be readily distinguished.
- C. Where the exit doorways are not visible from all locations in public corridors, directional signs, as required by the Chief of the Fire Department, shall be placed on walls or otherwise displayed in conspicuous locations to direct occupants to exit doorways.
- D. Required stairways, hallways and other means of egress, including exterior open spaces to or through which exitways lead, shall be kept adequately lighted at all times that the building served thereby is occupied.

§ 32-115. Number of occupants permitted.

Each place of assembly shall be posted with a legible sign in contrasting colors, conspicuously located, stating the maximum number of occupants permitted. The number shall be determined by the capacity of exitways provided.

§ 32-116. Fire control.

All fire protection equipment required under Article VI shall be kept in working condition. Extinguishers and hose and similar appliances shall be visible and convenient at all times. It shall be the duty of the owner and the tenant of each building or part of a building occupied as a place of assembly to properly train sufficient regular employees in the use of fire appliances so that such appliances can be quickly put in operation.

**ARTICLE XVI
General Precautions Against Fire**

§ 32-117. Outdoor fires prohibited; food preparation excepted.

- A. Except as otherwise provided in this section, no person shall kindle, start or maintain any outdoor fire in the City of Dunkirk without written authorization of the Chief of the Fire Department. **[Amended 7-21-1970; 10-20-1970]**
- B. Notwithstanding the foregoing subsection, the cooking or preparation of food by outdoor fire is permitted. **[Amended 7-21-1970; effective 8-1-1970]**

§ 32-118. Smoking of food products restricted. [Added 7-1-1969]

- A. Permit required. No person shall smoke food products without first having obtained a permit from the Chief of the Fire Department approving the location and equipment to be used in the smoking process.
- B. Hours restricted. The smoking of food products shall be permitted only between the hours of 8:00 a.m. and 6:00 p.m.
- C. Location restricted. The smoking of food products shall not be permitted within twenty (20) feet of any frame building.

§ 32-119. Smoking prohibited under certain conditions.

- A. Smoking shall mean and include the carrying of lighted pipe, cigar, cigarette

or tobacco in any form.

- B. Where conditions are such as to make smoking a hazard in any areas of piers, wharves, warehouses, stores, industrial plants, institutions, places of assembly and in open spaces where combustible materials are stored or handled, the Chief of the Fire Department is empowered and authorized to order the owner or occupant in writing to post "No Smoking" signs in each building, structure, room or place in which smoking shall be prohibited. The Chief of the Fire Department shall designate specific safe locations, if necessary, in any building, structure or place in which smoking may be permitted.
- C. "No Smoking" signs of approved-sized lettering and location, required in accordance with Subsection B, shall read "By Order of the Fire Chief."
- D. It shall be unlawful for any person to remove any legally required "No Smoking" sign or to smoke in any place where such signs are posted.

§ 32-120. Use of torches for removing paint.

Any person using a torch or other flame-producing device for removing paint from any building or structure shall provide one (1) approved fire extinguisher or water hose connected to the water supply on the premises where such burning is done. In all cases, the person doing the burning shall remain on the premises one (1) hour after the torch or flame-producing device has been used.

§ 32-121. Deposit of hot ashes and other dangerous materials.

No person shall deposit hot ashes or cinders or smoldering coals, or greasy or oily substances liable to spontaneous ignition, into any combustible receptacle, or place the same within ten (10) feet of any combustible materials, except in metal or other noncombustible receptacles. Such receptacles, unless resting on a noncombustible floor or on the ground outside the building, shall be placed on noncombustible stands, and in every case shall be kept at least two (2) feet away from any combustible wall or partition or exterior window opening.

§ 32-122. Accumulations of waste materials.

Roofs, courts, yards, vacant lots and open spaces shall be kept free and clear of deposits or accumulations of wastepaper, hay, grass, straw, weeds, litter or combustible waste or rubbish of any kind. All weeds, grass, vines or other growth, when same endangers property or is liable to be fired, shall be cut down and removed by the owner or occupant of the property.

§ 32-123. Handling of readily combustible materials.

No person making, using, storing or having in charge or under his control any shavings, excelsior, rubbish, sacks, bags, litter, hay, straw or combustible waste materials shall fail or neglect at the close of each day to cause all such material which is not compactly baled and stacked in an orderly manner to be removed from the building or stored in suitable vaults or in metal or metal-lined, covered receptacles or bins. The Chief of the Fire Department shall require suitable baling presses to be installed in stores, apartment buildings, factories and similar places where accumulations of paper and waste materials are not removed at least every second day.

§ 32-124. Storage of readily combustible materials.

- A. Permit required. No person shall store in any building or upon any premises in excess of two thousand five hundred (2,500) cubic feet gross volume of combustible empty packing cases, boxes, barrels or similar containers, or rubber tires, or baled cotton, rubber or cork, or other similarly combustible material, without a permit.
- B. Storage requirements. Storage in buildings shall be orderly, shall not be within two (2) feet of the ceiling, and not be so located as to endanger exit from the building. Storage in the open shall not be more than twenty (20) feet in height, shall be so located with respect to adjacent buildings, as not to constitute a hazard, and shall be compact and orderly.

§ 32-125. Flammable decorative materials in mercantile and institutional occupancies prohibited.

Highly flammable materials, such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials, shall not be used for decorative purposes in show windows or other parts of mercantile and institutional occupancies unless flameproofed. Electric light bulbs in mercantile and institutional occupancies shall not be decorated with paper or other combustible materials unless such materials shall first have been rendered flameproof.

§ 32-126. Open flames, lights and equipment capable of igniting flammable materials restricted.

- A. No person shall take an open flame or light into any building, barn, vessel, boat, or any other place where highly flammable, combustible or explosive material is kept, unless such light or flame shall be well secured in a glass globe, wire mesh cage or similar approved device.
- B. No heating or lighting apparatus or equipment capable of igniting flammable materials of the types stored or handled shall be used in the storage area of any warehouse storing rags, excelsior, hair or other highly flammable or combustible material; nor in the work area of any shop or factory used for the manufacture, repair or renovating of mattresses or bedding; nor in the

work areas of any establishment used for the upholstering of furniture.

- C. No person shall kindle a fire upon the land of another without permission of the owner thereof or his agent.

§ 32-127. Maintenance of chimneys, heating appliances and incinerators.

- A. All chimneys, smokestacks or similar devices for conveying smoke or hot gases to the outer air, and the stoves, furnaces, restaurant-type cooking equipment, incinerators, fireboxes or boilers to which they are connected, shall be constructed and maintained in such manner as not to create a hazardous condition.
- B. Commercial- and industrial-type incinerators used for burning of rubbish or other readily combustible solid waste material and flue-fed incinerators shall be provided with approved spark arresters or other effective means for arresting sparks and fly particles.

**ARTICLE XVII
Welding or Cutting**

§ 32-128. Scope of Article.

This Article shall apply to:

- A. Installation and operation of oxygen-fuel gas, gaseous fuels generated from flammable liquids under pressure, or electric-arc welding or cutting, or any combination thereof.
- B. Storage of calcium carbide and gases used in welding, cutting or heat treating.

§ 32-129. Definition.

FUEL GAS - Shall mean acetylene, hydrogen, liquefied petroleum gas and other liquefied and nonliquefied flammable gases.

§ 32-130. Permit required for welding or cutting; exceptions.

- A. A permit shall be required of each company, corporation, copartnership or owner-operator performing welding or cutting operations, except as provided in Subsection B. This permit shall not be required for each welding or cutting job location. The company, corporation, co-partnership or owner-operator shall notify the Chief of the Fire Department in advance where such work is taking place, except where such work is done in response to an emergency call that does not allow time for the Chief of the Fire Department to be notified in advance of the work.
- B. A permit shall not be required of any company, corporation, copartnership or owner-operator:
 - (1) Where the welding or cutting is performed in areas approved for the purpose, or
 - (2) Having an approved permit system established for control of the fire hazards involved.
- C. Application for a permit required by this Article shall be made by the company, corporation, co-partnership or owner-operator performing the welding or cutting operation, or by his duly authorized agent.
- D. A permit for welding or cutting operations shall not be issued unless the individuals in charge of performing such operations are capable of doing such work in a safe manner. Demonstration of a working knowledge of the provisions of this Article shall constitute acceptable evidence of compliance with this requirement.
- E. Companies, corporations, copartnerships and owner-operators required to have a permit shall maintain a record of all locations where welding or

cutting operations are performed, and have it available for inspection by the Chief of the Fire Department.

§ 32-131. Welding and cutting equipment.

- A. Approved equipment shall be used in welding and cutting.
- B. The use of liquid acetylene or liquid acetylenic compounds is prohibited unless properly stabilized.

§ 38-132. Fire control.

- A. Before welding or cutting operations are begun in areas not designed or approved for the purpose, specific authorization shall be obtained from the owner of the premises or his duly authorized agent.
- B. When welding or cutting operations are performed above, or within thirty-five (35) feet of combustible construction or material exposed to the operation, or within thirty-five (35) feet of floor, ceiling or wall openings so exposed:
 - (1) Such combustible construction or material shall be protected by noncombustible shields or covers from possible sparks, hot metal or oxide.
 - (2) Such floor, ceiling or wall openings shall be protected by noncombustible shields or covers.
 - (3) A fire watcher shall be provided to watch for fires, make use of portable fire extinguishers or fire hose and perform similar fire prevention and protection duties. The fire watcher shall remain on the job at least thirty (30) minutes after the welding or cutting operations have been completed, to insure that no fire exists. A signed inspection report attesting to that fact shall be filed and available for inspection by the Chief of the Fire Department.
- C. One (1) or more portable fire extinguishers of approved type and size shall be kept at the location where welding or cutting is to be done.
- D. Welding or cutting shall not be done in or near rooms or locations where flammable gases, liquids or vapors, lint, dust or loose combustible stocks are present when sparks or hot metal from the welding or cutting operations may cause ignition or explosion of such materials.
- E. Except as provided in Subsection F, welding or cutting shall not be performed on containers and equipment which contain or have contained

flammable liquids, gases or solids until these containers and equipment have been thoroughly cleaned or inerted or purged.

- F. "Hot tapping" may be permitted on tanks and pipelines, provided such operations are performed by companies, corporations, copartnerships or owner-operators not required to have a permit under § 32-130B.
- G. Sprinkler protection shall not be shut off while welding or cutting work is being performed. When welding or cutting is done close to automatic sprinkler heads, sheet asbestos or damp cloth guards may be used to shield the individual heads but shall be removed when the work is completed.

ARTICLE XVIII Enforcement, Appeals and Penalties

§ 32-133. Enforcing official; rules and regulations authorized.

The code hereby adopted shall be enforced by the Chief of the Fire Department, who is hereby authorized to make and adopt such written rules and regulations, not in derogation or contravention of the provisions of this code, as may be necessary for the enforcement thereof.

§ 32-134. Appeals from orders.

Any party affected by any order, except an order declared to require immediate remedy, which has been issued pursuant to this code, may request and shall be granted a hearing before the Fire Prevention Code Appeals Board upon the filing of a petition setting forth the grounds why such notice or order should be modified or vacated. No such hearing shall be granted unless the petition therefor shall have been filed with the City Clerk within ten (10) days after the order was issued. Each petition shall be accompanied by a fee of five dollars (\$5.). Upon receipt of such petition, a time and place shall be fixed for such hearing, and the petitioner shall be given at least three (3) days' notice thereof. Request for hearing properly filed shall stay the enforcement of any order which has been

issued. Upon hearing, the Board may, by two-thirds (2/3) vote of the entire Board, modify or vacate the order complained of by the petitioner; otherwise the order shall stand and the appeal deemed denied.

§ 32-135. Fire Prevention Code Appeals Board.

There shall be established in the City of Dunkirk, New York, an appeal body designated as the Fire Prevention Code Appeals Board, consisting of three (3) members appointed by the Mayor, subject to the approval of the Common Council, whose duty it shall be to conduct hearings properly brought before it. Of the members first appointed upon the establishment of the Fire Prevention Code Appeals Board, the term of one (1) shall expire on May 31, 1968, the term of one (1) shall expire on May 31, 1970, and the term of one (1) shall expire on May 31, 1972. Upon the expiration of each such terms, the term of office of each member thereafter appointed shall be for a period of six (6) years. If the office of any member shall become vacant by death, resignation or otherwise, his successor shall be appointed as herein provided for the unexpired term.

§ 32-136. Meetings and compensation. [Amended 3-4-1969]

All meetings of the Fire Prevention Code Appeals Board shall be public, and two (2) members shall constitute a quorum. Minutes of all meetings shall constitute public records available for examination by interested parties. The Fire Prevention Code Appeals Board shall meet at least once in each calendar month. The members shall be compensated at a monthly basis established by the Common Council.

§ 38-137. Penalties for offenses.

- A. Any person who shall violate any of the provisions of the code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the Fire Prevention Code Appeals Board or by a court of competent jurisdiction, within the time fixed herein, shall severally, for each and every violation and noncompliance respectively, be guilty of an offense punishable by a fine of not more than one hundred fifty dollars (\$150.) or by imprisonment for not more than thirty (30) days, by both such fine and imprisonment. The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

- B. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

§ 32-138. Conflicting ordinances repealed.

All former ordinances or parts thereof conflicting or inconsistent with the provisions of this chapter or of the code hereby adopted are hereby repealed.

§ 32-139. Severability.

If a term, part, provision, section, subdivision or paragraph of this chapter shall be held unconstitutional, invalid or ineffective in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions and paragraphs.

§ 32-140. Effective date.

This chapter shall take effect and be in force from and after the first day of March, 1967.

TABLE 32-47. Arrangement of Container Storage

SPRINKLERED OR QUIVALENT UNPROTECTED PROTECTION Maximum per Pile Maximum per Pile										
Class of Liquid	Storage AISLE Level WIDTH		TOTAL Feet	WIDTH	HEIGHT Gallons	AISLE WIDTH		TOTAL Feet	TOTAL Feet	WIDTH Feet
	Main Gallons	Side Feet				Main Feet	Side Feet			
I 8	7	Ground and	2,640	8	6	8	5	660	4	3
		upper floors	(48)	(4)	(2)	(12)	(2)	(1)		
		Basement		Not Permitted						Not
Permitted										
II 8	5	Ground and	5,280	8	6	8	4	1,320	4	3
		upper floors	(96)	(4)	(2)	(24)	(2)	(1)		
		Basement		Not Permitted						Not
Permitted										
III 8	4	Ground and	11,000	12	3 feet under	8	4	2,640	8	12
		upper floors			sprinkler heads					
		Basement	5,000	8	9	8	4			
Not Permitted										
			(100)	(4)	(3)					

Note: The figures in the column, Total Gallons, represent the number of gallons that may be stored per pile, and the figures in parentheses are the corresponding number of 55-gallon drums. The figures in the "Width" and "Height" columns are the width and height of the pile in feet and the figures in parentheses are the corresponding number of 55-gallon drums which when stored on end will

produce this size pile.

CHAPTER 33

FIREARMS

§ 33-1.	Prohibited Acts	3301
§ 33-2.	Exceptions.....	3301
§ 33-3.	Penalties for offenses	3301

[HISTORY: Adopted by the Common Council of the City of Dunkirk 11-21-2006 as Local Law #8-2006.]

§ 33-1. Prohibited Acts.

- A. It shall be unlawful to discharge a firearm within the City of Dunkirk.

§ 33-2. Exceptions.

- A. Law Enforcement personnel, including an Animal Control Officer, who discharges a firearm in the course of their duties.
- B. An individual who discharges a firearm at an approved range facility.

§ 33-3. Penalties for offenses.

Violation of this chapter is a misdemeanor.

CHAPTER 34

FIREWORKS DISPLAYS

§ 34-1.	Permit application.....	3401
§ 34-2.	Insurance.....	3401
§ 34-3.	Inspection; approval; issuance	3402
§ 34-4.	Multiple displays	3402
§ 34-5.	Penalties for offenses	3402
§ 34-6.	When effective	3402

[HISTORY: Adopted by the Common Council of the City of Dunkirk 4-2-1963 as Chapter XXVI-B of the Ordinances of the City of Dunkirk; amended in its entirety 3-19-1992. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Air pollution - See Ch. 4.
Fire prevention - See Ch. 32.
Permits - See Ch. 51.

§ 34-1. Permit application.

Any person, partnership, corporation, association or organization desiring to procure a permit for a public display of fireworks in the City of Dunkirk, pursuant to § 405.00 of the Penal Law of the State of New York, shall make written application to the City Clerk of the City of Dunkirk at least five (5) days in advance of the date of display, on an application form to be provided by the City Clerk, setting forth therein the information required by § 405.00 of the Penal Law of the State of New York.

§ 34-2. Insurance.

In addition to the information required by § 405.00 of the Penal Law, the applicant shall provide, prior to issuance of the permit, evidence of an insurance policy with coverage in accordance with the City of Dunkirk Standard Insurance Certificate, in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit.

§ 34-3. Inspection; approval; issuance.

The City Clerk, upon receipt of such application, shall refer the application to the Chief of the Dunkirk Fire Department, who shall cause to be made an inspection of the premises named in the application as the place where it is proposed to give the public display of fireworks, and if in the judgment of the Fire Chief it would not be hazardous to surrounding property or dangerous to persons to permit such public display of fireworks at such location, the Fire Chief shall approve and return such application to the City Clerk. If such application is approved, the City Clerk shall issue a permit, in writing, to the applicant, upon the payment of a permit fee of Ten Dollars (\$10.00) and evidence of the insurance coverage required herein.

§ 34-4. Multiple displays.

In the event that more than one (1) such display of fireworks shall be made by the applicant within a seven-day period, it shall not be necessary to make separate application nor to pay a separate fee therefore, provided that the dates of such displays are set forth in the application.

§ 34-5. Penalties for offenses.

Any person, partnership, corporation, association or organization exploding or causing to explode fireworks at public display without first having obtained a permit as herein provided shall be punished by a fine or not exceeding Two Hundred Fifty Dollars (\$250.00) for each violation, as provided in § 270.00 of the Penal Law of the State of New York.

§ 34-6. When effective.

This chapter shall take effect immediately.

CHAPTER 34A

FLOOD DAMAGE PREVENTION

§ 34A-1.	Findings.....	3401A
§ 34A-2.	Purpose	3402A
§ 34A-3.	Objectives.....	3402A
§ 34A-4.	Definitions	3403A
§ 34A-5.	Applicability.....	3407A
§ 34A-6.	Basis for establishing areas of special flood hazard	3407A
	[Amended 10-3-1989 by L.L. #3-1989]	
§ 34A-7.	Interpretation; conflict with other laws.....	3408A
§ 34A-8.	Severability.....	3408A
§ 34A-9.	Penalties for offenses	3408A
§ 34A-10.	Warning and disclaimer of liability.....	3409A
§ 34A-11.	Designation of local administrator.....	3409A
§ 34A-12.	Development permit	3409A
§ 34A-13.	Duties of local administration.....	3410A
§ 34A-14.	General standards for flood hazard reduction	3413A
§ 34A-15.	Specific standards for flood hazard reduction.....	3416A
§ 34A-16.	Floodways	3418A
§ 34A-17.	Board of Appeals	3419A
§ 34A-18.	Conditions for variances.....	3420A

[HISTORY: Adopted by the Common Council of the City of Dunkirk 4-21-1987 as Local Law #2-1987. Amendments noted where applicable.]

General References

Zoning - See Ch. 79.

§ 34A-1. Findings.

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

§ 34A-2. Purpose.

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

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities. **[Editor's Note: This local law also provided for the supersession of former Ch. 34A, Flood Damage Prevention, adopted 12-16-1980]**
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify for and maintain participation in the National Flood Insurance Program

§ 34A-3. Objectives.

The objectives of this chapter are to:

- A. Protect human life and health.
- B. Minimize expenditure of public money for costly flood control projects.
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. Minimize prolonged business interruptions.
- E. Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines and streets and bridges located in areas of special flood hazard.

- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- G. Provide that developers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 34A-4. Definitions.

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

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

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

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

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

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

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

BUILDING – Any structure built for support, shelter or enclosure for occupancy

or storage.

CELLAR - The same meaning as “basement.”

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

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

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

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

FLOOD or FLOODING - A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

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

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

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

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

FLOODWAY - The same meaning as “regulatory floodway.”

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

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

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

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

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

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

MOBILE HOME - The same meaning as “manufactured home.”

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

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

ONE-HUNDRED-YEAR FLOOD - The same meaning as "base flood."

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

REGULATORY FLOODWAY – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 34A-13B, of this chapter.

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

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

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

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

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

VARIANCE - A grant of relief from the requirements of this chapter which permits

construction or use in a manner that would otherwise be prohibited by this chapter.

§ 34A-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Dunkirk, County of Chautauqua.

§ 34A-6. Basis for establishing areas of special flood hazard. [Amended 10-3-1989 by L.L. #3-1989]

The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study, City of Dunkirk, New York, Chautauqua County," dated August 4, 1980, with Flood Insurance Rate Maps enumerated on Map Index No. 360137 0005B dated February 4, 1981, and with accompanying Flood Boundary and Floodway Maps enumerated on Map Index No. 360137 0005B, dated February 4, 1981. The above documents are hereby adopted and declared to be a part of this chapter and are filed at the Housing, Building and Zoning Office.

§ 34A-7. Interpretation; conflict with other laws.

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

§ 34A-8. Severability.

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

§ 34A-9. Penalties for offenses.

No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall

constitute a violation. Any person who violated this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than fifteen (15) days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the City of Dunkirk from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under § 34A-17 and § 34A-18 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 34A-10. Warning and disclaimer of liability.

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

§ 34A-11. Designation of local administrator.

The Housing, Building and Zoning Officers are hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 34A-12. Development permit.

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in § 34A-6. Application for a development permit shall be made on forms furnished by the local administrator and may include, but not be limited to, plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures; fill, storage of materials; drainage facilities; and the location of the foregoing.

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

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

- (3) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 34A-14C(1).
 - (4) A certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 34A-15.
 - (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- B. **Construction stage.** Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the local administrator a certificate of the elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

§ 34A-13. Duties of local administrator.

The duties of the local administrator shall include, but not be limited to:

- A. **Permit application review.** The local administrator shall:
- (1) Review all development permit applications to determine that the requirements of this chapter have been satisfied.
 - (2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
 - (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purpose of this chapter, "adversely affects" means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.

- (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
 - (4) Review all development permits for compliance with the provisions of § 34A-14E, Encroachments.
- B. Use of other base flood and floodway data.** When base flood elevation data has not been provided in accordance with § 34A-6, Basis for establishing areas of special flood hazard, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 34A-14D(4), in order to administer § 34A-15, Specific standards for flood hazard reduction, and § 34A-16, Floodways
- C. Information to be obtained and maintained.** The local administrator shall:
- (1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including the basement or cellar, of all new or substantially improved structures and whether or not the structure contains a basement or cellar.
 - (2) For all new or substantially improved floodproofed structures:
 - (a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and
 - (b) Maintain the floodproofing certifications required in §§ 34A-14 and 34A-15.
 - (3) Maintain for public inspection all records pertaining to the provisions of this chapter, including variances, when granted, and certificates of compliance.
- D. Alteration of watercourses.** The local administrator shall:
- (1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.

- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that flood-carrying capacity is not diminished.

E. Interpretation of FIRM boundaries.

- (1) The local administrator shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
- (2) Base flood elevation data established pursuant to § 34A-5 and/or § 34A-13B, when available, shall be used to accurately delineate the areas of special flood hazard.
- (3) The local administrator shall use flood information from any other authoritative source, including historical data, to establish the limits of the areas of special flood hazard when base flood elevations are not available.

F. Stop-work orders.

- (1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 34A-9 of this chapter.
- (2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the local administrator. Disregard of a stop-work order shall be subject to the penalties described in § 34A-9 of this chapter.

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

H. Certificate of compliance.

- (1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of

compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.

- (2) All other development occurring within the designated flood hazard area will have, upon completion, a certificate of compliance issued by the local administrator.
- (3) All certifications shall be based upon the inspection conducted subject to § 34A-13G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

§ 34A-14. General standards for flood hazard reduction.

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

A. Anchoring.

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

B. Construction materials and methods.

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

C. Utilities.

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

D. Subdivision proposals.

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

E. Encroachments.

- (1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the area of special flood hazard set forth in § 34A-13A, Permit application review. This may require the submission of additional technical data to assist in the determination.
- (2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 34A-13B or § 34A-14D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and

anticipated development, shall not increase the water surface elevation of the base flood more than one (1) foot at any point.

- (3) In all areas of the special flood hazard where floodway data is provided or available pursuant to § 34A-13B, the requirements of § 34A-16, Floodways, shall apply.

§ 34A-15. Specific standards for flood hazard reduction.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 34A-6, Basis for establishing areas of special flood hazard, and § 34A-13B, Use of other base flood and floodway data, the following standards are required:

A. Residential construction. New construction and substantial improvements of any resident structure shall:

- (1) Have the lowest floor, including the basement or cellar, elevated to or above the base flood elevation.
- (2) Have fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (a) There shall be a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

B. Nonresidential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including the basement or cellar, elevated to or above the base flood elevation or be floodproofed so that the structure is

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

- (1) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a license architect or meet the following criteria.
 - (a) There shall be a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (2) If the structure is to be floodproofed:
 - (a) A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (b) A licensed professional engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level, to which the structure is floodproofed.
- (3) The local administrator shall maintain on record a copy of all such certificates noted in this section.

C. **Construction standards for areas of special flood hazard without base elevations.** New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor,

including the basement, elevated to or above the base flood elevation as may be determined in § 34A-13B or two (2) feet above the highest adjacent grade where no elevation data is available.

- (1) New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including the basement, elevated at least two (2) feet above the highest adjacent grade next to the proposed foundation of the structure.
- (2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically (without human intervention) allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - (a) There shall be a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.
 - (b) The bottom of all such openings shall be no higher than one (1) foot above the lowest adjacent finished grade.
 - (c) Openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

§ 34A-16. Floodways.

Located within areas of special flood hazard are areas designated as floodways. (See Definitions, § 34A-4.) The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by §§ 34A-6 and 34A-13B; all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 34A-17. Board of Appeals.

- A. The Zoning Board of Appeals, as established by § 79-70 of the Dunkirk City Code, shall hear and decide appeals and request for variances from the requirements of this chapter.

- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - (1) The danger that materials may be swept onto other lands to the injury of others.
 - (2) The danger to life and property due to flooding or erosion damage.
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (4) The importance of the service provided by the proposed facility to the community.
 - (5) The necessity to the facility of a waterfront location, where applicable.
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use of the Comprehensive Plan and floodplain management program of that area.
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (10) The cost to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

- (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, and maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.
- E. Upon consideration of the factors of § 34A-16D and the purpose of this chapter, the Zoning Board may attach such conditions to the granting of variances as it deems necessary to further the purpose of this chapter.
- F. The local administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

§ 34A-18. Conditions for variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that § 34A-17D(1) through (12) has been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the contributing structures procedures set forth in the remainder of this section.
- C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
 - (1) The criteria of Subsection A, D, E and F of this section are met.
 - (2) The structure of other development is protected by methods that minimize flood damage during the base flood and create no additional threat to public safety
- D. Variances shall not be issued within any designated floodway if any increase in flood level during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:

- (1) A showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense; create nuisances; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.

CHAPTER 35

GAMES OF CHANCE

§ 35-1. Title3501
 § 35-2. Statutory authority.....3501
 § 35-3. Definitions3501
 § 35-4. Regulation and supervision.....3503
 § 35-5. Restrictions on conduct.....3503
 § 35-6. Application and licensing procedures3503
 § 35-7. Enforcing officer3503
 § 35-8. Statutory provisions adopted3504
 § 35-9. Effective date3504

[HISTORY: Adopted by the Common Council of the City of Dunkirk 6-7-1979. Amendments noted where applicable.]

GENERAL REFERENCES

Bingo - See Ch. 13.
Permits - See Ch. 51.

§ 35-1. Title

This chapter shall be known as the “City of Dunkirk Games of Chance Licensing Law.”

§ 35-2. Statutory authority.

This chapter is authorized by and subject and subordinate to all the conditions and provisions contained in Article 9-A of the General Municipal Law, and amendments thereto, and any and all rules and regulations and opinions adopted or to be adopted by the New York State Racing and Wagering Board.

§ 35-3. Definitions.

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

AUTHORIZED GAMES OF CHANCE LESSOR - An authorized organization which has been granted a license pursuant to the provisions of Article 9-A of the General Municipal Law or pursuant to the provisions of this chapter.

AUTHORIZED ORGANIZATION - Any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer fireman, which, by its charter, certificate of incorporation, constitutes or act of the legislature, shall have among its dominate purposes one (1) or more of the lawful purposes as defined in Article 9-A of the General Municipal Law as amended, provided that each shall operate without profit to its members and provided that each such organization has engaged in serving one (1) or more of the lawful purposes as defined in Article 9-A of the General Municipal Law for a period of three (3) years immediately prior to applying for a license under this Article. No organization which is formed primarily for the purpose of conducting games of chance and which does not devote at least seventy five percent (75%) of its activities to purposes other than conducting games of chance shall be deemed an authorized organization. No political party shall be deemed an authorized organization.

AUTHORIZED SUPPLIER OF GAMES OF CHANCE EQUIPMENT - Any person, firm, partnership, corporation or organization licensed by the New York State Racing and Wagering Board to sell or lease games of chance equipment or paraphernalia which meets the specifications and regulations established by the Board. Nothing herein shall prevent an authorized organization from purchasing common articles, such as cards and dice, from normal sources of supply of such articles or from constructing equipment and paraphernalia for games of chance for its own use. However, no such equipment or paraphernalia, constructed or owned by an authorized organization, shall be sold or leased to any other authorized organization without written permission from the Board.

BOARD - The New York State Racing and Wagering Board and its successor, if any.

GAMES OF CHANCE - Specific games of chance as expressly authorized and defined by the rules and regulations of the State Racing and Wagering Board, being craps, roulette, blackjack, big six, money wheel, chuck-a-luck, hazard, under and over seven, beat the dealer, merchandise wheels, big nine, color wheel and any other game of chance which has been approved in writing by the Board, but not including games commonly known as "bingo" or "lotto", which are controlled by Article 14-H of the General Municipal Law.

- B. All other definitions as set forth in § 186 of Article 9-A of the General Municipal Law, as amended, are hereby incorporated and made a part of hereof.

§ 35-4. Regulation and supervision.

The regulation of said games of chance and the supervision thereof shall adhere to § 188-a of the General Municipal Law, as amended, and shall be governed by the New York State Racing and Wagering Board as called for therein.

§ 35-5. Restrictions on conduct.

- A. Restrictions upon conduct of games of chance shall be regulated by § 189 of the General Municipal Law, as amended.
- B. Games of chance are hereby authorized on Sundays, said games to be regulated by all the rules and regulations pertaining to said Sunday games as contained in the General Municipal Law, Article 9-A, and all applicable rules and regulations of the State of New York Racing and Wagering Board. **[Added 7-1-1980]**

§ 35-6. Application and licensing procedures.

The application and procedure for the obtaining of a license to operate a game of chance shall be governed by § 190 of the General Municipal Law, as amended.

§ 35-7. Enforcing officer.

The Chief Law enforcement officer of the City of Dunkirk is hereby charged with the enforcement of this chapter. Offenses shall be charged and punished as provided in Article 9-A of the General Municipal Law.

§ 35-8. Statutory provisions adopted.

The Common Council of the City of Dunkirk hereby adopts in their entirety all other sections of Article 9-A of the General Municipal Law, as amended, and incorporates said section herein as part of this chapter.

§ 35-9. Effective date.

This chapter shall take effect on the first day of January 1980 after having been approved by a majority of the electors of the City of Dunkirk, New York, voting on same which will be submitted at the general election for the year 1979 in accordance with the provisions of § 188(2) and (3) of the General Municipal Law, as amended. **[Editor's Note: This ordinance was approved by referendum 11-6-1979]**

CHAPTER 35A

GARAGE SALES

§ 35A-1.	Definitions	3501A
§ 35A-2.	License required; fee.....	3502A
§ 35A-3.	Duration and display of license	3502A
§ 35A-4.	Application for license	3502A
§ 35A-5.	Type of merchandise to be offered	3503A
§ 35A-6.	Hours of sale	3503A
§ 35A-7.	Advertisement; signs	3503A
§ 35A-8.	Exemptions	3503A
§ 35A-9.	Investigation of violations; responsibility to maintain good order.....	3504A
§ 35A-10.	Penalties for offenses	3504A

[HISTORY: Adopted by the Common Council of the City of Dunkirk 8-6-1992.
Amendments noted where applicable.]

GENERAL REFERENCES

Permits and licenses - See Ch. 51.

§ 35A-1 Definitions.

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

GARAGE SALE - Includes all sales entitled “garage sale”, attic sale”, “rummage sale”, “flea market sale” or any similar casual sale of tangible personal property which is promoted by any means whereby the public at large is, or can be, made aware of such sale.

GOODS - Includes any goods, warehouse merchandise or other property capable of being the object of a sale regulated hereunder.

PERSON - Includes individuals, partnerships, voluntary associations and corporations. For the purpose of the provisions of this chapter relating to licensing, “person” shall include family or household groups occupying the same dwelling unit.

§ 35A-2. License required; fee.

- A. It shall be unlawful for any person to conduct more than three (3) garage sales in a calendar year in the City of Dunkirk without first filing with the City Clerk the information hereinafter specified and obtaining from such City Clerk a license so to do, to be known as a “garage sale license.”
- B. There shall be a fee of Ten Dollars (\$10.00) for such a license.

§ 35A-3. Duration and display of license.

- A. Such license shall be issued to one (1) person only twice within a twelve-month period, and no such license shall be issued for more than seven (7) consecutive calendar days.
- B. Each license issued under this chapter must be prominently displayed on the premises upon which the garage sale is conducted throughout the entire period of the licensed sale.

§ 35A-4. Application for license.

The information to be filed with the City Clerk pursuant to this chapter shall be as follows:

- A. The name of the person, firm, group, corporation, association or organization conducting the sale.
- B. The name of the owner of the property on which the sale is to be conducted and the written consent of the owner, if the applicant is other than the owner.
- C. The location at which the sale is to be conducted.
- D. The number of days of the sale.
- E. The date and nature of all past garage sales in the City of Dunkirk.
- F. The relationship or connection the application has with any person, firm, group, organization, association or corporation conducting any past sale and the date or dates of such sales.
- G. Whether or not the applicant has been issued any other vendor’s license by any local, state or federal agency.
- H. A sworn statement or affirmation by the applicant signing that the information therein given is full and true and known to the applicant to be so.

§ 35A-5. Type of merchandise to be offered.

The merchandise offered at the sale shall be only used, unwanted items of personal property acquired for normal use by the licensee.

§ 35A-6. Hours of sale.

All garage sales shall be conducted only between the hours of 9:00 a.m. and 9:00 p.m.

§ 35A-7. Advertisement; signs.

- A. Garage sales may be advertised through the newspaper or other news media.
- B. Signs not greater in size than two by two (2 x 2) feet may be installed.
 - (1) No sign shall be placed on the public right-of-way.
 - (2) No lighted signs may be used.
 - (3) Signs shall be displayed only during the sale and shall be removed within twenty-four (24) hours after completion of the sale.

§ 35A-8. Exemptions.

The provisions of this chapter shall not apply to or affect the following persons or sales:

- A. Persons selling goods pursuant to an order of process of a court of competent jurisdiction.
- B. Persons acting in accordance with their powers and duties as public officials.
- C. Any person selling or advertising for sale an item or items of personal property which are specifically named or described in the advertisement and which separate items do not exceed five (5) in number.
- D. Any sale conducted by a merchant or mercantile or other business establishment from or at a place of business wherein such sale would be permitted by the zoning regulations of the City of Dunkirk or under the protection of the nonconforming use provisions thereof, or any other sale conducted from properly zoned premises and not otherwise prohibited.

- E. Any bona fide charitable, educational, cultural or governmental institution or organization; provided, however, that the burden of establishing the exemption under this subsection shall be on the organization or institution claiming such exemption.

§ 35A-9. Investigation of violations; responsibility to maintain good order.

- A. It shall be the duty of the Police Department of the City of Dunkirk to investigate any violations of this chapter brought to its attention by complaint or arising during the performance of its regular duties.
- B. The person to whom the license is issued and the owner of the premises, in the case of a license issued to a tenant of the premises on which such sale or activity is conducted, shall be jointly and severally responsible for the maintenance of good order and decorum on the premises during all hours of such sale or activity. No such person shall permit any loud or boisterous conduct on that premises or permit vehicles to impede the passage of traffic on any roads or streets in the area of such premises. All such persons shall obey the order of the Police Department of the City of Dunkirk in order to maintain the public health, safety and welfare.

§ 35A-10. Penalties for offenses.

Any person violating any provision of this chapter shall, upon conviction, be subject to a fine not exceeding One Hundred Dollars (\$100.00) and/or imprisonment not to exceed fifteen (15) days, or both, at the discretion of the court. The continuation of a violation against the provisions of this chapter shall constitute, for each day the violation is continued, a separate and distinct violation.

CHAPTER 36

(RESERVED)

CHAPTER 37

(RESERVED)

CHAPTER 38

(RESERVED)

CHAPTER 39

HAWKERS AND PEDDLERS

§ 39-1.	Definitions	3902
§ 39-2.	Permit required	3903
§ 39-3.	Exemptions	3903
§ 39-4.	Permit to be in effect	3903
§ 39-5.	Application for general permit.....	3903
§ 39-6.	Application for a single day or multi-day municipal event permit.....	3904
§ 39-7.	Insurance and Bond	3905
§ 39-8.	Issuance and conditions of permit.....	3905
§ 39-9.	Compliance required; fees.....	3906
	[Amended 9-7-2010 as L.L. #1-2010]	
§ 39-10.	Badges and vehicle plates	3907
§ 39-11.	Name and address on vehicle	3908
§ 39-12.	Revocation of permit	3908
§ 39-13.	Restrictions	3909
§ 39-14.	Harbor area restrictions	3910
	[Added 6-17-1993 as L.L. #6 (Intro No. 10) 1993]	
§ 39-15.	Written orders and receipts	3910
§ 39-16.	Records	3910
§ 39-17.	Effect on other provisions	3910
§ 39-18.	Penalties for offenses	3911

[HISTORY: Adopted by the Common Council of the City of Dunkirk 4-29-1992 as L.L. #2-1992. Editor's Note: This local law superseded former Ch. 39 Hawkers and Peddlers, adopted 5-23-1922 as Ch. XXV of the Ordinances of the City of Dunkirk, as amended. Amendments noted where applicable.]

GENERAL REFERENCES

Auctions and auctioneers -	See Ch. 6.
Junk dealers and pawnbrokers -	See Ch. 44.
Permits -	See Ch. 51.

§ 39-1. Definitions. [Amended 6-17-1993 as L.L. #10-1993; amended 5-5-1994 as L.L. #3-1994]

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

CRAFT PEDDLER - Any "person", either principal or agent, who sells or barter, offers for sale or barter, or carries or exposes for sale or barter, any hand-made goods, except for food items, at a single day or multi-day municipal event.

HAWKER and PEDDLER - Any person, either principal or agent, who from any boat or car on a railroad track or in any public street or public place or by going from house to house or place of business to place of business, on foot or from any vehicle, sells or barter, offers for sale or barter or carries or exposes for sale or barter or consigns for vending purposes any goods, wares or merchandise, except newspapers.

PEDESTRIAN WALKWAY - a thirteen foot (13') wide strip of land immediately adjacent to the hotel premises located at 30 Lake Shore Drive East, running from Lake Shore Drive East on the south parallel to the western boundary of the hotel premises to the northern boundary of the hotel premises."

PERSON - One (1) or more persons of either sex, natural persons, corporations, partnerships, associations, joint-stock companies, societies and all other entities of any kind capable of being sued.

PUBLIC WATERFRONT ACCESS AREA - a thirty foot (30') wide strip of land located along Lake Erie, beginning at a point located three hundred seventy-nine and seven-tenths feet (379.7') north by rectangular measurement from the northerly line of Lake Shore Drive East (NYS Route 5) and two hundred seventy and two-tenths feet (270.2') west by rectangular measurement from the westerly line of Deer Street; thence northerly and parallel to Deer Street thirty feet (30') to the north face of an existing sheetpile lakewall; thence westerly along said sheetpile lakewall six hundred twenty feet (620'); thence southerly and parallel to Deer Street thirty feet (30'); thence easterly and parallel to Lake Shore Drive East, six hundred twenty feet (620') to the point or place of beginning.

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

§ 39-2. Permit required. [Amended 5-5-1994 as L.L. #3-1994]

No person shall at any time offer for sale as a hawker, peddler, solicitor or craft peddler, any goods, wares, provisions or merchandise at retail in any manner in any of the public streets or places or from house to house within the City of Dunkirk without having procured a permit as required by the terms of this chapter.

§ 39-3. Exemptions.

This chapter does not apply to:

- A. Any sales conducted pursuant to statute or by order of any court.
- B. Any person selling personal property at wholesale to dealers in such articles.
- C. Farmers and truck gardeners who, themselves or through their employees, vend, sell or dispose of products of their own farms and gardens.
- D. Berry pickers who sell berries of their own picking.

§ 39-4. Permit to be in effect. [Amended 5-5-1994 as L.L. #3-1994]

It shall be unlawful for any person within the corporate limits of the City of Dunkirk to act as a hawker, peddler, solicitor or craft peddler, as herein defined, without first having obtained and paid for and having in force and effect a permit.

§ 39-5. Application for general permit.

Any person desiring to procure a permit as a hawker, peddler or solicitor in the City of Dunkirk shall complete and file with the City Clerk an application containing the following information:

- A. The name, address and telephone number of the applicant.
- B. The name and address of the person, firm or corporation that the applicant represents.
- C. A list of the type of goods or services to be sold.
- D. The method of distribution.
- E. A list of the articles to be sold in conducting business.
- F. The length of time the permit is applicable.
- G. Certificate of all weighing and measuring devices from the Sealer of Weights and Measures, where applicable.
- H. Such other information as the City may require.

§ 39-6. Application for single day or multi-day municipal event permit. [Amended 5-5-1994 as L.L. #3-1994]

- A. Any person desiring to procure a permit as a hawker, peddler, solicitor or craft peddler in the City of Dunkirk for a single day or multi-day municipal event shall complete and file with the City Clerk an application containing the following information:
 - (1) The name, address and telephone number of the applicant.
 - (2) The legal status of the applicant.
 - (3) A list of goods or services to be sold.
 - (4) They type of electrical connections required.
 - (5) An agreement to comply with such other conditions as may be required by the City.
- B. Any person with a general permit must also procure a single day or multi-day municipal event permit it that person intends to hawk, peddle or solicit during the period of the single day or multi-day municipal event.
- C. At the option of the City, only full event or minimum period permits shall be issued, and there shall be no single-day or partial period permits available unless authorized by the City.

§ 39-7. Insurance Bond. [Amended 5-5-1994 as L.L. #3-1994]

- A. Any application for a permit, with the exception of a permit application by a craft peddler, shall be accompanied by proof of an insurance policy providing the coverage required by Vendor Classification E on the City of Dunkirk Standard Insurance Certificate. No permit shall be issued until such satisfactory proof is produced and approved as to form and surety by the City Attorney, except for craft peddler permits.
- B. An application for a permit as a solicitor who demands, accepts or receives payment or deposit of money in advance of final delivery shall also be accompanied by a bond to the City of Dunkirk, approved as to form and surety by the City Attorney, in the penal sum of Two Thousand Five Hundred Dollars (\$2,500.00), with a sufficient surety or sureties or sufficient collateral security, conditioned for making final delivery of the goods, wares or merchandise ordered or services to be performed in accordance with the terms of order, or, failing therein, that the advance payment on such order be refunded.

- C. Any person aggrieved by the action of any permitted solicitor shall have a right by action on the bond for the recovery of the money advanced or damages, or both.
- D. Such bond shall remain in full force and effect, and in case of a cash deposit, such deposit shall be retained by the City of Dunkirk for a period of ninety (90) days after the expiration of any such permit, unless sooner released.

§ 39-8. Issuance and conditions of permit.

- A. Upon the filing of the application, bond and certificate as provided in the preceding section, the City Clerk shall, upon approval of such application, issue to the applicant a permit as provided in § 39-4, signed by the City Clerk.
- B. Except as hereinunder provided, no permit shall be refused except for a specific reason and for the protection of the public safety, health, morals or general welfare.
- C. A permit shall not be assignable. Any holder of such permit who permits it to be used by any other person, and any person who uses such permit granted to any other person, shall each be guilty of violation of this chapter.
- D. Whenever a permit, badge or vehicle plate shall be lost or destroyed on the part of the holder or the holder's agent or employee, a duplicate in lieu therefore under the original application and bond may be issued by the City Clerk upon the filing with the Clerk by the permittee of an affidavit setting forth the circumstances of the loss and what, if any, search has been made for its recovery.
- E. All such permits shall be issued from a properly bounded book with proper reference stubs kept for that purpose, numbered in the order in which they are issued, and shall state clearly the kind of vehicle to be used, the kind of goods, wares and merchandise to be sold or service to be rendered, the badge number and license plate, the dates of issuance and expiration of the permit, the fee paid and the name and address of the permittee.
- F. Such permits shall automatically expire on January 1 following the date of issuance of such permits, but such permits may specifically state and provide for an earlier expiration date.
- G. Such permit shall include the right to use only one (1) vehicle in carrying on the business for which the person is licensed.

- H. No applicant to whom a permit has been refused or who has had a permit which has been revoked shall make further application until a period of at least six (6) months shall have elapsed since the last previous rejection or revocation, unless the person can show that the reason for such rejection no longer exists.
- I. Every permittee, while exercising this permit, shall carry the permit with the permittee and shall exhibit the same upon demand.

§ 39-9. Compliance required; fees. [Amended 5-5-94 as L.L. #3-1994; Amended 4-18-2006 as L.L. #3-2006; Amended 9-7-2010 as L.L. #1-2010]

- A. No permit shall be issued until the provisions of this chapter have been complied with and the following fees therefore shall be paid to the City Clerk:
 - (1) A permit to sell any merchandise of any description, using a motor vehicle, pushcart or wagon or other vehicle: Three Hundred Dollars (\$300.00) per annum. **[Amended 4-18-2006 as L.L. #3-2006; Amended 9-7-2010 as L.L. #1-2010]**
 - (2) A fifteen-day permit for Subsection A(1): One Hundred Dollars (\$100.00) per day. **[Amended 4-18-2006 as L.L. #3-2006; Amended 9-7-2010 as L.L. #1-2010]**
 - (3) A permit for a single day or multi-day municipal event: One Hundred Dollars (\$100.00) per day with the exception of July Fourth, where the fee will be Two Hundred Fifty Dollars (\$250.00). **[Amended 5-5-1994 as L.L. #3-1994; Amended 4-18-2006 as L.L. #3-2006; Amended 9-7-2010 as L.L. #1-2010]**
- B. All permittees may use one (1) additional person and no more, in selling and distributing their merchandise, but such additional person shall only act while accompanying a permittee, hawker, peddler or solicitor.
- C. The permit fees set forth in Subsections A and B shall not apply to individuals with licenses obtained under § 32 of the General Business Law.

§ 39-10. Badges and vehicle plates.

- A. The City Clerk shall supply badges and vehicle plates to permitted hawkers, peddlers, solicitors and craft peddlers. Such badges and plates

shall not be transferred or assigned. **[Amended 5-5-1994 as L.L. #3-1994]**

- B. On the expiration of the permit, the permittee shall surrender the badge to the City Clerk.
- C. It shall be unlawful for any person to destroy, deface or injure such badge in any manner or change the number or date thereon.
- D. It shall also be unlawful for any person to wear or have in his or her possession such badge unless he is the permitted hawker, peddler, solicitor or craft peddler in whose name the permit is issued. **[Amended 5-5-1994 as L.L. #3-1994]**
- E. Such permittee, while exercising the permit, shall wear on the front of his or her outermost garment the badge so provided, which badge shall state the number and character of the permit and the date when it expires.
- F. The vehicle plates shall be displayed by every permittee operating a vehicle, one (1) on each side of the body of the vehicle used in the exercise of the permit.
- G. Such vehicle plates shall state the character and number of the license and the date of expiration.
- H. The color of the vehicle plates shall be changed each permit year.
- I. The wearing of the badge and display of the vehicle plates are hereby made a condition of every permit to which such badge or plate apply, and failure by the permittee to wear the badge or to display the vehicle plates, as aforesaid, while in the exercise of the permit shall be cause for the revocation of such permit.
- J. A charge of One Dollar (\$1.00) shall be made by the City Clerk for each badge, which sum shall be refunded when the badge is returned by the permittee.

§ 39-11. Name and address on vehicle.

Every vehicle used by a permitted hawker, peddler or solicitor in or about his or her business shall have the name of the permittee and address plainly, distinctly and legibly painted in letters and figures at least two (2) inches in height in a conspicuous place on the outside of each side of every such vehicle, and such name and address shall be kept so painted plainly and distinctly at all times while such vehicle is in use during the continuance of the permit.

§ 39-12. Revocation of permit.

- A. The City Clerk may, at any time, for a violation of this chapter or any other ordinance or any law, revoke any permit.
- B. When a permit shall be revoked, no refund or any unearned portion of the permit shall be made.
- C. Notice of such revocation and the reason or reasons therefore, in writing, shall be served by the City Clerk upon the person named in the application or by mailing the same to the address given in the application and upon filing a copy of such notice with the City Clerk.

§ 39-13. Restrictions.

A permitted hawker, peddler, solicitor or craft peddler shall not: **[Amended 5-5-1994 as L.L. #3-1994]**

- A. Falsely or fraudulently misrepresent the quantity, character or quality of any article offered for sale or offer for sale any unwholesome, tainted or diseased provisions or merchandise.
- B. Wear the badge provided by the City or use the vehicle plates after the expiration or revocation of the permit represented by them
- C. Allow the vehicle and receptacles used to become in an unsanitary condition and shall keep the foodstuffs and eatables offered for sale well covered and protected from dirt, dust and insects.
- D. Blow a horn, ring a bell or use any other noisy device to attract public attention to his or her wares or shout or cry out his or her wares between the hours of 10:30 P.M. and 9:00 A.M.
- E. Stand or permit the vehicle used to stand in one (1) place in any public place or street for more than ten (10) minutes or in front of any premises for any time if the owner of or lessee of the ground floor thereof objects.
- F. Sell any confectionery or ice cream within two hundred fifty (250) feet of any school between the hours of 8:00 A.M. and 4:00 P.M. on school days.
- G. Create or maintain any booth or stand or place any barrels, boxes, crates or other obstructions upon any street or public place for purposes of selling or exposing for sale any goods, wares or merchandise.

- H. Hawk, peddle or solicit any good or services, from house to house, between the hours of sunset and 9:00 A.M. **[Added 5-6-1993 as L.L. #5 (Intro No. 8) 1993]**

§ 39-14. Harbor area restrictions. [Added 6-17-1993 as L.L. #6 (Intro No. 10) 1993]

- A. No person shall hawk, peddle or solicit on the public waterfront access area, pedestrian walkway or on any sidewalk on Lake Shore Drive East between Main Street and Central Avenue.
- B. This section shall not apply to a person procuring a single day or multi-day municipal event permit, nor to any other permitholder on such days as may be designated by the Common Council.

§ 39-15. Written orders and receipts for deposits. [Editor's Note: Renumbered as of 6-17-1993]

All orders taken by permitted solicitors who demand, accept or receive payment or deposit any money in advance of final delivery shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and one (1) copy shall be given to the purchaser at the time the deposit of money is paid to the solicitor.

§ 39-16. Records. [Editor's Note: Renumbered as of 6-17-1993]

It shall be the duty of the City Clerk to keep a record of all applications and of all permits granted under the provisions of the chapter, giving the number and date of each permit, the name and residence of the person permitted, the amount of the permit fee paid and also the date of revocation of all permits revoked.

§ 39-17. Effect on other provisions. [Editor's Note: Renumbered as of 6-17-1993]

The provisions of this chapter are supplemental to, and not in replacement of, the provisions of Article 10-A of the Personal Property Law.

§ 39-18. Penalties for offenses. [Editor's Note: Renumbered as of 6-17-1993]

The violation of any of the provisions of this chapter is hereby declared to be a misdemeanor, and any person, upon being convicted of such violation, shall be punishable as provided in Chapter 1, General Provisions, Article I, of the Code of the City of Dunkirk.

CHAPTER 40

(RESERVED)

CHAPTER 41

HOUSING STANDARDS

**Part 1
Residential Premises**

**ARTICLE I
General Provisions**

§ 41-1. Title..... 4103
§ 41-2. Purpose 4104
§ 41-3. Effective date..... 4104
§ 41-4. Scope 4104
§ 41-5. Nonapplicability 4104
§ 41-6. Application 4104
§ 41-7. Reference to New York State Building Construction Code
and other laws..... 4105
§ 41-8. Partial invalidity 4105
§ 41-9. Definitions 4105

**ARTICLE II
Space Requirements**

§ 41-10. General space requirements 4111
§ 41-11. Occupancy classification of buildings 4111
§ 41-12. Maximum occupancy 4112
§ 41-13. Prohibited uses 4112
§ 41-14. Habitable space 4113
§ 41-15. Public space 4114
§ 41-16. Nonhabitable space 4115
§ 41-17. Access and vertical travel between stories 4117
§ 41-18. Exits 4117

**ARTICLE III
Structural Requirements**

§ 41-19. General structural requirements..... 4118
§ 41-20. Exterior protection..... 4118
§ 41-21. Interior protection..... 4119

**ARTICLE IV
Fire Safety Requirements**

§ 41-22.	Prohibited accumulations and storage	4120
§ 41-23.	Prevention of fire spread	4120
§ 41-24.	Interior finishes, trim and decorative materials	4120
§ 41-25.	Fireplaces	4121

**ARTICLE V
Equipment Requirements**

§ 41-26.	General equipment requirements	4122
§ 41-27.	Plumbing	4122
§ 41-28.	Fuel gas	4127
§ 41-29.	Heating.....	4129
§ 41-30.	Chimneys, flues and gas vents	4131
§ 41-31.	Incinerators	4132
§ 41-32.	Electrical.....	4133
§ 41-33.	Cooking and refrigeration.....	4134
§ 41-34.	Air-conditioning and mechanical ventilation in one-and two-story dwellings	4135
§ 41-35.	Air-conditioning and mechanical ventilation in multiple dwellings	4135
§ 41-36.	Fuel oil	4137
§ 41-37.	Fire protection in multiple dwellings.....	4138
§ 41-38.	Elevators, dumbwaiters and escalators in multiple dwellings.....	4139

**ARTICLE VI
Property Maintenance Requirements**

§ 41-39.	General maintenance requirements	4140
§ 41-40.	Open areas	4140
§ 41-41.	Buildings and structures	4142
§ 41-42.	Infestation and screening	4143
§ 41-43.	Garbage and refuse	4143

**Part 2
Administration and Compliance**

**ARTICLE VII
General Provisions**

§ 41-44.	Title.....	4144
§ 41-45.	Purpose	4144
§ 41-46.	Effective date.....	4144
§ 41-47.	Scope	4144
§ 41-48.	Nonapplicability	4144
§ 41-49.	Partial invalidity	4144

**ARTICLE VIII
Administration**

§ 41-50.	Administrative agency.....	4145
§ 41-51.	Powers and duties.....	4145
§ 41-52.	Inspection.....	4147
§ 41-53.	Records	4147

[HISTORY: Adopted by the Common Council of the City of Dunkirk 11-8-1962 as Chapter XXXIII of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

GENERAL REFERENCES

Building Construction -	See Ch. 15
Fumigation of Buildings -	See Ch. 17
Electrical Installations -	See Ch. 28
Fire Prevention -	See Ch. 32
Removal of Plant Growth -	See Ch. 53
Plumbing -	See Ch. 55
Property Maintenance -	See Ch. 56
Sewers -	See Ch. 63
Solid Waste Management and Recycling -	See Ch. 66
Zoning -	See Ch. 79

**Part 1
Residential Premises**

**ARTICLE I
General Provisions**

§ 41-1. Title.

This Part shall be known as "Housing Standards Applicable to Residential Premises in the City of Dunkirk, New York."

§ 41-2. Purpose.

The purpose of this Part is to provide basic and uniform standards, in terms of performance objectives implemented by specific requirements, governing the condition, occupancy and maintenance of residential premises, and establishing reasonable safeguards for the safety, health and welfare of the occupants and users thereof.

§ 41-3. Effective date.

This Part shall take effect on the 10th of January, 1963.

§ 41-4. Scope.

This Part shall apply to residential premises as follows:

- A. Lots, plots or parcels of land on which residential buildings, buildings of mixed occupancy or accessory structures are located.
- B. Residential buildings, including one- and two-family dwellings and multiple dwellings, except as specifically excluded in § 41-5.
- C. Residential occupancies in buildings of mixed occupancy.
- D. Accessory structures, accessory to residential occupancies.

§ 41-5. Nonapplicability.

This Part shall not apply to mobile homes and mobile home courts, or to transient-type occupancies and uses, including, but not limited to, nursing and convalescent homes, hotels, motels, tourist camps, farm and labor camps, travel trailers and trailer parks, and other forms of temporary housing.

§ 41-6. Application.

- A. The provisions of this Part shall supersede local laws, ordinances, codes or regulations to the extent that such laws, ordinances, codes or regulations are inconsistent with the provisions of this Part; provided that nothing herein contained shall be construed to prevent the adoption and enforcement of a law, ordinance, code or regulation which is more restrictive or establishes a higher standard than those provided in this Part, and such more restrictive requirement or higher standard shall govern during the period in which it is in effect.
- B. Where a provision of this Part is found to be in conflict with a provision of a zoning, building, electrical, plumbing, fire, safety, health, water supply or sewage disposal law or ordinance, or regulation adopted pursuant thereto, or other local law, ordinance, code or regulation, the provision or requirement which is the more restrictive or which establishes the higher standard shall prevail.

§ 41-7. Reference to New York State Building Construction Code and other laws.

Installations, alterations and repairs to residential premises, and materials, assemblies and equipment utilized in connection therewith, shall be reasonably safe to persons and property and in conformity with applicable statutes of the State of New York, and orders, rules and regulations issued by authority thereof. Conformity of such work, materials, assemblies or equipment with the applicable requirements of the New York State Building Construction Code shall be prima facie evidence that the same is reasonably safe to person and property.

§ 41-8. Partial invalidity.

If a term, part, provision, section, subdivision or paragraph of this Part shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions and paragraphs.

§ 41-9. Definitions.

ACCESSORY STRUCTURE - A "structure," the use of which is incidental to that of the residential "building," and which is located on the same premises.

ACCESSORY USE - A use, occupancy or tenancy customarily incidental to the principal use or occupancy of a residential "building." Such "accessory uses" may include, among others, the following:

- A. Offices for the building management.
- B. Dining rooms, banquet rooms, public kitchens, and hall-rooms.
- C. Recreation and playrooms.
- D. Laundries for the use of tenants and occupants, and in connection with the management and operation of a residential "building."
- E. Maintenance and work shops, storage rooms for linen, bedding, furniture, supplies and tenants' equipment and effects.
- F. Rooms or space for the incidental sale or display of merchandise to occupants and tenants, such as newspaper, candy and cigar stands.
- G. Garages within a residential "building" or on the premises thereof, used primarily for the storage of passenger-type motor vehicles.

ALTERATIONS - As applied to "building" or "structure," means a change or rearrangement of the structural parts or in the exit facilities; or an enlargement, whether by extending on the side or by increasing in height: or the moving from

location or position to another; the term "alter," in its various modes and tenses and its participial forms, refers to the making of an "alteration." **[Added 10-5-1965]**

APARTMENT or SUITE - A room or suite of two (2) or more rooms occupied or intended to be occupied as the home or residence of an individual, "family" or household. **[Added 10-5-1965]**

APPROVED - "Approved" by the administrative officer under the regulations of this chapter, or approved by an authority designated by law or this chapter.

BASEMENT - That space of a "building" that is partly below grade, which has more than half its height, measured from floor to ceiling, above the average established curb level or "finished grade" of the ground adjoining the "building."

BATHROOM - Enclosed space containing one (1) or more bathtubs or showers, or both, and which may also contain water closets, lavatories or fixtures serving similar purposes. See definition of "toilet room."

BUILDING - A "structure" wholly or partially enclosed within exterior walls or within exterior or party walls and a roof, affording shelter to "persons," animals or property.

CELLAR - That space of a "building" that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or "finished grade" of the ground adjoining the "building."

DWELLING, ONE-FAMILY - A "building" containing not more than one (1) "dwelling unit" occupied exclusively for residential purposes.

DWELLING, TWO-FAMILY - A "building" containing not more than two (2) "dwelling units" occupied exclusively for residential purposes.

DWELLING UNIT - One (1) or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one (1) "family."

EXIT - A way of departure from the interior of a "building" or "structure" to the exterior at street or grade, including doorways, passageways, hallways, corridors, stairways, ramps, fire escapes and all other elements necessary for egress and escape.

FAMILY - A household constituting a single housekeeping unit occupied by one (1) or more "persons."

GARBAGE - All putrescible animal or vegetable wastes resulting from the handling, preparation, cooking and consumption of food. **[Added 4-6-1965]**

GENERALLY ACCEPTED STANDARD - A specification, code, rule, guide or procedure in the field of construction or related thereto, recognized and accepted as authoritative.

GRADE, FINISHED - The natural surface of the ground, or surface of ground after completion of any change in contour, abutting "building" or premises.

HABITABLE SPACE - Space occupied by one (1) or more "persons" for living, sleeping, eating or cooking. "Kitchenettes" shall not be deemed to be "habitable space." See definitions of "nonhabitable space," "public space" and "exit."

HUMAN OCCUPANCY - Space occupied by one (1) or more "persons" for living, sleeping, eating or cooking. **[Added 10-5-1965]**

INFESTATION - The presence, within or contiguous to a dwelling, "dwelling unit," "lodging house," "lodging unit" or premises, of insects, rodents, vermin or other pests.

JUNKED VEHICLE - Any vehicle, including a trailer, which is without a currently valid license plate or plates, and is in either a rusted, wrecked, discarded, dismantled, partly dismantled, inoperative or abandoned condition.

KITCHEN - Space, sixty (60) square feet or more in floor area, with a minimum width of five (5) feet, used for cooking or preparation of food.

KITCHENETTE - Space, less than sixty (60) square feet in floor area, used for cooking or preparation of food.

LODGING HOUSE - A multiple dwelling used primarily for the purpose of furnishing lodging, with or without meals, for compensation.

LODGING UNIT - A room or group of rooms forming a single habitable unit, used or intended to be used for lodging.

LOT - A portion or parcel of land considered as a unit, vacant or dedicated to a certain use or occupied by a "building" or group of "buildings" that are united by a common interest or use, and customary accessories and open spaces belonging to same. **[Added 4-6-1965]**

MIXED OCCUPANCY - Occupancy of a "building" in part for residential use and in part for some other use not accessory thereto.

MULTIPLE DWELLING - (See § 41-5 for certain multiple dwellings not within scope of this chapter.)

A. "Building" containing three (3) or more "dwelling units."

- B. "Building" containing living, sanitary and sleeping facilities occupied by one (1) or two (2) "families" and more than four (4) lodgers residing with either one of such "families."
- C. "Building" with one (1) or more sleeping rooms, other than a "one- or two-family dwelling," used or occupied by permanent or transient paying guests or tenants.
- D. "Building" with sleeping accommodations for more than five (5) "persons," used or occupied as a club, dormitory, fraternity or sorority house or for similar uses.
- E. "Building" used or occupied as a convalescent, old-age or nursing home, but not including private or public hospitals or public institutions.

MULTIPLE RESIDENCE - See definition of "multiple dwelling."

MUNICIPALITY - A city, town or village.

NONHABITABLE SPACE - Space used as "kitchenettes," pantries, bath, toilet, laundry, rest, dressing, locker, storage, utility, heater and boiler rooms, closets and other spaces for service and maintenance of the "building," and those spaces used for access and vertical travel between stories. See definitions of "habitable space," "public space" and "exit."

OWNER - See "person." **[Added 10-5-1965]**

PERSON - The "owner," occupant, mortgagee or vendee in possession, assignee of rents, receiver, administrator, executor, trustee, lessee, agent or any other "person," firm or corporation directly or indirectly in control of a "building" or part thereof. **[Added 10-5-1965]**

PLUMBING SYSTEM - The water supply system, the drainage system, the vent system, fixtures and traps, including their respective connections, devices and appurtenances within the property lines of the premises.

POTABLE WATER - Water which is approved for drinking, culinary and domestic purposes.

PUBLIC SPACE - Space within a residential "building" for public use, such as lobbies, lounges, reception, ball, meeting, lecture and recreation rooms, banquet and dining rooms and their "kitchens," and swimming pools.

REFUSE - All cardboard, plastic, metal or glass food containers, wastepaper, rags, sweepings, small pieces of wood, excelsior, rubber, leather and similar waste

material that ordinarily accumulates around a home, business or industry. **[Added 4-6-1965]**

SEWAGE - Liquid waste containing animal or vegetable matter in suspension or solution, and which may include industrial wastes and liquids containing chemicals.

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

TOILET ROOM - Enclosed space, containing one (1) or more water closets, which may also contain one (1) or more lavatories, urinals and other plumbing fixtures. See definition of "bathroom."

UNOCCUPIED HAZARD - Any "building" or part thereof which remains unoccupied for a period of more than one (1) year, with either doors, windows or other openings broken, removed, boarded or sealed up, or any "building" under construction upon which little or no construction work has been performed for a period of more than one (1) year. **[Added 4-6-1965]**

VENTILATION - Supply and removal of air to and from a space by natural or mechanical means.

VENTILATION, MECHANICAL - "Ventilation" by power-driven devices.

VENTILATION, NATURAL - "Ventilation" by opening to outer air through windows, skylights, doors, louvers or stacks with or without wind-driven devices.

YARD - An open space on the same "lot" which contains a "building," and located between the building line and the lot line which the particular building line faces. **[Added 4-6-1965]**

ARTICLE II
Space Requirements

§ 41-10. General space requirements.

- A. Buildings occupied in whole or in part, as defined in this chapter, shall comply with the requirements hereinafter set forth concerning occupancy size, light and ventilation in order to provide safe and healthful environment.
- B. The term "accessory use" shall have a uniform meaning and shall apply in the same manner and under the same conditions or restrictions to all residential buildings.

§ 41-11. Occupancy classification of buildings.

Buildings, for the purpose of this chapter, shall be classified in respect to their occupancies as follows:

- A. **One- and two-family dwellings.** Buildings containing one (1) or two (2) dwelling units with less than four (4) lodgers residing with a family in either one of such dwelling units.
- B. **Multiple dwellings.**
 - (1) Buildings containing one (1) or two (2) dwelling units with more than four (4) lodgers with a family in either one of such dwelling units.
 - (2) Buildings containing three (3) or more dwelling units.
 - (3) Apartment houses and apartment hotels.
 - (4) Lodging houses.
 - (5) Buildings with sleeping accommodations for more than five (5) persons, used or occupied as a club, dormitory, fraternity or sorority house or for similar uses.
 - (6) Garden apartments.
- C. **Accessory structures.** Garages, carports and similar-type structures for residential premises.

§ 41-12. Maximum occupancy.

- A. In dwelling units, the maximum number of occupants shall be limited to the number determined on the basis of the floor areas of habitable rooms, other than kitchens, as follows: one (1) occupant per room having floor area of at least seventy-five (75) but less than one hundred twenty (120) square feet; two (2) occupants per room having floor area of at least one hundred twenty (120) but less than one hundred eighty (180) square feet; and three (3) occupants per room having floor area of one hundred eighty (180) or more square feet.
- B. In lodging units, the maximum number of occupants shall be limited to the number determined on the same basis as for dwelling units.
- C. In buildings occupied as clubs, dormitories, sorority or fraternity houses and providing sleeping accommodations for more than five (5) persons, the maximum number of occupants so accommodated in any habitable room shall be limited to the number determined on the basis of the floor area, in square feet, of the room divided by fifty (50) square feet per occupant.
- D. No room in any dwelling unit or rooming unit shall be used for sleeping purposes unless there is a minimum floor space of seventy (70) square feet for the first occupant and a minimum floor space of fifty (50) square feet for each additional occupant. **[Added 9-21-1965]**

§ 41-13. Prohibited uses.

- A. It shall be prohibited to use for sleeping purposes any kitchen, nonhabitable space or public space.
- B. It shall be prohibited, in lodging houses, to use for dining purposes any communal kitchen containing less than one hundred (100) square feet of floor area, or any nonhabitable space or public space other than dining space.
- C. It shall be prohibited to prepare or eat meals in lodging units.
- D. It shall be prohibited to use any cellar space as habitable space.

§ 41-14. Habitable space.

A. Size.

- (1) Habitable space shall have a minimum ceiling height of seven (7) feet six (6) inches over fifty percent (50%) of the floor area; and the floor area where the ceiling height is less than five (5) feet shall not be considered in computing floor area.

- (2) A dwelling unit shall contain at least one (1) habitable room having a minimum of one hundred fifty (150) square feet of floor area and a minimum horizontal dimension of ten (10) feet.

B. **Basements.** Basements shall not be deemed habitable space where required windows are located only on one (1) wall and the depth of the basement space exceeds four (4) times its clear height.

C. **Light and ventilation.**

- (1) Habitable space shall be provided with natural light through one (1) or more windows, skylights, transparent or translucent panels, or any combinations thereof, that face directly on legal open spaces at least six (6) inches above the adjoining finished grade or are above a roof. The amount of light shall be equivalent to that transmitted through clear glass equal in area to ten percent (10%) of the floor area of the habitable space.
- (2) Habitable space shall be provided with artificial light.
- (3) Habitable space shall be provided with natural ventilation through openable parts of windows or other openings in exterior walls that face legal open spaces above the adjoining finished grade or above a roof, or through openable parts of skylights, providing total clear ventilation area equal to not less than five percent (5%) of the total floor area of each habitable space.
- (4) Habitable space may also be provided with mechanical ventilation in addition to natural ventilation.

D. **Miscellaneous requirements.**

- (1) Dwelling units shall be separated from each other and from other spaces outside the dwelling unit.
- (2) Sleeping rooms within dwelling units shall be separated from each other and from other spaces outside the sleeping rooms to provide privacy.
- (3) Lodging units shall be separated from each other and from other spaces outside the lodging units.
- (4) A communal kitchen or dining room in a lodging house shall be accessible to the occupants sharing such kitchen or dining room

without going through a dwelling unit or lodging unit of another occupant.

§ 41-15. Public space.

- A. **Height.** Public space shall have a minimum height of seven (7) feet six (6) inches measured from finished floor to finished ceiling.
- B. **Light and ventilation.**
 - (1) Public spaces shall be provided with artificial light.
 - (2) In public stairs, stairways and passageways, artificial light shall be electric lighting; available at all times so as to afford safe passage for occupants and users. Such lighting shall conform to the following:
 - (a) A sufficient number of fixtures shall be provided so that the distance between fixtures is not more than thirty (30) feet and so that no wall is more than fifteen (15) feet distant from a fixture.
 - (b) Incandescent lighting shall be based on not less than one-fourth (1/4) watt per square foot of floor area, except that each fixture shall have a lamp or lamps with a total of not less than twenty-five (25) watts.
 - (c) Fluorescent lighting shall be based on not less than one-tenth (1/10) watt per square foot of floor area, except that each fixture shall have a lamp or lamps of a total of not less than fifteen (15) watts.
 - (d) Where under these formulas the calculated wattage does not correspond to that of a standard lamp, the next larger size shall be used.
 - (3) Public spaces shall be provided with either natural ventilation, conforming to the requirements for habitable space, or with mechanical ventilation.

§ 41-16. Nonhabitable space.

- A. **Height.** Nonhabitable space, except crawl spaces and attics, in multiple dwellings shall have a minimum height of seven (7) feet measured from floor to ceiling.
- B. **Toilet rooms and bathrooms.**

- (1) Toilet rooms and bathrooms in one- and two-family dwellings shall have provisions for privacy.
- (2) Toilet rooms and bathrooms for dwelling units in multiple dwellings shall be located within the dwelling units and shall be accessible from any sleeping room.
- (3) Unless located within dwelling units or directly connected with sleeping rooms, toilet rooms and bathrooms in multiple dwellings shall be provided in each story containing habitable space and shall be accessible thereto.
- (4) Toilet rooms for employees in multiple dwellings shall be in separate rooms for each sex where there are five (5) or more employees, shall be readily accessible to such employees and shall not open directly into any public kitchen or other public space used for the cooking or preparation of food.
- (5) In one and two-family dwellings, bathrooms and toilet rooms shall be provided with floors of moisture resistant material.
- (6) In multiple dwellings, floors of bathrooms, toilet rooms and similar spaces shall be waterproof; such waterproofing shall extend six (6) inches or more above floors except at doors, so that floors can be flushed or washed without leaking.

C. Light and ventilation.

- (1) Kitchenettes, bathrooms and toilet rooms shall be provided with artificial light appropriate for the use of such rooms.
- (2) Laundry rooms, furnace rooms and similar nonhabitable space shall be provided with artificial light appropriate for the intended use of such rooms.
- (3) Stairs shall be provided with artificial light to allow safe ascent or descent.
- (4) Kitchenettes, bathrooms and toilet rooms shall be provided with ventilation in accordance with either of the following:
 - (a) Natural ventilation as required for habitable space, except that such openable areas shall be not less than one and one-half (1/2) square feet for bathrooms or toilet rooms and not less than three (3) square feet for kitchenettes; or

- (b) mechanical ventilation exhausting not less than twenty-five (25) cubic feet per minute for bathrooms and toilet rooms and not less than one hundred (100) cubic feet per minute for kitchenettes.
- (5) Spaces in multiple dwellings which contain central heat-producing, air-conditioning and other equipment shall be ventilated to the outer air, and air from these spaces shall not be recirculated to other parts of the building.
- (6) Ventilation shall be provided in unheated attics, spaces below flat roofs and crawl spaces. Location and net areas of ventilation openings shall be such as to minimize deterioration of structural members from condensation or other causes, in conformity with generally accepted standards.

§ 41-17. Access and vertical travel between stories.

- A. Stairs, both interior and exterior, shall be of sufficient width, in conformity with generally accepted standards, so as to serve the occupants.
- B. Railings shall be provided on open portions of stairs, balconies, landings and stairwells.
- C. Handrails shall be provided on at least one (1) side of stairways. **[Added 9-4-1979]**

§ 41-18. Exits.

- A. Safe, continuous and unobstructed exit shall be provided from the interior of the building to the exterior at street or grade level.
- B. Exits shall be arranged, constructed and proportioned so that occupants may escape safely from the building in case of emergency.
- C. In one- and two-family dwellings, in addition to a primary exit from each dwelling unit, there shall be provided a secondary exit placed remotely from the primary exit. **[Added 8-4-1964; amended 5-16-1972]**
- D. In multiple dwellings, approved exits shall be provided.

ARTICLE III
Structural Requirements

§ 41-19. General structural requirements.

- A. Buildings and parts thereof shall be maintained so as to be capable of sustaining safely their own weight and the loads to which they may be subjected.
- B. Buildings shall be maintained so that loads are transmitted to the soil without undue differential settlement, unsafe deformation or movement of the building or of any structural part.
- C. Buildings shall be maintained so that protection is provided for all structural members which may become structurally unsound if left unprotected. Causes of such deterioration include, among others, action of freezing and thawing, dampness, corrosion, wetting and drying, and termites and other destructive insects.
- D. Buildings built in soil which is water-bearing at any season of the year shall be maintained so that ground and surface water will not penetrate into habitable spaces, basements and cellars.

§ 41-20. Exterior protection.

- A. Foundation walls shall be maintained so as to be structurally sound and to prevent entrance of moisture, termites and vermin. Such protection shall consist of shoring where necessary, subsoil drains at footings, grouting of masonry cracks, waterproofing of walls and joists and other suitable means.
- B. Exterior walls and wall components shall be maintained so as to prevent deterioration due to the elements and destructive insects. Such

maintenance shall consist of painting, installation or repair of walls, copings and flashings, waterproofing of joists, waterproof coatings, installation or repair of termite shields, poison treatment of soil, or other suitable means.

- C. Roofing shall be maintained in watertight condition so as to prevent leakage into the building. Such maintenance shall consist of repairs of roofing, flashings, waterproof coatings or other suitable means.

§ 41-21. Interior protection.

- A. Crawl spaces shall be maintained free of moisture and the flow of air from such spaces into walls above shall be effectively barred so as to prevent deterioration of structural members. Such provisions shall consist of maintenance of openings in foundation walls to provide adequate circulation of air in the crawl space, covering the ground in the crawl space with a moisture barrier, installation of drains outside structure if the crawl space is below surrounding grade, blocking openings in stud walls to prevent flow of air and moisture into walls, frequent destruction of termite tubes from the soil to wood floor members above, poison treatment of soil and other suitable means.
- B. Structural members shall be maintained so as to be structurally sound. Such protection shall consist of shoring, reinforcement, or repair where necessary, frequent destruction of termite tubes or other appropriate means.
- C. Chimneys and flues shall be maintained so as to be structurally sound and to prevent leakage of gases into the structure. Such maintenance shall consist of clearing flue stoppages, sealing open joints, repairing masonry where necessary, and other suitable means.
- D. Ceilings and walls shall be maintained so that parts which become loose or defective do not constitute a hazard to occupants. Such maintenance shall consist of removing and replacing loose or defective sections.
- E. Toilet room and bathroom floors shall be maintained so as to prevent leakage of water through the floor, under normal conditions of use and floor washing, and resultant deterioration or defects in structural members and ceilings below. Maintenance shall consist of repairs which effectively provide the moisture and waterproof qualities for the particular floor.

ARTICLE IV
Fire-Safety Requirements

§ 41-22. Prohibited accumulations and storage.

It shall be prohibited:

- A. To accumulate or store on residential premises, except in approved locations, any highly flammable or explosive matter, such as paints, volatile oils, cleaning fluids and similar materials, or any combustible refuse liable to spontaneous combustion, such as wastepaper, boxes, rags or similar materials.
- B. To accumulate or store materials on fire escapes or stairs, in stairways or passageways, at doors or windows or in any other locations where, in the event of fire, such materials may obstruct egress of occupants or interfere with fire-fighting operations.

§ 41-23. Prevention of fire spread.

- A. Walls and ceilings shall be maintained free from cracks and openings which would permit flame or excessive heat to enter the concealed space.
- B. In buildings of mixed occupancies, nonresidential space shall be separated from residential space by approved fire separations which will retard the spread of fire.
- C. Garages in or attached to a residential building shall be separated from other spaces in the building by approved fire separations which will retard the spread of fire and prevent flammable or toxic vapors originating within the garage from being transmitted to other parts of the building.

§ 41-24. Interior finishes, trim and decorative materials.

Interior finish materials for acoustical correction, surface insulation and decorative treatment on the surfaces of walls and ceilings, and interior trim shall be of materials that will not, in burning, give off excessive amounts of smoke or objectionable gases.

§ 41-25. Fireplaces.

- A. Fireplaces and similar construction used or intended to be used for burning fuel in open fires shall be connected to approved chimneys and shall be installed so that nearby or adjacent combustible material and structural members shall not be heated to unsafe temperatures.
- B. Hearths and linings or other parts of fireplaces exposed directly to flame shall be of materials that will not melt, disintegrate, spall or shatter at high temperatures.
- C. Wood mantels and trim on fireplaces shall be placed and attached so that they cannot be heated to unsafe temperatures or ignited by sparks or embers from the fire.

ARTICLE V
Equipment Requirements

§ 41-26. General equipment requirements.

- A. Plumbing, heating, electrical, ventilating, air-conditioning, refrigerating, cooking, fire protection and radiation production equipment, elevators, dumbwaiters, escalators and other mechanical additions, installations or systems for the use of the building shall be installed, located and maintained so that under normal conditions of use such equipment and systems will not be a danger to health or welfare, a danger because of structural defects, or a source of ignition or a radiation hazard, and will not create excessive noise or otherwise become a nuisance. Equipment and systems include, but are not limited to, apparatus, devices, fixtures, piping, pipe hangers, pipe covering, wiring, fittings and materials used as part of or in connection with such installations.
- B. Equipment and systems subject to damage from freezing shall be adequately protected against freezing.
- C. Moving parts of equipment which may be a potential hazard shall be guarded to protect against accidental contact.

§ 41-27. Plumbing.

A. General requirements.

- (1) Plumbing systems shall be maintained in sanitary and serviceable condition.
- (2) Plumbing systems shall be maintained so as not to weaken structural members nor cause damage or deterioration to any part of the building through fixture usage.

B. Water supply.

- (1) Potable water from an approved source shall be available at all times in residential buildings. The domestic water supply system of the building shall be connected to such approved source and shall not be subject to contamination. When supplied from a public source, the potable water supply system shall not be connected to private or unsafe water supplies.
- (2) Water supply systems shall be installed and maintained so as to provide at all times a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable them to function satisfactorily and without undue noise under all normal conditions of use.
- (3) Water supply systems shall be installed and maintained so that water used for purposes of cooling or heating shall not be

reintroduced into the domestic water supply system nor be distributed through such equipment to plumbing fixtures.

- (4) Hot water supply systems shall be provided with safety devices arranged to relieve hazardous pressures and excessive temperatures.

C. Sewage drainage system.

- (1) Plumbing fixtures shall be drained to a sewage drainage system, and such system shall be connected to a public sewer or to an adequate and approved system of sewage disposal.
- (2) Where a public sewer is not available, a system shall be provided to receive and dispose of sewage without health hazard or nuisance.
- (3) Sewage or other waste which may be deleterious to surface or subsurface waters shall not be discharged into the ground or into a waterway unless it has first been rendered harmless through subjection to treatment in conformity with generally accepted standards.
- (4) Substances which will clog pipes, produce explosive mixtures, destroy the pipes or their joints or interfere unduly with the sewage disposal process shall not be discharged into the building drainage system unless it is provided with approved devices suitable for intercepting such substances.
- (5) Each fixture directly connected to the sewage drainage system shall be equipped with a water seal trap.
- (6) Adequate cleanouts shall be provided and maintained so that the pipes may be readily cleaned.
- (7) The drainage system and its attendant vent piping shall be maintained so as to provide adequate circulation of air in all pipes in order that siphonage, aspiration or pressure will not cause a loss of trap seal under ordinary conditions of use.
- (8) Each vent terminal to the outer air shall be installed and maintained so as to minimize the possibilities of clogging, frost closure, and the return of foul air to the building or the creation of a nuisance to adjacent premises.
- (9) Drains provided for fixtures, devices, appliances or apparatus containing food, water, sterile goods or similar materials shall be equipped with air breaks adequate to prevent contamination of such

contents from any possible backup of sewage through the direct or indirect drainage piping.

D. Storm drainage.

- (1) Roofs and paved areas, including yards and courts, shall be drained. Storm drainage shall be conveyed to an adequate and approved system or stormwater disposal where available. Storm drains shall be discharged in such manner that water will not flow onto sidewalks.
- (2) Where drainage system may be subject to backwater, suitable provision shall be made to prevent its overflow into the building.
- (3) Leaders and gutters, if used, shall be constructed of noncombustible material, except that wood leaders and gutters may be used for buildings not more than three (3) stories high.

E. Plumbing Facilities.

- (1) Buildings and portions thereof shall be provided with plumbing systems designed to dispose of the sewage from all fixtures and to furnish cold water to every water closet and urinal, and hot and cold water to every sink, lavatory, bathtub and shower required therein. In multiple dwellings, hot water shall be furnished at one hundred thirty degrees Fahrenheit to one hundred forty degrees Fahrenheit (130° - 140° F.) temperature range. **[Amended 7-3-1973]**
- (2) There shall be provided, within each dwelling unit, plumbing fixtures consisting of at least:
 - (a) One (1) kitchen sink.
 - (b) One (1) water closet.
 - (c) One (1) bathtub or shower.
 - (d) One (1) lavatory.
- (3) Where multiple dwellings contain sleeping accommodations arranged as individual rooms or suites, for each multiple of six (6) sleeping rooms or fraction thereof, there shall be provided plumbing fixtures consisting of at least:

- (a) One (1) water closet.
 - (b) One (1) bathtub or shower.
 - (c) One (1) lavatory.
- (4) Where multiple dwellings contain sleeping accommodations arranged as a dormitory, for each multiple of fifteen (15) persons or fraction thereof so accommodated, there shall be provided and located adjacent thereto plumbing fixtures consisting of at least:
- (a) One (1) water closet.
 - (b) One (1) bathtub or shower.
 - (c) One (1) lavatory.
- (5) Urinals may be substituted in men's toilet rooms for not more than one-third (1/3) of the required number of water closets.
- (6) Privies, privy vaults and outhouses shall be prohibited on residential premises.

F. Plumbing Fixtures.

- (1) Plumbing fixtures shall be made of smooth, nonabsorbent material and shall be free from concealed fouling surfaces.
- (2) Plumbing fixtures shall be so spaced as to be reasonably accessible for their intended use.
- (3) Plumbing fixtures shall be located in spaces that are accessible, lighted and ventilated.

G. Swimming pools.

- (1) Water supply used for filling or for cleaning of the pool shall be clean. Water supply shall be protected against potential pollution from all sources, including cross-connection and backflow.
- (2) Drains shall be provided so that the pool can be safely and adequately drained. Drains shall be provided in floors surrounding the swimming pool, and arranged so that water from such areas will drain without entering the pool.

- (3) Filtering, sterilizing and auxiliary equipment, where required, shall be adequate to maintain the sanitary quality of water during each period the pool is in use. Equipment containing gases or disinfectants capable of giving off irritating, toxic or flammable fumes shall be located in ventilated rooms.
- (4) The installation shall be arranged and maintained to prevent dirt, sand or other foreign matter from entering the bathing area.

H. Water supply tanks.

- (1) Water supply tanks shall be installed and maintained so as to be watertight, verminproof, rodentproof, resistant to corrosion and capable of withstanding the working pressures under normal operation.
- (2) Supports for tanks shall be noncombustible construction.
- (3) Tanks and their supports shall not be used to support equipment or structures other than for tank use, except where specially designed for such other use.
- (4) Means for emptying water supply tanks shall be provided and maintained in proper working condition.
- (5) Potable water supply tanks for domestic supply and standpipe or automatic sprinkler systems shall be installed and maintained to furnish water in sufficient quantity and pressure for such systems.

§ 41-28. Fuel gas.

A. General requirements.

- (1) Fuel gas piping systems shall be installed and maintained so as to remain gastight, safe and operative under conditions of use.
- (2) Fuel gas piping systems shall provide a supply of gas sufficient to meet the maximum expected demand of the installed gas-burning appliances connected thereto.

B. Shutoff valves.

- (1) Gas piping systems shall have at least one (1) accessible means for shutting off all gas supply, and such means shall be maintained in good operating condition.
 - (2) An easily accessible shutoff valve or cock shall be provided in the piping in close proximity to, and ahead of, every outlet for gas appliance.
- C. **Service equipment for gas supplied from utility mains.** Gas services, gas meters and gas pressure regulators shall be located so that they are protected from damage.
- D. **Gas refrigerators and ranges.** Gas refrigerators and ranges shall be installed with clearance for ventilation and shall be maintained in good operating condition.
- E. **High-pressure gas.** Any service connection supplying gas at a pressure in excess of one (1) pound per square inch gauge shall be provided with a device to reduce such pressure to not more than one-half (1/2) pound per square inch gauge prior to entering the meter, except where such service supplies equipment using gas at high pressures.
- F. **Liquefied petroleum gas.**
- (1) Undiluted liquefied petroleum gas in liquid form shall not be conveyed through piping equipment and systems in buildings.
 - (2) Liquefied petroleum gas shall not be vaporized by devices utilizing open flame or open electrical coil.
 - (3) Where two (2) or more containers are installed, connection shall be arranged so that containers can be replaced without shutting off the flow of gas to equipment.
 - (4) Containers shall be designed, stored and located so as not to be a hazard to the premises served or to the surrounding property.
 - (5) Systems shall be provided with safety devices to relieve excessive pressures and shall be arranged so that the discharge terminates at a safe location.
 - (6) Systems shall have at least one (1) accessible means for shutting off the gas. Such means shall be located outside the building and shall be maintained in good operating condition.

§ 41-29. Heating.

A. General requirements.

- (1) Residential buildings intended for occupancy between the first day of November and the first day of May the following year shall be provided with heating equipment designed to maintain a temperature of not less than seventy degrees Fahrenheit (70° F.) at a distance of three (3) feet and more from exterior walls, and at a level of five (5) feet above the floor, in habitable spaces, kitchenettes, bathrooms and toilet rooms. The capability of the heating equipment to maintain such indoor temperature shall be based on the average of the recorded annual minimum outside temperatures for the locality.
- (2) In multiple dwellings, adequate heat shall be provided to maintain the indoor temperature in habitable spaces, kitchenettes, bathrooms and toilet rooms at seventy degrees Fahrenheit (70° F.) when the outside temperature falls below fifty-five degrees Fahrenheit (55° F.).
[Added 7-3-1973]

B. Smoke control. Fuel-burning, heat-producing equipment shall be installed and maintained so that the emission or discharge into the atmosphere of smoke, dust, particles, odors or other products of combustion will not create a nuisance or be detrimental to the health, comfort, safety or property of any person.

C. Warm air heating. Ducts and other air-handling equipment used for heating shall conform to the requirements of such equipment used for ventilating purposes.

D. Prohibited locations for heat-producing equipment. Fuel-burning water heaters shall not be located in sleeping rooms, bathrooms or toilet rooms.

E. Fuel supply connection. Fuel-burning equipment shall be permanently fastened and connected in place. Fuel supply connection to such equipment shall be made with pipe or tubing of solid metal.

F. Installation and clearance. Where heat-producing equipment is installed on or adjacent to combustible materials, the location, insulation, clearance and the control of the equipment shall be such that the temperature on the surface of the combustible materials will not exceed a safe temperature.

G. Air supply.

- (1) Direct-fired heat-producing equipment and the enclosure in which it is located shall be provided with a supply of air adequate both for complete combustion at the rated gross output of the equipment and for ventilation of the enclosure to prevent the accumulation of heat.
- (2) Rooms containing fuel-burning equipment shall have such air supply provided by means of one (1) or more openings to the exterior, or by means of fixed openings to interior spaces which open to the exterior.

H. Removal of products of combustion.

- (1) Equipment for burning solid or liquid fuel shall be connected to suitable chimneys or flues and shall not be connected to gas vents. Unvented heaters burning liquid fuel shall be prohibited.
- (2) Fuel-burning space heaters located in sleeping rooms normally kept closed shall be connected to a suitable chimney, flue or gas vent.
- (3) Gas-fired equipment shall be connected to a suitable chimney, flue or gas vent when the discharge of products of combustion into the space where the equipment is installed would be a hazard.

I. Safety devices.

- (1) Equipment capable of developing hazardous pressures or temperatures shall be provided with means to relieve safely such pressures and temperatures.
- (2) Controls for the safe operation of automatically operated heat-producing equipment shall be provided to function as follows: When failure or interruption of flame or ignition occurs, the fuel supply shall be cut off. When a predetermined temperature or pressure is exceeded, the input of additional heat shall be prevented or reduced to a safe rate. When the water level in a steam boiler drops below a predetermined level, the fuel supply shall be cut off. When failure or interruption of pilot light or main burner of liquefied petroleum gas equipment occurs, the fuel supply to each pilot light and main burner shall be cut off.

J. Heating of garages. Fuel-burning equipment for garages servicing multiple dwellings shall be located in heater rooms, except that equipment burning gas or liquid fuel, located in the vehicle storage space, shall be permitted in stories at or above grade where elevated so as not to be exposed to possible accumulation of flammable gases.

§ 41-30. Chimneys, flues and gas vents.

A. General requirements.

- (1) Chimneys, flues, gas vents and their supports shall be installed and maintained so as to be structurally safe, durable, smoketight, noncombustible and capable of withstanding the action of flue gases without softening, cracking, corroding or spalling.
- (2) Such facilities shall effectively convey the products of combustion to the outer air.
- (3) Masonry chimneys, except approved prefabricated chimneys, shall have noncombustible foundations.
- (4) Flue linings shall be capable of withstanding the action of flue gas without softening, cracking, corroding or spalling at the temperature to which they will be subjected.
- (5) Openings for smoke pipes or gas vent connections shall be provided with means for easy connection without restriction of flue.
- (6) No flue shall have smoke pipe or gas vent connections in more than one (1) story of a building.
- (7) Fuel-burning equipment and fireplaces located in different tenancies shall not be connected to the same flue.

B. Fire safety. Chimneys, flues and gas vents shall be installed and maintained so that under conditions of use the temperature of any combustible material adjacent thereto, insulated therefrom or in contact therewith does not exceed a safe temperature.

C. Spark arresters. A chimney or flue connected to an incinerator and a chimney or flue which may emit sparks shall be provided with a spark arrester or noncombustible construction. Spark arresters shall have sufficient total clear area to permit unrestricted passage of flue gases. Openings in spark arresters shall be of such size as to prevent passage of embers to minimize clogging by soot.

§ 41-31. Incinerators

A. General requirements.

- (1) Incinerators shall be of adequate capacity for the intended use.

- (2) Flue-fed incinerators shall be equipped with means for burning auxiliary fuel in sufficient quantity to assure complete combustion of refuse.
- (3) A flue serving an incinerator shall be provided with a substantially constructed arrester.
- (4) Incinerators shall be connected to a suitable noncombustible chimney, smokestack or flue.
- (5) Connections to incinerators shall provide free passage of refuse without clogging.

B. Service openings.

- (1) Service openings shall be readily accessible to the building occupants.
- (2) Durable signs with plainly legible letters prohibiting disposal of highly flammable substances in incinerators shall be provided near service openings.

§ 41-32. Electrical.

A. General requirements.

- (1) Electrical wiring and equipment shall be installed in conformity with generally accepted standards and maintained so as not to be a potential source of ignition of combustible material or a potential source of electrical hazard.
- (2) Electrical wiring and equipment shall be firmly secured to the surface on which it is mounted.
- (3) Electrical wiring and equipment installed in damp or wet locations or where exposed to explosive or flammable gases or to excessive temperatures shall be of a type for the purpose and location.
- (4) Electrical wiring and equipment shall be protected against excessive current by properly rated overcurrent devices.
- (5) Electrical wiring and equipment shall be grounded or otherwise protected by insulation, isolation or guarding so as to minimize the danger of high voltages from lightning or other causes.

- (6) Electrical equipment which in ordinary operation produces arcs or sparks shall be enclosed unless separated and isolated from all combustible material.
- (7) Service equipment and overcurrent protection devices shall be installed and maintained in a readily accessible location.

B. Artificial lighting.

- (1) Residential buildings and occupancies shall be wired for electricity, and lighting equipment shall be installed throughout to provide adequate illumination for the intended use of each space. Electric wiring system shall be connected to an adequate source of supply.
- (2) There shall be a switch or other means of controlling a light in each dwelling unit near the point of entrance to such unit.

C. Exit and directional signs.

- (1) Exits in multiple dwellings shall be provided with exit and directional signs visible from the approach to the exits, except that such signs shall not be required in those portions of a building which contain dwelling units only or in which exit from sleeping rooms is directly to the outside.
- (3) Directional signs shall be provided at locations from which the exit doorway is not readily discernible.
- (3) Such signs shall be worded in plainly legible block letters with the word "EXIT" for exit signs and the words "TO EXIT," with a suitable pointer or arrow indicating the direction of exit, for directional signs. Letters for signs shall be at least six (6) inches high, except that for internally illuminated signs the height of such letters shall be at least four and one-half (4 1/2) inches.
- (4) Exit and directional signs shall be illuminated either externally or internally by electric lights and shall be kept illuminated when the building is occupied.

§ 41-33. Cooking and refrigeration.

A. General requirements.

- (1) Each dwelling unit shall be provided with appropriate cooking and refrigeration equipment.

- (2) Cooking and refrigeration equipment shall be maintained in good operating condition.
- (3) Gas-burning cooking equipment shall be permanently fastened and connected in place. Gas supply connection to such equipment shall be made with pipe or tubing of solid metal.
- (4) Solid fuel-burning cooking equipment shall be appropriately vented.

B. Communal cooking and dining facilities. Communal kitchens and dining rooms shall comply with the following requirements:

- (1) Communal kitchens shall contain: at least one (1) kitchen sink; at one (1) kitchen gas or electric stove equipped with an oven and not less than four (4) top burners; at least one (1) electric or gas-type refrigerator with adequate food storage capacity, but in no case less than eight (8) cubic feet nominal size. Dining space and eating facilities, where provided in the kitchen area, shall comply with the requirements for communal dining rooms.
- (2) Communal dining rooms shall contain at least one (1) dining chair and two (2) lineal feet of dining space for each occupant permitted in a dining room at any particular time.

§ 41-34. Air-conditioning and mechanical ventilation in one- and two-story dwellings.

- A. Exhaust air from a dwelling unit shall not be circulated to another dwelling unit.
- B. Ducts shall be securely fastened in place and appropriately fire-stopped.

§ 41-35. Air-conditioning and mechanical ventilation in multiple dwellings.

A. Refrigerants.

- (1) Refrigerants that are highly flammable shall not be used in multiple dwellings.
- (2) Direct systems using refrigerants that are flammable or toxic shall not be used for air-conditioning purposes.

B. Ventilating systems.

- (1) Ventilating systems shall be installed and maintained so that the rapid spread of heat, flame or smoke through the system will be prevented and so that under conditions of use the temperature of any combustible material adjacent therewith will not exceed a safe temperature.
- (2) Stairways, passageways, exits, shafts, hoistways or attics shall not be used as plenum chambers.
- (3) Ducts shall be securely fastened in place and appropriately fire-stopped.
- (4) Ducts and other air-handling equipment shall be of noncombustible material.
- (5) Filters shall be installed and maintained so as not to constitute a fire or smoke hazard.
- (6) Ducts passing through or located within combustible construction shall be separated from such construction have a clearance of at least one-half (1/2) inch or by a noncombustible insulating material at least one quarter (1/4) inch thick.
- (7) Air required for ventilation shall be taken from the exterior or shall be quality-controlled.
- (8) Exhaust air from a dwelling or a space whose contents may emit odors, fumes or vapors shall not be circulated to other occupied spaces within the building.

C. Air intake and exhaust openings.

- (1) Air intake and exhaust openings shall be installed, located and maintained so as not to constitute a hazard or nuisance and so as to prevent the possibility of fire, smoke, fumes or foreign matter being drawn into the system.
- (2) Ventilating systems shall be provided with adequate openings for incoming and outgoing air to obtain the required circulation. Intake openings shall provide air from an uncontaminated source.
- (3) Where openings for mechanical exhaust are located in spaces that also contain fuel-burning equipment, there shall be provided fixed intake openings from the exterior to supply sufficient air so that the fuel-burning equipment is not adversely affected.

- (4) Exhaust openings shall be located so that the exhaust air will not create a nuisance.

D. Ventilation requirements.

- (1) Enclosures or spaces where heat, gases, vapors or odors may accumulate and become a potential source of hazard or nuisance shall be provided with adequate means of ventilation to remove such excess.
- (2) Public spaces shall be provided with means for obtaining air supply for the maximum number of persons for which such spaces are designed.

E. Safety controls.

- (1) Manually operated controls shall be provided to stop the operation of all central fan equipment. Such controls shall be conspicuously identified and in readily accessible locations outside the fan room.
- (2) Every system using recirculated air and serving an assembly space or more than one (1) fire area or more than one (1) story of a building shall be provided with controls arranged so that under abnormal rise in temperature of the air in the systems, the fans causing normal circulation shall stop and require manual restart.
- (3) Every system for ventilating an assembly space shall be provided with an emergency switch conveniently located and with a durable sign giving instructions for shutting down the system in case of fire.

§ 41-36 Fuel Oil.

A. General requirements. Fuel oil shall be received, stored and conveyed by means of fixed liquidtight equipment.

B. Storage tanks.

- (1) Tanks shall be provided with means for venting.
- (2) Tanks shall be installed and maintained so as not to be a hazard to the premises served or the surrounding property.

C. Piping.

- (1) Automatically operated boilers and furnaces using fuel oil shall be provided with remote control to stop the flow of oil during fire or other emergency.
- (2) Filling, emptying and venting of tanks shall be by means of fixed piping. Pipes to underground tanks shall be pitched toward tanks. Terminals of fill and vent pipes shall be located outside buildings at a safe distance from building openings.

§41-37. Fire protection in multiple dwellings.

- A. **Fire alarm systems.** Required fire alarm systems shall be maintained in proper operating condition at all times.
- B. **Sprinkler equipment.**
 - (1) Required sprinkler equipment shall be maintained in proper operating condition at all times. Storage of materials shall cause minimum interference to effective discharge of water.
 - (2) Valves controlling water supply to sprinklers shall be secure in the open position.
 - (3) Sprinkler heads shall be maintained free of corrosion and paint.
- C. **Standpipe systems.**
 - (1) Standpipe systems shall be maintained in proper operating condition at all times.
 - (2) Gate valves at hose stations shall be maintained tight against leaks.
 - (3) Hose shall be in proper position ready for operation, dry and free of deterioration.
- D. **Portable extinguishers.**
 - (1) Each oil burner for boiler, furnace or central hot water heater shall be provided with an approved hand fire extinguisher or two (2) rounded-bottom pails filled with sand.

- (2) Portable extinguishers required for fire protection shall be in their designated locations and in a condition which will permit efficient operation without delay.

§41-38. Elevators, dumbwaiters and escalators in multiple dwellings.

- A. Elevators, dumbwaiters and escalators shall be maintained so as to be free from physical and fire hazards.
- B. Elevator and power-operated dumbwaiter cars shall be provided with durable signs in conspicuous locations on which the rated capacity shall be indicated.
- C. Elevator cars shall be provided with approved means for transmitting a signal outside the hoistway in case of emergency.
- D. Hoistways and pits shall be maintained free of refuse.
- E. Machine rooms shall be maintained free of oil and grease and shall not be used for storage of articles or materials unnecessary for the maintenance of the elevator or dumbwaiter. Flammable liquids shall not be kept in such rooms.
- F. No person shall at any time make any required safety device or electrical protective device inoperative, except where necessary during tests, inspections or maintenance.

**ARTICLE VI
Property Maintenance Requirements**

§ 41-39. General maintenance requirements.

Residential premises shall be maintained in conformity with the provisions of this chapter so as to assure the desirable residential character of the property.

§ 41-40. Open areas.

- A. Surface and subsurface water shall be appropriately drained to protect buildings and structures and to prevent development of stagnant ponds. Butters, culverts, catch basins, drain inlets, stormwater sewers, approved combined storm and sanitary sewers or other satisfactory drainage systems shall be utilized where deemed necessary.
- B. **Fences. [Amended 7-1-1969]**
- (1) Any fence in a residential district shall be of open construction, such as an ornamental iron, wire, chain or picket (iron or wood), and shall not exceed four (4) feet in height. No fence of any description, except a hedge, shall be built nearer the street line than the front line of the dwelling on such lot, unless approved by the Housing Commission.
 - (2) No fence or hedge of any description shall be built nearer than three (3) feet of the inside of the street side of the property line. In any case where the rear lot line of a lot is adjacent to the side lot line of another lot, no fence of any description, except a hedge, shall be built on the side of the rear lot line nearer the street line than the front line of the dwelling on such adjacent lot, unless approved by the Housing Commission.
 - (3) No hedge fence placed along the front property line shall exceed four (4) feet in height. This hedge fence of four-foot height shall also be the limit for the front and side of a corner lot abutting an open street.
 - (4) Any fence shall have the finished side of the fence facing the abutting property. All supporting posts shall be placed inside the property line.
 - (5) No hedge shall be planted directly on the property line, but planting shall provide for growth of hedge. Hedges shall be planted a minimum of twelve (12) inches from property line. The owner of such hedge fences shall keep the hedges trimmed in line with the abutting property line. No hedge fence shall exceed six (6) feet in height.
 - (6) All fences shall be maintained in a safe and substantial condition. All exposed surfaces, excepting hedges, shall be periodically protected with paint or other preservative to retard deterioration. Use of barbed wire for fencing is prohibited in any zone excepting industrial, unless approved by the Housing Commission.

- (7) Fences, whether hedge, ornamental iron, solid board, picket, interwoven, etc., where used for purposes of privacy, shielding of patio, etc., when exceeding the four-foot height, shall be built six (6) inches inside the property line for every foot of additional height, and in no case shall exceed eight (8) feet in height.
- C. Steps, walks, driveways, parking spaces and similar paved areas shall be maintained so as to afford safe passage under normal use and weather conditions.
- D. Yards, courts and vacant lots shall be kept clean and free of physical hazards, rodent harborage and infestation. In residential areas, and storage of old lumber, metal, pipes, plumbing fixtures and broken concrete or stone shall not be permitted for longer than a ninety-day period. **[Amended 4-6-1965]**
- E. Heavy undergrowths and accumulations of plant growth which are noxious or detrimental to health shall be eliminated.
- F. A junked vehicle may not be parked, stored or left in the open unless it is necessary for the operation of a business enterprise lawfully situated on private property. Any other junked vehicle or vehicles must be relocated to a completely enclosed location, or otherwise removed from the property. In a residential district, there shall be no outside storage of any unregistered and/or unlicensed motor vehicle for a period longer than one (1) month in any calendar year, providing that such unregistered and/or unlicensed motor vehicle, notwithstanding the year in which the same shall have been manufactured, is at all times while being so stored kept in such condition and maintained with such equipment that it will meet the minimum requirements to pass the York State Motor Vehicle Inspection Standards, as provided by the Vehicle and Traffic Law of the State of New York, and all rules and regulations promulgated by the Commissioner of Motor Vehicles for the periodic inspection of motor vehicles in the State of New York, and as the same may be amended from time to time. There shall be no outside storage in a residence district of motor vehicle bodies or motor vehicle parts anytime. **[Amended 4-6-1965]**

§41-41. Buildings and structures.

- A. Exterior wood surfaces of buildings and structures that are not inherently resistant to deterioration shall be periodically treated with a protective coating of paint or other suitable preservative.
- B. Floors, walls, ceilings, stairs, furnishings and fixtures of buildings shall be maintained in a clean, safe and sanitary condition. Every floor, exterior wall, roof and porch or appurtenance thereto, shall be maintained in a manner so

as to prevent collapse of the same or injury to the occupants of the building or to the public. **[Amended 4-6-1965]**

- C. Accessory structures shall be maintained so as to be free of conditions detrimental to safety or health.
- D. The owner of a vacant building shall take such steps and perform such acts as may be required of him from time to time to ensure that the building and its adjoining yards remain safe and secure and do not present a hazard to adjoining property or to the public. **[Amended 4-6-1965]**
- E. Buildings and structures shall be maintained in such condition so that they shall not become an unoccupied hazard as defined in § 41-9. **[Amended 4-6-1965]**

§41-42. Infestation and screening.

- A. Grounds, buildings and structures shall be maintained free of insect, vermin and rodent harborage and infestation. Methods used for exterminating insects, vermin and rodents shall conform with generally accepted practice.
- B. Where the potential for rodent or vermin infestation exists, windows and other openings in basements and cellars shall be appropriately screened with wire mesh or other suitable materials.
- C. From May 1 to October 1, entrances to residential buildings shall be provided with self-closing-type devices or screens, and windows and other openings used for ventilation shall be appropriately screened. Screens shall not be required in rooms located sufficiently high in the upper stories of multiple dwellings as to be free of mosquitoes, flies and other flying insects.

§41-43. Garbage and refuse.

- A. Adequate sanitary facilities and methods shall be used for the collection, storage, handling and disposal of garbage and refuse.
- B. In multiple dwellings, it shall be prohibited to store or accumulate garbage or refuse in public halls and stairways.

Part 2
Administration and Compliance

ARTICLE VII
General Provisions

§ 41-44. Title.

This Part shall be known as "Administration and Compliance Provisions Supplementary to Applicable Housing Standards."

§ 41-45. Purpose.

The purpose of this Part is to provide basic and uniform administration of, and compliance with, applicable housing standards, and to establish the responsibilities of parties concerned therewith.

§ 41-46. Effective date.

This Part shall take effect on the 10th of January 1963.

§ 41-47. Scope.

This Part shall apply to administration of, and compliance with, applicable housing standards.

§ 41-48. Nonapplicability.

This Part shall not apply to premises which are not within the scope of applicable housing standards.

§ 41-49. Partial invalidity.

If a term, part, provision, section, subdivision or paragraph of this Part shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, provisions, sections, subdivisions and paragraphs.

**ARTICLE VIII
Administration**

§ 41-50. Administrative agency.

- A. There shall be established or designated by local law in the City of Dunkirk, New York, an agency to administer and secure compliance with the applicable housing standards. Such agency is hereinafter referred to as "the agency."
- B. The agency shall be under the direction and charge of a chief officer, who shall have as his representatives such assistants and inspectors as may be necessary to carry out effectively the powers and duties of the agency.
- C. All personnel of the agency shall be qualified and appointed as prescribed by local law, and shall be furnished with appropriate official badges or identification cards.
- D. All personnel of the agency shall be free from personal liability for acts done in good faith in the performance of their official duties.
- E. The term "agency" when used in this Part shall mean the office of the Building Inspector and all personnel thereof: the chief officer of said office shall be the duly appointed Building Inspector. **[Added 8-4-1964]**

§ 41-51. Powers and duties.

- A. The agency shall be charged with the duty of administering the applicable housing standards and securing compliance therewith, and shall be empowered to adopt rules and regulations necessary for securing such compliance and for its own organization and internal management, provided that such rules and regulations shall not be in conflict with the applicable housing standards.

- B. The agency shall be authorized to conduct surveys of housing in any area of the municipality to determine the condition of premises, extent of deterioration, lack of facilities, inadequate maintenance, unsafe and unsanitary conditions, extent of overcrowding, land use and other relevant factors.
- C. It shall be the duty of the chief officer:
- (1) To cause periodic inspections to be made, not less than once every five (5) years, of all premises within the scope of applicable housing standards.
 - (2) To cause an investigation of all complaints of alleged housing violations or other unsafe or unsanitary conditions.
 - (3) To order, in writing, the remedying of all conditions found to exist in or on any premises in violation of provisions of the housing standards or of rules and regulations adopted by the agency, to state in the violation order a reasonable time limit for compliance therewith and, where necessary, to cover the vacation of premises found unfit for human habitation.
 - (4) To issue an appearance ticket for legal proceedings in the City Court of Dunkirk, New York, upon failure of the responsible party to comply with such violation order within the specified time therein and to request the chief legal officer of the municipality to appear on behalf of the City at such proceedings. **[Added 2-6-1979 by L.L. #3-1978]**
 - (5) To cause a search of the agency's records of housing violations existing on any premises and to issue a certified statement thereof upon receipt of written request and payment of any fees required by local law or ordinance.
 - (6) To study housing conditions in the municipality.
 - (7) To cooperate with other municipal, governmental and private agencies engaged in the study and improvement of housing conditions.
 - (8) To publish an annual report of housing conditions in the municipality, accomplishments of the agency and recommendations for the future.
 - (9) Where a vacant apartment or building does not conform to the provisions of this chapter, and after due notice to the owner as provided in Subsection C(3) above, the agency may post a sign or

placard on such apartment or building. This placard or sign shall state: "This apartment or building is not to be occupied until a certificate of occupancy or compliance has been issued by the Building Inspector. It shall be unlawful to remove, deface, or destroy this sign or placard without the written consent of the Building Inspector." **[Added 8-16-1966; effective 9-1-1966]**

- D. Where violations of the housing standards exist and pose an immediate hazard or danger to the health, safety or welfare of building occupants or of the public, the chief officer may issue an order citing the violation and directing such action by such municipal agency as is necessary to remove or abate the immediate hazard or danger.

41-52. Inspection.

- A. Inspectors shall be authorized and have the right, in the performance of their duties, to enter any premises during normal business hours and in emergencies whenever necessary to protect the public interest.
- B. Owners, agents, operators and occupants shall be responsible for providing access to all parts of the premises within their control to authorized agency personnel acting in the performance of their duties.

§ 41-53. Records.

The agency shall keep records of all complaints received, inspections made and violations found regarding premises regulated by the housing standards. Records shall be kept in a manner and form as prescribed by local law and shall be available for public inspection.

CHAPTER 42

(RESERVED)

CHAPTER 43

(RESERVED)

CHAPTER 44

JUNK DEALERS AND PAWNBROKERS

§ 44-1.	License required	4401
§ 44-2.	Definitions	4402
§ 44-3.	Application for license; bond	4402
§ 44-4.	Issuance or denial of license	4404
§ 44-5.	License fees and regulations	4404
§ 44-6.	Badges to be supplied; vehicle markings; required signs ..	4405
§ 44-7.	Designation of places of business; change of address	4406
§ 44-8.	Restrictions	4406
§ 44-9.	Revocation of license	4407
§ 44-10.	Records of purchases	4407
§ 44-11.	Reports to Police Department	4407
§ 44-12.	Lost or stolen articles	4408
§ 44-13.	Penalties for offenses	4408

[HISTORY: Adopted by the Common Council of the City of Dunkirk 5-23-1922 as Chapter XV of the Ordinance of the City of Dunkirk. Amendments noted where applicable.]

GENERAL REFERENCES

Auctions and auctioneers - See Ch. 6
Hawkers and peddlers - See Ch. 39

§ 44-1. License required.

- A. No person or persons, association, partnership, firm or corporation shall, within the limits of the City of Dunkirk, engage in or carry on the business of collecting, buying, selling or otherwise dealing in rags, old rope, bottles, bones, tinware, rubber, bagging or any other article or thing, except old metal as defined in Article 6 of the General Business Law of the State of New York, which from its worn condition renders it useless for the purpose for which it was made, whether at a fixed place of business or as an itinerant peddler, without first having obtained and paid for a license as hereinafter provided.
- B. Any no person or persons, association, partnership, firm or corporation shall conduct a store for the purpose of buying or selling secondhand furniture, clothing or other merchandise without first having obtained and paid for a license as hereinafter provided.

- C. Neither shall any person engage in the business of loaning money on jewelry or other merchandise without first having obtained and paid for a license as hereinafter provided.

§ 44-2. Definitions.

- A. Every person, as principal, agent or employee, who shall go, with or without a vehicle, from house to house or place to place, buying offering to buy, collecting or gathering any of the articles enumerated in § 44-1, shall be deemed to be a “junk peddler.”
- B. Every person, association, partnership, firm or corporation, as principal, agent or employee, who or which shall carry on the business of buying, selling or storing any of the articles enumerated in § 44-1 at an established place of business, shall be deemed to be a “junk merchant.”
- C. Every person, association, partnership, firm or corporation who or which shall carry on the business of buying or selling used furniture, clothing or other merchandise, shall be deemed to be a “secondhand dealer.”
- D. Every person who shall conduct the business of loaning money on jewelry, clothing or on other goods or merchandise, shall be deemed to be a “pawnbroker.”

§ 44-3. Application for license; bond.

- A. Any person, persons, associations, partnerships, firm or corporation desiring to procure a license as herein provided shall file with the Mayor a written application upon blank forms prepared and furnished by the City. Such application shall contain the names and residences of the applicants if an individual, partnership or firm, or the names of the principal officers and their residences if the applicant is an association or corporation. Such application shall also describe in detail the character of the business in which he, they or it desire to engage and the kind of materials, he, they or it desire to collect, buy, sell or otherwise deal in. It shall also state the following:
 - (1) Whether the applicant is licensed to sell old metal in accordance with Article 6 of the General Business Law of New York State.
 - (2) The length of time such applicant or applicants, if an individual, firm or partnership, or the manager or person in charge, if the applicant is a firm, partnership, corporation or association, has or have resided in the City of Dunkirk; his or their places of previous employment; whether married or single; whether he or they or any

of them have been convicted of a felony or a misdemeanor, and if so, what offense, when and in what court.

- (3) The premises where such business is to be located or carried on, giving street and number.
 - (4) Whether the applicant or applicants or manager had either alone or with someone else, previously been a junk merchant, junk peddler, secondhand dealer or pawnbroker as defined in § 44-2.
 - (5) Such other information as may be required by the Mayor.
- B. Such application shall be signed and acknowledged before a notary public or other officer authorized to administer oaths.
- C. Such application shall be accompanied by a bond to the City of Dunkirk, approved as to form by the City Attorney, in the penal sum of Five Hundred Dollars (\$500.00) for a junk merchant, One Hundred Dollars (\$100.00) for a junk peddler, One Hundred Dollars (\$100.00) for a secondhand dealer and Five Hundred Dollars (\$500.00) for a pawnbroker, with a sufficient surety or sureties or sufficient collateral security, conditioned for the due observance during the term of the license of any and all ordinances which are now in force or may hereafter be adopted by the Common Council respecting the collection, buying, selling or otherwise dealing in articles enumerated in § 44-1.

§ 44-4. Issuance or denial of license.

Upon the filing of the application and the bond as provided in the preceding section, the Mayor may, upon his approval of such application after investigation and such bond as to sufficiency of surety or sureties or collateral security, and the payment to the city of the license fee hereinafter provided, issue to the applicant a license to engage in business as provided in § 44-1. No license shall be refused except for a specific reason and for the protection of the public safety, good order or morals. All licenses shall be numbered in the order in which they are issued, and shall state clearly the nature and location of the business, the date of issuance and expiration of the license and the name and address of the licensee. No applicant to whom a license has been refused shall make further application until a period of at least six (6) months shall have elapsed since the last previous rejection, unless he can show that the reason for such rejection no longer exists.

§ 44-5. License fees and regulations.

A. Fees enumerated.

- (1) Every junk merchant as defined in § 44-2 shall pay an annual license fee of Twenty-five Dollars (\$25.00) for each established place of business.
- (2) Every junk peddler as defined in § 44-2 shall pay an annual license fee of Ten Dollars (\$10.00).
- (3) Every secondhand dealer as defined in § 44-2 shall pay an annual license fee of One Dollar (\$1.00)
- (4) Every pawnbroker as defined in § 44-2 shall pay an annual license fee of Twenty-five Dollars (\$25.00).

B. License regulations.

- (1) All licenses shall be issued as of January 1 and shall continue in force until December 31 next succeeding the date of issuance thereof, unless sooner revoked by the Mayor.
- (2) No junk merchant shall engage in business as a junk peddler without paying a separate license therefore.
- (3) No junk peddler's license shall give authority for more than one (1) person to buy, offer to buy, or collect under it.
- (4) Each junk merchant or peddler, while exercising his license, shall carry his license and exhibit the same whenever requested so to do by any citizen or police officer of the city.
- (5) Every secondhand dealer or pawnbroker licensed under this chapter shall keep his license posted in a conspicuous place in his place of business.
- (6) No license shall be used by any person other than the original licensee, and any holder of such license who permits it to be used by any other person, and any person who uses such license granted to any other person, shall each be guilty of a violation of this chapter.
- (7) Whenever a license shall be lost or destroyed without fault on the part of the holder or his agent or employees, a duplicate license in lieu thereof under the original application and bond may be issued by the Mayor in his discretion.

§ 44-6. Badges to be supplied; vehicle markings; required signs.

The Mayor shall supply to each junk peddler licensed under this chapter a badge which shall be surrendered upon the expiration of the license granted to such junk peddler, which badge shall bear a number corresponding to the number of the license held by the peddler to whom such badge is furnished. Said badge shall also show the year for which said peddler has been licensed. It shall be unlawful for any person to destroy, deface or injure such badge in any manner, or change the number or date thereon. It shall also be unlawful for any person to wear or have in his possession such badge unless he is the licensed junk peddler in whose name the license is issued. Such badge shall be worn by the licensee on his outermost garment at all times while exercising his license. In the event that any junk peddler shall lose his badge, he shall immediately procure a new badge and shall reimburse the city for the cost of the badge which he has lost. The vehicle kept or used by a junk peddler in the exercise of his license shall be marked on both sides with his name, the street and number of his place of business and his license number, in plain letters and figures at least two (2) inches in length and of such color as to be plainly read at a distance of at least ten (10) feet. Every licensed junk merchant, secondhand dealer or pawnbroker shall have and keep a sign on the outside and in front of each of his or its places of business, on which shall be plainly set forth in conspicuous letters his or its name, licensed business and the number corresponding to the number on his or its license.

§ 44-7. Designation of places of business; change of address.

Every license which shall be granted in pursuance of § 44-1 shall designate the house or place of business in or from which the licensee shall be authorized to carry on such business. In case any licensee shall remove his or her place of business from the place designated in the license, he or she shall immediately thereon give notice to the Mayor and have the same endorsed upon such license, and the number of his place of business shall thereafter be changed upon the side of the vehicle used by such licensee and made to correspond with such change in the place of business.

§ 44-8. Restrictions.

- A. No junk merchant or peddler shall carry on the business at or from any other place than the one designated in the license therefore. Nor shall he or it continue to carry on business after such license has been revoked or has expired.
- B. No junk merchant, junk peddler or secondhand dealer shall purchase any article enumerated in § 44-1 from any minor, apprentice or servant, knowing or having reason to believe or suspect the seller to be such, nor from any person between the setting of the sun and 7:00 a.m.
- C. No person, persons, partnership, firm, association or corporation licensed under the provisions of this chapter to do business as a pawnbroker shall

make any load upon any article or thing to any minor, apprentice or servant, knowing or having reason to believe or suspect the person offering any such article to be such.

- D. No license as a junk merchant or peddler, secondhand dealer or pawnbroker shall be granted to any person, persons, association, partnership or corporation who or which shall have been convicted, within two (2) years of the date of application, of a violation of this chapter, or association or corporation of which a member or members shall have been so convicted; or to any person who has, within two (2) years of the date of application, been convicted of a felony or knowingly receiving stolen goods, and any association or copartnership of which any member or members has or have been so convicted of a felony or knowingly receiving stolen goods.

§ 44-9. Revocation of license.

The Mayor may, at any time, for such cause as he, upon investigation, deems sufficient, revoke any license granted under the provisions of this chapter. Whenever any license shall be so revoked, no refund of any unearned portion thereof shall be made, and no license shall be granted to any person, firm, partnership, association or corporation whose license has been so revoked within a period of two (2) years from the date of such revocation. Notice of such revocation and the reason or reasons therefor in writing shall be served by the Mayor upon the person, firm, partnership, association or corporation named in the application, by mailing the same to the address given in the application and upon filing a copy of such with the City Clerk.

§ 44-10. Records of purchases.

Every junk merchant or secondhand goods dealer shall keep in such form as the Chief of Police may prescribe, and written in ink or indelible pencil, a daily record of all articles purchased, the name, residence, age and occupation of the person from whom each article was purchased, and the name of the employer of such person, also the day and hour of such purchase and the price paid. The records shall at all reasonable times be open to the inspection of any police officer or the Mayor, Chief of Police, any magistrate or any person duly authorized in writing for such purpose by the Chief of Police or any magistrate, who shall exhibit such authorization to the junk merchant or secondhand goods dealer, his agent or employee. No entry in such records shall be changed, erased, obliterated or defaced. The provisions of this section shall also apply to pawnbrokers, who shall keep such records as the Chief of Police may direct.

§ 44-11. Reports to Police Department.

Every junk merchant, secondhand dealer or pawnbroker, upon being served with a written notice so to do by a member of the police Department, shall report to the Chief of Police, on blank forms to be furnished by the Police Department, an accurate description

of all goods, articles or things purchased or received by him in the course of business, at such time and during such period of time specified in the notice, stating the amount paid for or loaned upon each article, and the name, residence and general description of the person from whom such goods, articles or things were received.

§ 44-12. Lost or stolen articles.

If any goods, articles or things whatsoever shall be advertised in any newspaper printed in the city as having been lost or stolen, and the same or any answering the description advertised, or any part or portion thereof, shall be or come into the possession of any junk merchant, junk peddler, secondhand dealer or pawnbroker, he or it shall give information thereof in writing to the Chief of Police and state from whom the same was received. Any junk merchant, junk peddler, secondhand dealer or pawnbroker who shall have or receive any goods, articles or things lost or stolen, or alleged or supposed to have been lost or stolen, shall exhibit the same on demand to any police officer or to the Mayor, Chief of Police or any magistrate, or any person duly authorized in writing by the Chief of Police or any magistrate, who shall exhibit such authorization to such dealer or peddler.

§ 44-13. Penalties for offenses.

The violation of any of the provisions of this chapter shall be punishable as provided in Chapter 1, General Provisions, Article I, of the Code of the City of Dunkirk; and any person convicted of any such violation shall be guilty of a misdemeanor.

CHAPTER 45

(RESERVED)

CHAPTER 46

LANDMARK PRESERVATION

§ 46-1.	Legislative intent	4601
§ 46-2.	Definitions	4601
§ 46-3.	Creation and organization of Landmark and Preservation Board	4602
§ 46-4.	Procedures, powers and duties of Landmark and Preservation Board.....	4603
§ 46-5.	Designation of local landmarks	4604
§ 46-6.	Criteria for designation	4605
§ 46-7.	Certificate of appropriateness	4606
§ 46-8.	Controls on designated structures and districts	4607
§ 46-9.	Purpose; severability.....	4608
§ 46-10.	Conflict with other provisions	4608
§ 46-11.	Penalties for offenses	4608
§ 46-12.	When effective	4608

[HISTORY: Adopted by the Common Council of the City of Dunkirk 4-3-1979. Amendments noted where applicable.]

§ 46-1. Legislative intent.

The intent of this chapter is to promote the public welfare, to preserve the historical and architectural character of designated structures or districts within the City of Dunkirk; to prevent the impairment of or injury to their historical, architectural and cultural value to the community; and to these ends to provide that a reasonable degree of control may be exercised over the situation of designated buildings and over the alteration, architectural design and construction of structures already erected or to be erected in any designated district.

§ 46-2. Definitions.

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

ALTERATIONS - Any act or process which changes one (1) or more of the exterior architectural features of a structure designated for preservation or of any structure in a district designated for preservation.

BOARD - The Dunkirk Landmark and Preservation Board.

CERTIFICATE OF APPROPRIATENESS - A certificate from the Preservation Board authorizing plans for alterations, construction, removal or demolition of a

designated landmark, landmark site or structure within a landmark district.

EXTERIOR ARCHITECTURAL FEATURE - The architectural style, design, general arrangement and components of all the outer surfaces as distinguished from the interior surfaces enclosed by said exterior surfaces, including but not limited to the kind, color and texture of the building material and the type and style of all windows, doors, lights, signs and other fixtures attached thereto.

LANDMARK - Any structure which has been designated a "landmark" pursuant to the provisions of this chapter.

LANDMARK SITE - A parcel or part thereof:

- A. On which is situated a landmark, and any abutting parcel or part thereof used and constituting part of the premises on which the landmark is situated; or
- B. Which has been designated as a "landmark site" pursuant to the provisions of this chapter.

PRESERVATION DISTRICT - Any area which has been designated as a "preservation district" pursuant to this chapter.

PRESERVATION SITE - Any parcel within a preservation district or upon which a landmark structure is situated.

§ 46-3. Creation and organization of Landmark and Preservation Board.

- A. The Board shall consist of five (5) voting members. The Mayor shall appoint one (1) member from among the membership of the Board of Trustees of the Dunkirk Historical Society as recommended by the Society, one (1) member from the Common Council, one (1) member representing the local business community, one (1) member who is an architect, and one (1) member from the public at large. The Mayor shall designate one (1) of the five (5) members of the Board to serve as Chairman of the Board. The Board shall also include the following ex officio nonvoting members: the City Historian, City Attorney, a member of the Zoning Board of Appeals, a member from the Citizens' Advisory Commission and a member of the City Planning Commission.
- B. The Common Council shall provide for any compensation to Board members as it deems proper. Nothing in this chapter shall require any Board member to be compensated.
- C. The terms of members appointed shall be on a rotating basis, each one to hold office for a three-year period. Rotation shall be provided by the original

appointments being made as follows: two (2) for three (3) years, two (2) for two (2) years, and one (1) for one (1) year. Thereafter, all appointments shall be for three (3) years. Members shall be eligible for reappointment. If a vacancy occurs other than by expiration of a term, it shall be filled by appointment of the Mayor for the remainder of the term.

§ 46-4. Procedures, powers and duties of Landmark and Preservation Board.

- A. A quorum shall consist of four (4) voting members of the Board. Three (3) concurring votes shall be necessary for the Board to take any official action.
- B. Meetings shall be held at such times as a majority of the Board may determine or at the call of the Chairman, but a meeting must be held within thirty (30) days' receipt of a written application for a certificate of appropriateness or within sixty (60) days of receiving written application to designate a structure or district as one covered by this chapter. Said meetings shall be open to the public, and notice of such meetings shall be given in the official City newspaper five (5) days prior to the date of the meeting.
- C. Minutes shall be kept of all proceedings. A record shall be kept of all official actions, including the vote of each member upon any question.
- D. The Board may call upon such outside experts as it deems advisable: provided, however, that no such expert may be retained requiring the expenditure of City funds without prior approval of the Common Council.
- E. Appropriate markers may be designed and supplied to the owners of designated structures by the Board as it, in its discretion, deems proper; provided, however that no City funds may be expended for such markers without prior Common Council approval.
- F. Bounds of historic districts shall be noted on all official City maps, including zoning maps.
- G. A current inventory of all designated historic structures and districts within the City of Dunkirk shall be supplied to the Building Inspector, City Clerk, City Historian, Clerk of the Department of Assessment, and the Dunkirk Historical Society.
- H. Pursuant to §§ 46-1 and 46-6 of this chapter, the Board shall have the power to designate a structure or district as a local landmark.
- I. Pursuant to § 46-7 of this chapter, the Board shall have the power to grant a certificate of appropriateness.

§ 46-5. Designation of local landmark.

- A. Any person, group of persons or association may request the designation of a landmark structure or a landmark district by submitting to the City Clerk of Dunkirk a written request for such designation and the reasons therefor. Such request will then be forwarded to the Board for its consideration. In addition, the Board may initiate such proceedings on its own motion.
- B. Notice that an application for designation has been received and is being considered shall be given to the owner of the parcel on which the proposed landmark is situated or which is part of the proposed landmark site. Such notice shall be served by the Board by certified mail, addressed to the owner or owners at his or their last known address as it appears in the records of the City's Department of Assessment, or, if there is no name on such records, such notice may be served by regular mail, addressed to "owner" at the street address of the property in question.
- C. Notice shall be given by regular mail to surround property owners owning property within two hundred (200) feet of the property being considered for designation.
- D. Upon request of the owner of the property being considered for designation, the Board may hold informal meetings with said owner and other interested persons, in addition to its formal meetings.
- E. Any application for designation shall be approved or disapproved in writing within forty-five (45) days of the public meetings having been conducted by the Board to consider such application. Written notice of the Board's decision shall be sent to the initiating person, group of persons or association. Such notice shall include the Board's findings of fact and their reasons for the decision.
- F. Notwithstanding the time limit provided in Subsection E above, should the particular circumstances of an application warrant it, the Board may reserve decision without prejudice until such time as a decision may be rendered.
- G. A decision of the Board may be appealed from, within fifteen (15) days in writing, to the Common Council. The Common Council shall make its determination within thirty (30) days of receiving said appeal. All proceedings shall be stayed during the appeal period.

§ 46-6. Criteria for designation.

- A. Criteria for evaluation of historical significance shall be based on its particular importance to the nation, state, City and neighborhood, its identification with historic persons and/or its identification with historic

events.

- B. Criteria for evaluation of architectural significance shall be based on its date of erection, style of building and scarcity of same, quality of design and its scale, fenestration, trim and manner and materials of construction, and also the alteration and desecration of original design and its present condition and appearance.
- C. Evaluation of districts shall be made using the same criteria and review as for individual buildings, but, in addition, a consideration of the collective merits of all structures within a district's boundaries and their interrelationship shall be reviewed by the Board in consultation with architects and historians and recommendations made by said Board to the Common Council. A public hearing advertised in the official City paper five (5) days prior to the meeting shall be held by the Common Council before it designates an historic district in the City of Dunkirk.

§ 46-7. Certificate of appropriateness.

- A. A certificate of appropriateness shall be granted by the Board upon a majority vote of its total members on an application for alteration or for demolition of a designated structure or for alteration, demolition or new construction of structures within a designated district.
- B. In considering whether a certificate of appropriateness shall be granted, the Board shall consider:
 - (1) The applicant's reasons for the request for a certificate of appropriateness.
 - (2) Historical significance.
 - (3) Architectural significance.
 - (4) The site in relation to its surroundings.
 - (5) The aesthetic and cultural value to the community.
 - (6) The condition of the structure at the time of application.
 - (7) Whether the denial of the certificate of appropriateness will cause economic hardship to the applicant and, if so, to what extent.
- C. A decision of the Board may be appealed from, within fifteen (15) days in writing, to the Common Council. The Common Council shall make its determination within thirty (30) days of receiving said appeal. All proceedings shall be stayed during the appeal period.

- D. No building permit to alter an existing designated structure or structure within a designated district or a building permit for a new structure within such district may be granted prior to obtaining a certificate of appropriateness. Should the approval of the City's Zoning Board of Appeals be required for any designated structure or structure within a designated district, said approval shall not be given prior to a certificate of appropriateness being granted.

§ 46-8. Controls on designated structures and districts.

- A. Any owner of a designated structure or of a structure within a designated district who desires to repair the exterior of an existing building or structure has the right to repair with the same material without a certificate of appropriateness. The Board shall have no control over interior changes in any building or structure as long as no evidence of such change appears on the exterior.
- B. All other changes in the exterior architectural features or appearance of a designated structure or of any existing structure or new construction in a designated district shall require a certificate of appropriateness. All applications for a certificate of appropriateness shall be sufficiently detailed to show that the proposed changes, additions, removals or new construction will be in harmony with the existing designated building, structure or district.
- C. Owners desiring to make alterations to designated structures or to existing structures within a designated district shall design such alterations only in a manner consistent with the exterior style of the structure, the design, scale, fenestration, trim, manner and materials of construction.
- D. New structures in a designated district shall harmonize with the general character of the entire designated district. Notwithstanding the above, no new structure shall be required to be a copy of any particular style or architectural period.
- E. Nothing herein contained shall be construed to require the owner of any presently existing designated structure or a structure within a designated district, which is otherwise maintained in conformity with the law, to make any change in the exterior design or appearance of such structure, nor shall it be construed to prohibit the use of modern materials, techniques or methods of construction in the erection of new structures.
- F. Owners who desire to demolish a designated structure or a structure in a designated district shall obtain a certificate of appropriateness from the

Board. After the granting of such certificate, a period of ninety (90) days must elapse before a demolition permit can be issued. Anyone who desires to save the structure by suitable means may have this time to determine a fair price by appraisal and to locate a purchaser who will agree not to raze the structure.

- G. Consideration of tax abatement or reduction in assessment may be recommended to the City's Department of Assessment and used to promote preservation when justified in the opinion of the Landmark and Preservation Board.

§ 46-9. Purpose; severability.

Each of the foregoing provisions of this chapter has been adopted in an endeavor to preserve and extend the public welfare by preserving the characteristics or historic and/or architecturally significant structures or districts. In the event that any portion of this chapter shall be determined invalid, such determination shall not affect or result in the invalidity of any other provision contained in this chapter.

§ 46-10. Conflict with other provisions.

In the event that any of the provisions of this chapter shall be in conflict with the provisions of any other ordinance in the City of Dunkirk, the provisions of this chapter shall control.

§ 46-11. Penalties for offenses.

The violation of any provisions of this chapter shall be an offense, and any person, corporation, association, agent, contractor or engineer, upon being convicted of such violation, shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or by imprisonment not exceeding fifteen (15) days. Each week that a violation is continued shall be deemed a separate offense.

§ 46-12. When effective.

This chapter shall take effect upon publication in the official City newspaper.

CHAPTER 47

NOISE

[Added on 8-5-97 as L.L. #11 (Intro No. 16) 1997]

§ 47-1.	Definitions	4701
§ 47-2.	General prohibition.....	4701
§ 47-3.	Prohibited acts.....	4702
§ 47-4.	Prima facie evidence	4704
§ 47-5.	Presumptions.....	4704
§ 47-6.	Exceptions.....	4705
§ 47-7.	Penalties.....	4707

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 8-5-1997 as L.L. #11 (Intro No.16) 1997. Amendments noted where applicable.]

§ 47-1. Definitions.

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

AUDIBLE - Sound which is loud enough to be heard by a person.

CITY - The City of Dunkirk.

KNOWINGLY - As defined in Section 15.02(2) of the New York State Penal Law.

PERSON - Any individual, partnership, firm, association, corporation or any combination of the same.

PREMISES - An apartment, building or parcel of land; however, when restricted sound generates from an apartment, premises shall mean apartment only.

§ 47-2. General prohibition.

- A. It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the City.
- B. No person shall make, contrive, cause to be made, or assist in making any unreasonable noise
- C. No person who is a tenant or subtenant of a house or apartment, or any other person having any control or authority over such building or

apartment, shall knowingly permit, suffer or allow unreasonable noise to exist within such building or apartment or any other area which the tenant or subtenant has authority to use or occupy.

- D. No person who is an owner of real estate or agent of such owner shall knowingly permit, suffer or allow unreasonable noise to exist within such real estate.

§ 47-3. Prohibited acts.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive:

- A. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the City, except as a danger warning.
- B. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto.
- C. The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound, which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
[Amended 6-20-2000 as L.L. #3 (Intro No. 5) 2000]
- D. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 P.M. and 7:00 A.M., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.
- E. The keeping or having possession of any pet which emits or issues any noise, bark, bray, bellow, or cry or sound that disturbs the quiet, comfort or repose of any person in the vicinity.
- F. The discharge into the open air of the exhaust of any steam engine, stationary internal-combustion engine, motorboat or motor vehicle, except

through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

- G. The use of any automobile, motorcycle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- H. (1) The erection (including excavating), demolition, alteration or repair of any building, other than between the hours of 7:00 A.M. and 9:00 P.M. except in the case of urgent necessity in the interest of public health and safety, and then only with a permit from the Housing, Building and Zoning Enforcement Officer, which permit may be granted for a period not to exceed three (3) days or less while the emergency continues and which permit may be renewed for periods of three (3) days or less while the emergency continues.

(2) If the Housing, Building and Zoning Enforcement Officer should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 9:00 P.M. and 7:00 A.M., and if the Housing, Building and Zoning Enforcement Officer shall further determine that loss or inconvenience would result to any party in interest, the Housing, Building and Zoning Enforcement Officer may grant permission for such work to be done within the hours of 9:00 P.M. and 7:00 A.M. upon application being made at the time the permit for the work is awarded or during the progress of the work.
- I. The creation of any excessive noise on any street adjacent to any school or institution of learning, church or court while the same is in use, or adjacent to any hospital, which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.
- J. The shouting of peddlers, hawkers and solicitors which disturbs the peace and quiet of the neighborhood, except as authorized by § 39-13(D) of the City Code.
- K. The operation between the hours of 9:00 P.M. and 7:00 A.M. of any pile driver, derrick, or other equipment, the use of which is attended by loud or unusual noise.
- L. The operation of any noise-creating blower or power fan or any internal-combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower

or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

- M. The operating of a motor vehicle or motorcycle in such a manner as to cause excessive squealing or the excessive noise of the tires or motor of such vehicle or motorcycle.

§ 47-4. Prima facie evidence.

Any restricted sound which is plainly audible off the premises from which the sound originates and from a distance of at least thirty (30) feet from the source of such sound or building or structure from which such sound originated during the hours of 11:00 P.M. and 7:00 A.M., shall be prima facie evidence that such sound is unreasonable noise.

§ 47-5. Presumptions.

- A. Any person present in any apartment or portion of a building from which unreasonable noise emanates shall be presumed to have made, or assisted in making unreasonable noise.
- B. Any person present in a group in any area from which unreasonable noise emanates shall be presumed to have made, or assisted in making unreasonable noise.

§ 47-6. Exceptions.

- A. Nothing contained in this chapter shall be construed to prevent the production of music in connection with any military, civic or authorized parade or funeral procession, or prevent any musical performance or fireworks display conducted by consent of the City Council.
- B. The provisions of this chapter shall not apply to sound originating from any municipal, federal or state vehicle, equipment, building or employee or agent or contractor thereof, provided such sound is a result of, and within the scope of work, thereof.

C. [Added 6-20-2000 as L.L. #3 (Intro No. 5) 2000]

- (1) Notwithstanding other provisions contained herein, the Dunkirk Common Council may grant special permits pursuant to this section, limited in time and scope, to groups or individuals sponsoring any particular event(s) the sounds of which may otherwise be deemed to be excessive and in violation of the Noise Ordinance, but not otherwise a nuisance or excessively loud.

- (2) The application for such permit shall provide the following information:
 - (a) Reason(s) for such event;
 - (b) Plans and specifications for amplification equipment;
 - (c) Period of time during which the permit is requested;
 - (d) Name of person(s) responsible for ensuring compliance with permit;
 - (e) When the activity for which such permit is sought is not a community-wide or public event, proof that notification of the application for such permit has been given to each person reasonably expected to be affected by the noise, the content of such notification and the manner such notification was provided.
- (3) Such written application shall be made to the City Clerk no later than thirty (30) days prior to the date(s) for which such permit is sought, and it shall be presented to the Departments of Police, Public Works and Law and any other applicable Department for review prior to Council action.
- (4) In order to further the purposes of this Chapter and to facilitate its implementation and enforcement, the Common Council shall have the authority to impose such conditions as determined to be reasonable and necessary on permits the Council issued pursuant to this section. Such conditions may govern factors which include, but are not limited to, the time and location that the involved sound source may be utilized.
- (5)
 - (a) The issuance of permits is discretionary and shall be issued only where such permit is deemed to be reasonable and necessary and will allow an activity that is consistent with the general purposes of this Chapter, provided that no permit shall be issued pursuant to this section for any sound source that will operate between 1:00 A.M. and 7:00 A.M. of any day. **[Amended 5-3-2005 as L.L. #2-2005]**
 - (b) Permits issued under this chapter for premises located within the H-1 District (as defined in Section 79 Article XII of the Dunkirk City Code, or as hereafter amended) may provide for extended hours of activity to the permit-holder, except that no sound source upon such H-1 District

premises will operate between 1:00 A.M. and 7:00 A.M. of any day. **[Added 5-3-2005 as L.L. #2-2005]**

(c) In no event shall any such sound source at any time exceed sixty (60) decibels, as measured out-of-doors within a one (1) block radius of the premises of the permit-holder. **[Added 5-3-2005 as L.L. #2-2005]**

(6) Any permit granted under this section shall apply only to this Chapter, and not to any other law, rule, regulation or ordinance.

§ 47-7. Penalties for offenses

- A. Any person violating any of the provisions of this chapter shall be punished, upon conviction for a first conviction by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment; for a second conviction, Five Hundred Dollars (\$500.00) or imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment; and for a third or subsequent conviction, Seven Hundred Fifty Dollars (\$750.00) or imprisonment not exceeding fifteen (15) days, or by both such fine and imprisonment.
- B. Any permit-holder found in violation of any terms or conditions of a permit granted under Section 47-6(C) of this Chapter shall be subject to, in addition to the above penalties, possible immediate restriction and/or revocation of such permit. **[Added 5-3-2005 as L.L. #2-2005]**

CHAPTER 48

NOTIFICATION OF DEFECTS

§ 48-1. Notice of condition required4801
§ 48-2. When effective4801

[HISTORY: Adopted by the Common Council of the City of Dunkirk 4-28-1981 as L.L. #2-1981. Amendments noted where applicable.]

§ 48-1. Notice of condition required.

The City of Dunkirk shall not be liable for damage or injury sustained by any person in consequence of any public street or highway or public place, land or building, including but not limited to any street, highway, parkway, park approach, bridge, culvert, sidewalk, crosswalk, grading, opening, drain, sewer, park or playground, or equipment located herein or thereon, being in a defective, out-of-repair, unsafe or dangerous condition or being obstructed by snow, ice or otherwise in any way or manner, unless written notice of the defective, unsafe, dangerous or obstructed condition shall have been given to the City Clerk or the Director of Public Works of said City, to the person having charge thereof, at least five (5) days previous to said damage or injury. This section applies to the claims of all persons, including infants.

§ 48-2. When effective.

This local law shall take effect immediately.

CHAPTER 49

PARKS

§ 49-1. Definitions4901
§ 49-2. Park Boundaries4902
§ 49-3. Park Hours.....4903
§ 49-4. Protection of beach areas, Promenschenkel Stadium
and Koch Field4903
§ 49-5. Refuse and rubbish4904
§ 49-6. Regulated uses4904
§ 49-7. Protection of property.4906
§ 49-8. Supervision and control.....4906
§ 49-9. Penalties for offenses4907
§ 49-10. Effective date4907

[HISTORY: Adopted by the Common Council of the City of Dunkirk 5-16-1967 as Chapter III of the Ordinances of the City of Dunkirk. Amendments noted where applicable. Amended 7-16-1992 as L.L. #7-1992; amended 4-25-1995 as L.L. #11-1995.]

GENERAL REFERENCES

Dock and Harbor Use - See Ch. 24
Solid Waste Management and Recycling - See Ch. 66
Vehicle and Traffic - See Ch. 76

§ 49-1. Definitions.

For the purpose of this chapter, the terms used herein are defined as follows:

PARKS - Those areas in the City of Dunkirk, New York, commonly known as Point Gratiot Park, Wright Park, Memorial Park, Washington Park and Cedar Beach. **[Amended 4-18-1972]**

BEACH - Park area situate adjacent to the shores of Lake Erie.

§ 49-2. Park Boundaries.

The boundaries of the respective parks of the City of Dunkirk shall be as follows:

- A. **Point Gratiot.** All that land lying south of Sycamore Street; west of the center line of West Point Avenue, unopened; north of the center line of Maple Street, unopened; west of Park Street, unopened; and north of Point Drive West. **[Amended 6-15-1978]**
 - B. **Point Gratiot Beach Area.** That area at Point Gratiot Park bounded on the west by the shore of Lake Erie; on the east by the highbanks; on the north and south by the park boundaries.
 - C. **Wright Park.** All that land east of North Ocelot Street to a point two hundred five (205) feet south of Lake Front Boulevard; north of a line drawn perpendicular to North Ocelot Street at that point extending to North Serval Street; east of North Serval Street, north of East Pine Street, unopened; west of the center line of Rabbit Street, unopened; north of the center line of East Elm Street, unopened; west of Talapoin Street, unopened; and north to the water's edge of Lake Erie.
 - D. **Wright Park Beach Area.** That area at Wright Park bounded on the north by Lake Erie; on the south by the highbanks and the lake wall; on the east by the center line of Talapoin Street, extended, and on the west by the center line of Martin Street, extended.
 - E. **Washington Park.** All of Block 519 lying north of East Sixth Street; east of Washington Avenue; west of Park Avenue; and south of East fifth Street.
 - F. **Memorial Park.** All that land lying north of Lake Shore Drive West to the lake wall beginning ninety (90) feet west of the west line of Eagle Street and westerly to the center line of Robin Street.
 - G. **Cedar Beach.** All that land lying east of Point Drive North bounded on the north by Lake Erie and on the south by Niagara Mohawk. **[Added 4-18-1972]**
- § 49-3. Park Hours. [Amended 4-21-1970, effective 5-1-1970; 6-15-1978; 7-21-1987; 4-25-1995]**
- A. All parks shall be opened to the public between the hours of 6:00 A.M. and 11:00 P.M. daily, except for Point Gratiot which shall be opened to the public between the hours of 6:00 A.M. and 10:30 P.M. and Washington Park, which shall be open to the public between the hours of 6:00 A.M. and 9:00 P.M. daily.

- B. Nothing herein shall be construed to prohibit through vehicular traffic on or over the thoroughfares in Wright Park between the hours of 11:00 P.M. and 6:00 A.M.
- C. No vehicular traffic shall be permitted in Point Gratiot Park between the hours of 10:30 P.M. and 6:00 A.M.
- D. It shall be unlawful to remain in or to enter into Point Gratiot and its beach area after 10:30 P.M., or Wright Park and its beach area, except as permitted by Subsection B above and Cedar Beach after 11:00 P.M. when the parks close, and before 6:00 A.M. when said parks open.
- E. The Common Council of the City may grant exceptions to the above subsections for activities sponsored in full or in part by City agencies or by recognized bona fide civic organizations, provided that the Council determines that the exception granted will be controlled by the sponsor and not be a nuisance.

§ 49-4. Protection of beach areas, Promenschenkel Stadium and Koch Field. [Amended 6-17-1980; 10-16-1979; 6-15-1978]

- A. No person shall throw, cast, discard or deposit any glass, crockery or metallic substance on any beach area or in the vicinity of the Promenschenkel Stadium or Koch Field areas.
- B. No person shall take onto, bring on or carry through or have in his possession any glass container within any beach area or within the vicinity of Promenschenkel Stadium or Koch Field. **[Amended 6-11-1985; 5-15-1984]**
- C. Alcoholic beverages in nonglass containers will be permitted in the vicinity of Promenschenkel Stadium and Koch Field, subject to the restrictions defined in § 49-6F(2). **[Amended 7-7-1987; 6-11-1985; 5-15-1984]**
- D. Alcoholic beverages shall be prohibited in the Wright Park area as defined by § 49-2D.

§ 49-5. Refuse and rubbish.

- A. No person shall throw, cast, lay, drop or discharge into or leave upon the waters adjacent to any park any substance, matter or thing, liquid or solid, which may or shall pollute the waters.
- B. No person shall leave in, throw, cast, lay, drop or discharge into any part of a park or beach area any garbage, sewage, refuse, wastepaper,

obnoxious materials or other litter, except in receptacles provided therefore.

§ 49-6. Regulated uses.

- A. **Commercial enterprises.** No person shall see or offer for sale, lease, hire or let out any merchandise in any park without a permit from the Common Council.
- B. **Assemblages.** No person shall erect any structure, stand or platform, hold any meeting or perform any ceremony in any park without a permit from the Common Council. The Common Council hereby delegates to the City Clerk the power to reserve the use of the Point Gratiot pavilions for picnics. **[Amended 6-15-1978]**
- C. **Advertising.** No person shall post, affix, distribute, hand out, deliver, place, cast or leave about any bill, billboard, placard, ticket, handbill, circular, advertisement or any matter of an advertising nature in any park.
- D. **Camping.** No person shall erect any tent or set up a camp trailer for living purposes in any park. It shall also be unlawful to camp overnight with or without a tent or to sleep in any City park when closed.
- E. **Fires.** No person shall build, make or maintain any fire in a bathing area.
- F. **Alcoholic beverages.** **[Added 9-16-1969, effective 10-1-1969; amended 4-21-1970, effective 5-1-1970; 5-19-1970; 4-18-1972; 6-15-1978]**
 - (1) Alcoholic beverages are prohibited in Washington Park, Memorial Park, Cedar Beach and those sections of Wright Park and Point Gratiot defined by § 49-4 of this chapter. **[Amended 10-16-1979]**
 - (2) Consumption of alcoholic beverages. **[Amended 7-7-1987]**
 - (a) Any person consuming alcoholic beverages in Point Gratiot or any City of Dunkirk park, except those areas where alcoholic beverages are not permitted must first obtain a permit to do so from either the City Clerk's office during regular business hours or any other designated agency for a fee as follows. **[Amended 5-1-1990]**

[1] Individual season permit:

Two Dollars (\$2.00) for residents;
Five Dollars (\$5.00) for non-residents.

[2] **Group daily permits: [Amended 7-16-1992 as L.L. #7-1992]**

Five Dollars (\$5.00) for residents;
Ten Dollars (\$10.00) for non-residents.

(b) The person securing such permit shall agree, in writing, that he or she is of legal age to obtain alcoholic beverages and that no one shall be served or sold any alcoholic beverages under said permit who is not of legal age.

(c) No alcoholic beverages shall be consumed in a vehicle in any park, nor shall any alcoholic beverages be consumed within thirty (30) feet of any parking area in any park.

(3) The Common Council of the City may grant exceptions to Subsection F(1) hereof for activities sponsored in full or in part by City agencies or by recognized bona fide civic organizations, provided that the Council determines that the exception granted will be controlled by the sponsor and not be a nuisance. **[Added 9-19-1978; Editor's Note: This resolution was vetoed by the Mayor. Council voted to override the veto 10-3-1978]**

G. No person shall take into, bring on or carry through or have in his possession any glass container in any park area. **[Added 4-18-1972; amended 5-15-1984; 6-11-1985]**

H. **Operation of motor vehicles.** No motor vehicle shall be operated off of the roadways or in any area of any City park. **[Added 4-18-1972]**

I. **Excessive noise. [Added 6-15-1978]**

(1) It shall be unlawful to maintain or operate any loudspeaker or amplifier connected to any radio, phonograph, tape recorder, microphone, musical instrument or other device by which sounds are magnified so that the resulting noise is excessively loud or is a nuisance in a City park, except provided in Chapter 47 (Noise) §47-6-C (Exceptions). **[Amended 6-20-2000 as L.L. #4 (Intro No. 6) 2000; §49-6-I(2) deleted]**

J. **Parking.** It shall be unlawful for any motor vehicle to park in any area in a City park other than in those areas designated by the Chief of Police pursuant to § 76-31N of the City Code. **[Added 6-15-1978]**

§ 49-7. Protection of property.

- A. No person shall willfully injure, disfigure, remove or destroy any tree, ornamental plant, bench, table, structure or building in any park.
- B. No person shall take or carry away any sand, earth or stone from any park.

§ 49-8. Supervision and control.

- A. The maintenance, operation and supervision of the City parks shall be under the general supervisions and control of the Director of Public Works and, more particularly the Division of Parks and Recreation in the Department of Public Works.
- B. The Police Department shall have all necessary law enforcement powers in the City parks to secure compliance with the provisions of this chapter and to ensure lawful activity in said parks. The Chief of Police of the City of Dunkirk is hereby empowered and authorized to close any park for a period not to exceed twenty-four (24) hours whenever, in his opinion, such closing is necessary to preserve the peace, safety and security of the park.

§ 49-9. Penalties for offenses.

The violation of any of the provisions of this chapter shall be considered an offense, and any person upon being convicted of such offense, shall be punishable by a fine of not more than Two Hundred Fifty Dollars (\$250.00) or by imprisonment for a term not to exceed fifteen (15) days, or both.

§ 49-10. Effective date.

This chapter shall take effect upon filing with the Secretary of State.

CHAPTER 50

(RESERVED)

CHAPTER 51

PERMITS

§ 51-1.	Definitions	5101
§ 51-2.	Amusement rides	5101
§ 51-3.	Bonfires	5102
§ 51-4.	Carnivals	5102
§ 51-5.	Circuses	5102
§ 51-6.	Skating Rinks	5103
§ 51-7.	Theaters	5103
§ 51-8.	Penalties	5104

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 4-1-1993. Amendments noted where applicable.]

GENERAL REFERENCES

§ 51-1. Definitions.

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

CITY - The City of Dunkirk.

PERSON - Any individual, partnership, firm, association, corporation or any combination of the same.

§ 51-2. Amusement rides.

- A. No person shall operate any amusement ride without first having secured a permit from the Mayor for such amusement ride.
- B. Such permit shall be issued only after payment to the City Clerk of the sum of Twenty-five Dollars (\$25.00) per day for each such riding device.
- C. All permits issued under this section shall state the dates of issue and expiration, to whom issued, the amount of the permit fee paid, the purpose for which issued and the location at which such riding device is to be operated.
- D. This section shall not apply to the events sponsored by the Chautauqua County Agricultural and Fair Association at the Chautauqua County Fairgrounds.

§ 51-3. Bonfires.

- A. No person shall build or otherwise start any bonfire without first having secured a permit from the Mayor.
- B. Such permits may be issued by the Mayor for particular occasions or for specified lengths of time, as the Mayor may deem proper.
- C. No permit shall be issued for this purpose for more than one (1) year.

§ 51-4. Carnivals.

- A. No carnival consisting of attractions, including, but not limited to, shows, games, concessions and refreshment stands, shall be conducted, unless the owner or owners thereof shall have first secured a permit from the Mayor for such carnival.
- B. The permit shall be issued only after the payment to the City Clerk of the sum of Fifty Dollars (\$50.00) per day for each show, game, concession or refreshment stand.
- C. Such permit shall state the date or dates when, and the place where, such carnival is to be conducted.
- D. This section shall not apply to events sponsored by the Chautauqua County Agricultural and Fair Association at the Chautauqua County Fairgrounds.

§ 51-5. Circuses.

- A. No circus shall be conducted unless the owner or owners thereof shall have first secured a permit from the Mayor for such circus.
- B. The permit shall be issued only after the payment to the City Clerk of the sum of Fifty Dollars (\$50.00) per day for each day the circus is conducted.
- C. The permit shall state the date upon which, and the place where, such circus is to be conducted.
- D. This section shall not apply to events sponsored by the Chautauqua County Agricultural and Fair Association at the Chautauqua County Fairgrounds.

§ 51-6. Skating Rinks.

- A. No person shall establish or maintain, as principal, agent or employee, any skating rink, without first having secured a permit from the Mayor for such skating rink.
- B. Such permit shall be issued only after the payment to the City Clerk of the sum of Twenty-five Dollars (\$25.00) for each such skating rink.
- C. The permit shall expire on the 31st day of December next following its issuance.
- D. Such permit shall be issued only after written application to the Mayor.
- E. All permits issued under this section shall contain the dates of issue and expiration, to whom issued, the amount of the permit fee paid, the purpose for which issued, and the street and number, or other description, of the place where such skating rink is to be operated.
- E. This section shall not apply to events sponsored by the Chautauqua County Agricultural and Fair Association at the Chautauqua County Fairgrounds.

§ 51-7. Theaters.

- A. No person shall establish or maintain, as principal, agent or employee, any theater, without having secured a permit from the Mayor for such theater.
- B. The permit shall be issued only after the payment to the City Clerk of the sum of Seventy-five Dollars (\$75.00) for each such theater.
- C. All permits issued under this section shall expire on the 31st day of December next following their issuance.
- D. No theater shall be maintained after the expiration of a permit unless the same shall have been renewed.

§ 51-8. Penalties.

The violation of any of the provisions of this chapter is hereby declared to be a misdemeanor, and any person, upon being convicted of such violation, shall be punishable as provided in Chapter 1, General Provisions, Article I of the Code of the City of Dunkirk.

CHAPTER 52

PLANNING BOARD

§ 52-1. Creation; membership.....5201
§ 52-2. Terms of Office5201
§ 52-3. Removal of Members5201
§ 52-4. Election of Chairman5201
§ 52-5. Employment of Experts and Staff.....5202
§ 52-6. Powers and Authority of Board5202

[HISTORY: Adopted by the Common Council of the City of Dunkirk 2-18-1975. Amendments noted where applicable.]

GENERAL REFERENCES

Department of Development -	See Ch. 2.
Zoning -	See Ch. 79.

§ 52-1. Creation; membership.

The City of Dunkirk does hereby create a Planning Board consisting of five (5) members, no more than two (2) of which shall hold any other public office or position in the City of Dunkirk and none of which may be members of the Dunkirk Common Council.

§ 52-2. Terms of Office.

The terms of members of the Planning Board shall be as follows: one (1) for a term of one (1) year, two (2) for a term of two (2) years and two (2) for a term of three (3) years.

§ 52-3. Removal of Members.

No member of the Planning Board shall be removed except for cause and after a public hearing.

§ 52-4. Election of Chairman.

The Planning Board shall elect a Chairman from its own members.

§ 52-5. Employment of Experts and Staff.

The Planning Board shall have the power and authority to employ experts and a staff and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation, if any, that may be made for such Board.

§ 52-6. Powers and Authority of Board.

The Planning Board shall have full power and authority to make such investigations, maps and reports and recommendations in connection therewith relating to the planning and development of the City as are referred to said Board by either the Mayor or Common Council, provided that the total expenditures of said Board shall not exceed the appropriation, if any, for its expenses.

CHAPTER 53

PLANT GROWTH, REMOVAL OF

§ 53-1. Short Title5301
§ 53-2. Purpose and Intent5301
§ 53-3. Weeds, Tall Grass and Brush Declared a Nuisance5301
§ 53-4. Duty of Owner to Cut and Remove.....5302
§ 53-5. Notice to Remove.....5302
§ 53-6. Abatement by City; Unpaid Costs a Lien5302
§ 53-7. Effective Date5302

[HISTORY: Adopted by the Common Council of the City of Dunkirk 2-3-1970 as Chapter XXX of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

§ 53-1. Short Title.

This chapter shall be known as the “Removal of Plant Growth Ordinance”.

§ 53-2. Purpose and Intent.

The purpose and intent of this chapter shall be to promote the general welfare in the City by prohibiting heavy undergrowths and accumulations of plant growth which may be noxious or detrimental to health, or which may tend to create a fire, health or public safety hazard.

§ 53-3. Weeds, Tall Grass and Brush Declared a Nuisance.

- A. Any weeds such as jimson, burdock, ragweed, thistle, cocklebur, poison ivy or other weeds or wild growth of a like kind are hereby declared to be a nuisance.
- B. Any plants other than trees, flowers or ornamental bushes and plants are hereby declared to be a nuisance.
- C. Any grasses over twelve (12) inches in height, except cereal grasses, grain or fodder, are hereby declared to be a nuisance.
- D. It shall be unlawful for any owner of real property in the City to permit any weeds, plants or grasses herein declared to be a nuisance to grow or remain anywhere in the City.

§ 53-4. Duty of Owner to Cut and Remove.

It shall be the duty of the owner of any real property in the City of Dunkirk to cut and remove such weeds, grasses or brush.

§ 53-5. Notice to Remove.

It shall be the duty of the Building Inspector to serve a notice to remove weeds, grasses or brush herein declared a nuisance, upon the owner of any property on which said plants are permitted to grow in violation of this chapter, and to demand abatement of the nuisance within ten (10) days. Notice shall be given either personally or in writing by certified mail addressed to the owner at his address as it appears on the current tax assessment roll of the City of Dunkirk.

§ 53-6. Abatement by City; Unpaid Costs a Lien.

If the owner so notified does not abate the nuisance within ten (10) days the Building Inspector shall order the removal of such nuisance and shall cause removal either by private contractor or the City of Dunkirk. All costs and expenses incurred by the City of Dunkirk in connection with said removal shall be assessed against the land and, if unpaid for thirty (30) days after billing, shall become a lien on the real property, and the City Treasurer shall be directed to file same as a special assessment to be levied, collected and enforced in the same manner, by the same proceedings and with the same penalties and having the same lien upon the property as special assessments.

[Editor's Note: The Common Council adopted on 6-20-1972 the following resolution: That the City establish a firm policy which includes a minimum charge of Ten Dollars (\$10.00) per lot to cover the cost of mobilizing certain pieces of equipment and manpower, with the addition of the cost of manpower plus overhead, together with equipment rental, the sum of which becomes the charge to be made against the private property owner for the purpose of covering City costs for cutting grass and weeds.]

§ 53-7. Effective date.

This chapter shall take effect March 1, 1970.

CHAPTER 54

(RESERVED)

CHAPTER 55

PLUMBING

[L.L. No. 16 (Intro No. 13) 1996]

§ 55-1.	Definitions	5502
§ 55-2.	Administrative Authority	5503
§ 55-3.	Applicability.....	5503
§ 55-4.	Public Facilities.....	5503
§ 55-5.	Corporate Rights	5503
§ 55-6.	License Requirement	5504
§ 55-7.	Certificate of Competency Requirement.....	5505
§ 55-8.	Master Plumber - Certificate of Competency Examination Requirements.....	5505
§ 55-9.	Master Plumber Examination	5507
§ 55-10.	Master Plumber Certification.....	5507
§ 55-11.	Annual Master Plumber License Fees.....	5507
	[Amended 12-06-11 as L.L. #8-2011]	
§ 55-12.	Payment of Fees	5507
§ 55-13.	Temporary Permits	5507
	[Amended 12-06-11 as L.L. #8-2011]	
§ 55-14.	Out-Of-Town Contractors	5508
§ 55-15.	Failure of Test(S) - Master Plumber	5508
§ 55-16.	Master Plumber License Renewal Requirements	5508
§ 55-17.	Reinstatement - Master Plumber - Military Service.....	5509
§ 55-18.	Grounds for Revocation or Suspension - Master Plumber....	5509
§ 55-19.	Revocation of License - Master Plumber	5510
§ 55-20.	Reinstatement of Revoked License Certificate - Master Plumber	5511
§ 55-21.	Fees for Reinstatement.....	5512
§ 55-22.	Highway Bond.....	5513
§ 55-23.	Insurance	5513
§ 55-24.	Examining Board of Plumbers – Membership.....	5514
§ 55-25.	Term of Office	5515
§ 55-26.	Compensation of Members	5515
§ 55-27.	Qualifications	5515
§ 55-28.	Powers and Duties	5515
§ 55-29.	Plumbing Inspector	5516
§ 55-30.	Plumbing Inspector Qualifications	5516
§ 55-31.	Plumbing Inspector Duties	5517
§ 55-32.	Dangerous and/or Unsanitary Conditions	5517
§ 55-33.	Special Installations	5519
§ 55-34.	Plumbing Inspector's License Fee	5519
§ 55-35.	New York State Plumbing Code.....	5519
§ 55-36.	Defective Fixtures.....	5521

§ 55-37.	Required Inspections	5521
§ 55-38	Plumbing Inspector's Right of Entry	5521
§ 55-39.	Notification of Time of Tests	5521
§ 55-40.	Materials and Labor for Tests	5522
§ 55-41.	Systems Tests.....	5522
§ 55-42.	Covering of Work.....	5522
§ 55-43.	Uncovering of Work.....	5522
§ 55-44.	Defective Work.....	5522
§ 55-45.	Certificate of Approval	5522
§ 55-46.	When Inspections and Tests Not Required	5522
§ 55-47.	Property Owner Responsibility	5522
§ 55-48.	Interpretation of Rules and Regulations	5523
§ 55-49.	Penalties	5523
§ 55-50.	Appeals	5523

[HISTORY: Approved by the Examining Board of Plumbers, the Board of Health of the City of Dunkirk and the NYS Department of State (Office of Fire Prevention and Control.) Adopted by the Common Council of the City of Dunkirk on 10-24-96 as L.L. #16 (Intro No. 13) 1996. Amendments noted where applicable]

GENERAL REFERENCES

Building Construction -	See Ch. 15.
Electrical Installations -	See Ch. 28.
Fire Prevention -	See Ch. 32.
Property Maintenance -	See Ch. 56
Sidewalks and Streets (65.12- thru 14(Permits) & Others -	See Ch. 65.

§ 55-1. Definitions.

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

CITY - The City of Dunkirk.

NYCRR – Official Compilation of Codes, Rules and Regulations of the State of New York.

§ 55-2. Administrative Authority.

- A. The administration and enforcement of this chapter shall be the duty of the Director of Public Works, who is hereby authorized to take such action as may be reasonably necessary to enforce the purpose of this chapter.

- B. Such person(s) may be appointed and authorized as assistants or agents of such administrative authority as may be necessary to carry out the provisions of this chapter.

§ 55-3. Applicability.

The provisions of this chapter shall apply to, and govern, plumbing as defined in this chapter, including the practice, materials, and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances, and appurtenances in connection with any of the following: sanitary drainage or storm drainage facilities, the venting system, and the public or private water systems within, or adjacent to, any building or other structure or conveyance, extension, or alteration of the storm water or sewage system of any premises to their connection with any point of public disposal or other terminus.

§ 55-4. Public Facilities.

It is recognized that certain facilities in or adjacent to public streets are referred to in this chapter, only a portion of which is under the ownership or the control of the owner or occupant of the building or premises to which this chapter applies.

§ 55-5. Corporate Rights.

- A. A domestic corporation desiring or intending to conduct the trade, business, or calling of a plumber, or of plumbing in a city of this state, as employing a Master Plumber, may do so provided one or more officers of such corporation separately or aggregately actually hold and own at least fifty-one percentum (51%) of the issued and outstanding capital stock of said corporation, and provided that each of such officers holding such percentage of the stock is the holder of a certificate of competency of the City as provided in §55-6.
- B. In case one or more officers of a corporation engaged in such business shall die, being the holder of a certificate of competency, the corporation may continue the business during the time necessarily required for the administration of the estate of such deceased officer, not exceeding two years from the granting of letters, provided one or more officers of the corporation is the holder of a certificate of competency and together with the legal representatives of such deceased officer or officers, actually owns and holds at least fifty-one percentum (51%) of the issued and outstanding capital stock of such corporation.
- C. Each and every member of said corporation holding a certificate of competency shall comply with all the rules and regulations applicable to master or employing plumbers in the City. Such corporation shall register as provided in §55-6.

§ 55-6. License Requirement.

- A. No person shall engage in the business of plumbing in the City unless licensed as a Master Plumber in accordance with the requirements of this chapter.
- B. A Master Plumber or certified plumbing contractor is an individual having a regular place of business who, by himself/herself or through a person or persons in his/her employ, performs plumbing work and who has successfully fulfilled the requirements of a Master Plumber license.
- C. No person other than a licensed Master Plumber, or a journeyman plumber employed by a licensed Master Plumber, shall be allowed to install, alter, repair or clean any plumbing or make any connections with any drains, soil, waste or water pipe or any pipe connected thereto, except as provided in Subsections D and E, infra.
- D. An owner of an owner-occupied one or two-family dwelling may install, alter, repair or clean any plumbing within such dwelling without being either a licensed Master Plumber or a journeyman plumber employed by a licensed Master Plumber.
- E. Owners of the following property types are excluded from the requirements of this section for routine maintenance within the Owner's boundaries:

- 612 - School
- 613 - Colleges and Universities
- 614 - Special Schools and Institutions
- 615 - All Other Educational Facilities
- 641 - Hospitals
- 651 - Government Highway Garages
- 652 - Governmental Buildings
- 653 - Parking Lots
- 661 - Army, Navy, Air Force, Marine and Coast Guard Installations, Radar, etc.
- 662 - Police and Fire Protection Electrical Signal Equipment and Other Facilities for Fire, Police and Civil Defense, etc.

All of Section 700 - Industrial
All of Section 800 - Public Service

(These classification codes are from the Property Type Classification Codes Manual, New York State Board of Equalization and Assessment, July, 1987

Edition)

Renovation work and major construction shall be performed by a City-licensed plumber. The City shall have access to inspect and to determine whether any and all alterations have been performed according to the Code.

§ 55-7. Certificate of Competency Requirement.

It shall be unlawful for any person to engage in the business of plumbing or to install, alter, clean or repair any plumbing system in the City, or to display a sign or give other notice setting forth or intending to imply that he/she is engaged in the business of plumbing, unless he/she has obtained a certificate of competency after examination, and has duly registered such certificate and received a certificate or registry and a metal sign from the City.

§ 55-8. Master Plumber - Certificate of Competency Examination Requirement.

- A. An applicant for a Master Plumber's license certificate shall file a written application to the office of the Department of Public Works, City Hall, City of Dunkirk, to the attention of the Plumbing Inspector, on the form provided by the Department of Public Works of the City, and pay a fee of Fifty Dollars (\$50.00) for such examination.
- B. The Examining Board of Plumbers shall approve the application, and, if necessary, approve the examination if:
 - 1. The required fee of \$50.00 has been paid.
 - 2. The applicant shall have submitted evidence that he/she is a citizen of the United States, and physically fit to carry out the duties of the trade.
 - 3. The applicant shall have had experience of at least five (5) years as a plumber's Apprentice or has submitted evidence of having received a degree in plumbing, sanitary engineering or plumbing engineering from a recognized college or university, and three years as a Journeyman Plumber with the equivalent of 2,000 hours of experience per year, and is able to furnish satisfactory evidence of such facts.
 - 4. The application must be accompanied by a certificate signed by not less than three (3) references stating that they are personally acquainted with the applicant, and believe him/her to be of good moral character.

5. No examination shall be required if the applicant presents proof of current Master Plumber license from another City, but the other provisions shall apply.
- C. If the application is approved, the Board shall notify the applicant in writing of such approval stating the place and time of the examination, if an examination is required.
 - D. If the application is disapproved, then the Examining Board of Plumbers shall notify the applicant in writing of such disapproval, stating the reasons for disapproval, and refund the examination fee paid by the applicant.
 - E. Individuals who demonstrate proof of having a Master Plumber license issued by another City shall not be required to take another examination, but shall be issued a certificate if they meet the other requirements.

§ 55-9. Master Plumber Examination.

1. Examinations shall be administered by the board, in February and August annually.
2. A written examination which shall consist of questions designed to determine the applicant's knowledge and qualifications to engage in the business of Master or Employing Plumber.

§ 55-10. Master Plumber Certification.

- A. Before issuing a certificate to engage in the business of master or employing plumber, the Board shall inquire into the applicant's fitness and qualifications for conducting such business and may require the applicant to submit under oath such evidence.
- B. The Examining Board of Plumbers shall issue, upon payment of the required license certificate fee of Fifty Dollars (\$50.00), a Master Plumber's license certificate to those applicants who meet the qualifications and pass the examination.
- C. Such license certificates shall be issued in the name of the Examining Board of Plumbers, with the seal thereof attached.

§ 55-11. Annual Master Plumber License Fee.

- A. The annual fee for a Master Plumber license in the City is One Hundred

Dollars (\$100.00) per year. Those who hold Master Plumber licenses from other cities shall be required to pay the annual fee to the City of Dunkirk. **[Amended 12-06-11 as L.L. #8-2011]**

§ 55-12. Payment of Fees.

- A. All fees associated with this chapter shall be made payable to the City of Dunkirk and shall be paid at the office of the City Clerk.

§ 55-13. Temporary Permits.

- A. Contractors or corporations not licensed within the City of Dunkirk may apply for a temporary permit in accordance with the following:

1. The contractor or corporation shall comply with §55-5 A and such officers as noted shall be the holders of a certificate of competency recognized by the Board.
2. Permits will be issued for the calendar year only, with all permits expiring on December 31 of each year. Permits can be renewed yearly with the payment of the applicable fee noted in subsection (4), infra.
3. Permits shall be issued for one job only. Additional permits must be applied for individually per job.
4. Fee for temporary permits shall be One Hundred Twenty-Five Dollars (\$125.00) per job per year. **[Amended 12-06-11 as L.L. #8-2011]**

§ 55-14. Out-Of-Town Contractors.

All out-of-town contractors must take the Master Plumber examination to become licensed in the City in accordance with §55-6 and §55-8, supra, unless he/she presents proof of a current Master Plumber's license from another City. If such proof is presented, no additional examination shall be required, but all other requirements of this Chapter must be met.

§ 55-15. Failure of Test(s) - Master Plumber.

An applicant who fails to pass the examination for a plumber's license shall not be permitted to apply for another examination until after the expiration of six (6) months following the date of such examination.

§ 55-16. Master Plumber Renewal Requirements.

- A. All plumber's license certificates shall expire in January following the date of issuance. License certificates may be renewed for a period of one year each succeeding January upon payment during the month of January of the required license certificate fee.
- B. A license certificate which has expired due to failure to pay the annual fee by January 30 will be considered suspended and the licensee will not be permitted to perform plumbing work.
- C. A penalty of Ten Dollars (\$10.00) shall be affixed to the fee to reinstate the license.
- D. After April 30, a penalty of Fifty Dollars (\$50.00) shall be affixed to the fee to reinstate the license.
- E. The license shall be revoked after July 30 and a new test must be taken for reinstatement, unless prior to July 31 a request is received in writing by the Plumbing Board asking for a waiver based on an acceptable reason, such as a medical reason.
- F. The decision to grant a waiver will be determined by the Plumbing Board.
- G. Plumbing work may not be performed while a license is suspended or revoked. Violators will be subject to penalties as outlined in §55-48, infra.
- H. Applicant for renewal must be physically fit to perform the duties of the profession.

§ 55-17. Reinstatement - Master Plumber - Military Service.

- A. The Examining Board of Plumbers shall reinstate a license certificate which expires while a licensee is in the active military service upon payment of the annual license certificate fee and submission and evidence of such military service.
- B. Such license certificate shall be reinstated without re-examination and without payment of the lapsed renewal fee.

§ 55-18. Grounds For Revocation or Suspension - Master Plumber.

The Examining Board of Plumbers shall revoke or suspend a license certificate after a hearing before the Examining Board of Plumbers when the findings show one or more of the following:

1. That the licensee obtained or conspired with others to obtain a license certificate by inducing the issuance thereof in consideration

of the payment of money or delivery of any other thing of value or by and through a willful misrepresentation of facts to the Examining Board of Plumbers.

2. That the licensee willfully violated any plumbing ordinance or resolution of the City or any law of this state regulating plumbing or plumbers.
3. That the licensee has been guilty of negligence or incompetence in the performance of plumbing.
4. That the licensee has been convicted of a felony.
5. That the licensee has willfully loaned or in any manner transferred his/her license certificate to another person, to permit such person to engage illegally in plumbing contrary to this ordinance.
6. That the licensee has willfully engaged in conduct not in accord with generally accepted standards of professional conduct for the trade, business, or calling of plumber.
7. Non-renewal of license.

§ 55-19. Revocation of License - Master Plumber.

- A. No license certificate shall be suspended or revoked until a written complaint is filed with the Examining Board of Plumbers stating facts which, if proved, would constitute grounds for suspension or revocation of a license certificate as provided in this chapter, and until an impartial hearing is held before the Board.
- B. When a written complaint is filed, the Examining Board of Plumbers shall set a date for a hearing which shall be held in the Department of Public Works, City Hall, Dunkirk, New York.
- C. The Board shall send to the licensee charged in the complaint, by personal delivery or registered mail, a correct copy of the complaint, and a notice stating when and where a hearing will be held.
- D. Such notice shall be served at least twenty (20) days before the date set for the hearing.
- E. If a license certificate is suspended, the license certificate shall be surrendered to the Examining Board of Plumbers, but shall be returned to the licensee upon the termination of the suspension period.

- F. Should licensee fail to appear before the hearing, revocation shall be automatic.

§ 55-20. Reinstatement of Revoked License Certificate - Master Plumber.

- A. The Examining Board of Plumbers may, in its discretion, reinstate a plumber's license certificate not less than three (3) months, and not more than three (3) years after such license certificate has been revoked.
- B. Reinstatement by the Examining Board of Plumbers may be ordered only after a hearing before the Examining Board of Plumbers on the petition of the person whose license certificate has been revoked.
- C. Whenever a petition for reinstatement is filed with the Examining Board of Plumbers, the Board shall set a hearing, and either by personal delivery or registered mail to the address of record, serve a copy of the petition and notice on all parties of record when the license certificate in question was revoked, stating when and where the hearing will be held.
- D. Such notice shall be served at least twenty (20) days before the date set for the hearing.
- E. The Examining Board of Plumbers shall hear all material evidence in support of, or against, the petition and shall allow or deny the petition for reinstatement of the license certificate.
- F. The decision of the Examining Board of Plumbers shall be sent to the petitioner and to all parties of record, to the addresses of the parties of record, either by personal delivery or registered mail.
- G. If the petition for reinstatement is denied, then the petitioner may file his petition for rehearing within twenty (20) days after receipt of the Examining board of Plumbers' order, whereupon the Examining Board of Plumbers will then order either a denial or allowance of the petition or rehearing.
- H. If such petition for rehearing is granted, the entire record shall be referred to the Board and a hearing held not less than twenty (20) days after notice of the time and place of the rehearing to all parties of record.
- I. At the conclusion of such rehearing, the Examining Board of Plumbers shall either grant or deny the petition for reinstatement.
- J. No more than one rehearing on the same petition for reinstatement shall be allowed; and not more than one petition for reinstatement of the same license certificate shall be considered or heard within one year.

- K. If the petition for reinstatement is granted by the Examining Board of Plumbers, it shall issue a plumber's license certificate to petitioner upon payment of the required annual license certificate fee.
- L. The Examining Board of Plumbers shall, at its expense, provide a stenographer, to take testimony and to preserve a record of all proceedings at the hearing upon any complaint or petition for reinstatement.
- M. The complaint or petition and other documents in the nature of pleadings and motions filed in the case, the transcript of testimony, findings, and orders of the Examining Board of Plumbers shall constitute the record.
- N. The Examining Board of Plumbers shall furnish a transcript of such record to any person upon payment of an amount to be determined by the Director of Public Works at such time.
- O. An Order of suspension, revocation or reinstatement of a license certificate, or of dismissal of a complaint or petition, or a certified copy of such order, over the seal of the Examining Board of Plumbers and purporting to be signed by two members of the Examining Board of Plumbers shall be prima facie proof that: (a) such signatures are the genuine signatures of the Examining Board of Plumbers, and (b) that such Examining Board of Plumbers and the members thereof are duly appointed and qualified to act.

§ 55-21. Fees For Reinstatement - Master Plumber.

- A. The fee for the reinstatement of a Master Plumber's license certificate shall be Fifty Dollars (\$50.00).
- B. The annual Master Plumber's license certificate fee shall be Fifty Dollars (\$50.00).

§ 55-22. Highway Bond.

- A. All licensed Master Plumbers or those corporations holding temporary permits shall supply the City with a minimum Two Thousand Dollar (\$2,000.00) highway bond.
- B. Such bond shall be utilized by the City to repair unsatisfactory work or restorations should the plumber or corporation fail to satisfy City requirements.
- C. The Department of Public Works may require a bond in excess of Two Thousand Dollars (\$2,000.00), should the Director deem the proposed work or restoration beyond the normal scope of activities.

§ 55-23. Insurance.

A. Liability insurance.

1. All Master Plumbers shall procure and maintain at their own expense and without expense to the City, insurance for liability for damages imposed by law, of the kinds and in the amounts hereinafter provided.
2. Such insurance shall be procured through insurance companies authorized to do such business in the State of New York covering all operations under their contracts whether performed by them or by subcontractors.
3. Before receiving a Master Plumber Certificate of Competency, and every year thereafter at the time of renewal of the Master Plumber license, a certificate or certificates of insurance in forms satisfactory to the City showing compliance with this paragraph, shall be furnished to the City, to be kept on file in the Department of Public Works, which certificate or certificates shall provide that the policy shall not be changed or canceled until thirty (30) days written notice has been given to the City.
4. This requirement shall apply to active Master Plumber license holders; those with inactive status are waived.
5. The kinds and amounts of insurance are as follows:
 - (i) Compensation insurance: A policy covering the obligations of the Master Plumber in accordance with workers' compensation law covering all operations under contract, whether performed by the master plumber, or the Master Plumber's subcontractors.
 - (ii) Public liability and property damage insurance:
 1. The Master Plumber shall take out and maintain such public liability and property damage insurance as shall insure and protect him/her, any subcontractor performing work for him, from claims for damages for personal injury, including accidental death, as well as from claims for property damages which may arise from his/her operations.
 2. Public liability insurance or general comprehensive liability insurance shall be in the amount of not less than \$1,000,000 per occurrence and not less than

\$1,000,000 aggregate; property damage insurance in an amount not less than \$1,000,000 aggregate.

6. The City shall be named as an additional insured on the policy for purposes of coverage only, but not for payment of premium.

§ 55-24. Examining Board of Plumbers - Membership.

- A. The existing Board for the Examination of Plumbers in the City is continued and shall be known as the Examining Board of Plumbers.
- B. The Examining Board of Plumbers in the City shall consist of five (5) persons to be appointed by the Mayor, of whom two (2) shall be employing Master Plumbers of not less than ten (10) years experience in the business of plumbing, and one (1) shall be a Journeyman Plumber of like experience, and the other members of the Board shall be the Plumbing Inspector of the City or officer performing the duties of such inspector, and the Director of Public Works.

§ 55-25. Term of Office.

- A. The term of office of each member of such Board shall be three years, from the first day of January following the appointment.
- B. Vacancies occurring by expiration of a term shall be filled by the Mayor for a full term.
- C. The Mayor shall appoint Board Members for the unexpired term when vacancies occur as a result of death, removal, inability to act, or the resignation or removal from the City of any member.
- D. The Plumbing Inspector and the Director of Public Works or the officers holding equivalent positions or acting in like capacities designated or appointed by the Mayor as herein provided, shall be ex-officio members of such examining board, and when they shall cease to hold their offices by reason or on account of which they were so designated or appointed, their successors shall act on the Board in their stead.

§ 55-26. Compensation of Members of Board.

The Master and Journeyman Plumbers serving as members of the Examining Board of Plumbers shall receive compensation for their services as shall be determined by the City Council.

§ 55-27. Qualifications.

All members of such Board shall be United States citizens and residents of

Chautauqua County.

§ 55-28. Powers and duties.

The Examining Board of Plumbers shall have power and it shall be its duty:

- A. To meet at stated intervals; they shall also meet whenever the Director of the Department of Public Works of the City or the Mayor thereof shall in writing request them to do so.
- B. To have jurisdiction over and to examine all persons desiring or intending to engage in the trade, business or calling of plumbing as employing plumbers in the City, which Board shall be appointed with the power of examining persons applying for certificates of competency as such employing or Master Plumbers or as inspectors of plumbing, to determine their fitness and qualifications for conducting the business of Master Plumbers or to act as inspector of plumbing, and to issue certificates of competency to all such persons who shall have passed a satisfactory examination before such Board and shall be by it determined to be qualified for conducting the business as employing or Master Plumbers or competent to act as inspectors of plumbing.
- C. To formulate in conjunction with the Department of Public Works of the City, a code of rules regulating the work of drainage and plumbing in this City, including the materials, workmanship and manner of executing such work and from time to time to add to, amend or alter the same or in their discretion to adopt the standard plumbing code recommended by the State of New York.
- D. To charge and collect from each person applying for the examination the sum dictated by the board and all monies so collected shall be paid over to the treasury of the City.

§ 55-29. Plumbing Inspector.

- A. To provide for the administration and enforcement of this chapter, the position of Plumbing Inspector is hereby created.
- B. The Mayor shall appoint or cause by examination, a Plumbing Inspector to assist in the discharge of the duties of the City's Department of Public Works - Division of Plumbing.

§ 55-30. Plumbing Inspector Qualifications.

The Plumbing Inspector hereafter employed shall:

- A. be a certified Master Plumber;
- B. be a resident of Chautauqua County;
- C. not be engaged directly or indirectly in the business of plumbing during the period of his or her appointment.

§ 55-31. Plumbing Inspector Duties.

The Plumbing Inspector shall maintain public office hours necessary to efficiently administer the provisions of this chapter, and amendments thereto, and shall perform the following duties:

- A. Require submission of, examine and check plans and specifications, drawings, descriptions and/or diagrams necessary to show clearly the character, kind and extent of plumbing work covered by applications for a permit applied for.
- B. Inspect all plumbing and drainage work authorized by any permits, or unauthorized installation, to assure compliance with provisions of this chapter or amendments thereto, approving or condemning such work in whole or in part as conditions require.
- C. Issue a Certificate of Approval for any work approved by the Plumbing Inspector.
- D. Condemn and reject all work done or being done or materials used or being used, which do not in all respects comply with the provisions of this chapter and amendments thereto.
- E. Order changes in workmanship and/or materials essential to obtain compliance with all provisions of this chapter.
- F. Investigate any construction or work regulated by this chapter and issue such notices and orders as provided for elsewhere in this chapter.
- G. Keep a complete record of all the transactions of the Plumbing Inspector.
- H. Maintain an official register of all persons, firms or corporations lawfully entitled to carry on or engage in the business of plumbing or to work at the trade of plumbing to whom a Plumber's License certificate has been issued in accordance with the provisions set forth elsewhere in this chapter.

§ 55-32. Dangerous And/or Unsanitary Conditions.

- A. Any portion of a plumbing system found by the Director of Public Works to be unsanitary as defined elsewhere in this chapter herein is hereby declared to be a nuisance.
- B.
 - (i) Whenever brought to the attention of the Director of Public Works that any unsanitary conditions exist or that any construction or work regulated by this chapter is dangerous, unsafe, unsanitary, a nuisance or a menace to life, health or property or otherwise in violation of this chapter, such Department may require an investigation by the Director of Public Works who, upon determining such information to be fact, shall order any person, firm or corporation using or maintaining any such condition or responsible for the use of maintenance thereof to discontinue the use or maintenance thereof or to repair, alter, change, remove or demolish same as the Director of Public Works may consider necessary for the proper protection of life, health or property and in the case of any gas piping or gas appliance may order any person, firm or corporation, supplying gas to such piping or appliance, to discontinue supplying gas thereto until such piping or appliance is made safe to life, health or property.
 - (ii) Every such order shall be in writing, addressed to the owner, agent or person responsible for the premises in which such condition exists, and shall specify the date or time for compliance with such order.
 - (iii) In the case of potable water piping or potable water using appliance or device, where a cross connection is found to exist between the potable water and contaminated water and/or waste, the Director of Public Works shall order any person, firm or corporation supplying potable water to such system, to discontinue supplying potable water thereto until such cross connection is removed and the system is made safe to life, health and/or property.
- C. Refusal, failure or neglect to comply with any such notice or order shall be considered a violation of this chapter.
- D. When any plumbing system is maintained in violation of this chapter and in violation of any notice issued pursuant to the provisions of this section, or where a nuisance exists in any building or on a lot on which a building is situated, the Director of Public Works shall institute any appropriate action or proceeding in any court of competent jurisdiction to prevent, restrain, correct or abate the violation or nuisance.

§ 55-33. Special Installations.

The Plumbing Inspector may recommend to the Board that special permission should be granted to the owner or his/her agent that the installation of plumbing work be done in a manner differing from the provisions of this chapter, when, in the judgment of either party, it is necessary to do so, due to the peculiarities of the construction of the building, and a letter from the owner or his agent is received requesting this permission.

§ 55-34. Plumbing Inspector's License Fee.

The Plumbing Inspector shall have the Master Plumber's license fee waived until such time as the Inspector is no longer employed by the City. The first January following departure from the City's service, §55-21, supra, shall apply.

§ 55-35. New York State Plumbing Code.

The City of Dunkirk hereby adopts the relevant provisions of the New York State Uniform Fire Prevention and Building Code as the plumbing code of the City of Dunkirk. All plumbing installations in the City shall be made in conformity with the requirements of 9 N.Y.C.R.R. Articles 8, 9, 10 and 13, which articles are incorporated by reference herein, with the following additions:

- A. In accordance with 9 N.Y.C.R.R. Part 903.12 add the following local requirements:
- (1) A trap must be placed in the house drain at an accessible point near the front of the house, or in the basement or cellar with a full size brass screw-type cleanout ahead of the trap.
 - (2) When placed in a basement, the house trap shall be provided with proper full-sized brass screw clean-out plug, placed on straight run of vertical Y branch on the house side of the main trap directly above the water seal; the side opening of Y shall be used for fresh air inlet.
 - (3) Where the house sewer enters the cellar, a Y branch shall be provided on the street side of the trap. The side opening shall be reserved for cleanout purposes; such cleanout shall be run up flush with the surface of the finished floor and provided with a full-sized brass clean out screw plug.
 - (4) Where the main trap is placed outside of the cellar, a cleanout shall be provided on the street side of the main trap; the cleanout shall be taken from the side opening of the Y branch in house sewer line and carried full size to finish grade at an angle of approximately forty-five degrees, and provided with suitable stopper.
 - (5) The Y shall be placed directly downstream of the main trap.

- (6) There must be an opening for fresh air entering the house drain on the house side of, and adjacent to, the house trap with pipe connections the full size in diameter leading to the outer air and provided with suitable cap or grating; such fresh air inlet shall not open within 4 feet of a window or cold air shaft.
 - (7) The trap shall be service weight, bell type cast iron pipe or vitreous tile pipe with neoprene fittings.
- B. In accordance with 9 N.Y.C.R.R. Part 904.6(a), add the following local requirement:
- (1) Building sewers under public ways shall be service weight cast iron bell type pipe, including fittings, with neoprene gaskets, vitreous clay tile bell type, with neoprene gaskets, or SDR-35 PVC, installed in accordance with the manufacturer's specifications. The public way shall be defined to be that area between the tie-in to the public sewer into, and including, the public right-of-way.
- C. In accordance with 9 N.Y.C.R.R. Part 904.6(b), add the following local requirement:
- (1) Building sewers within property lines shall be service weight cast iron, SDR Schedule 35 PVC with ring-type joints or vitreous clay tile bell type with neoprene joints. These materials should extend to within 3' of the structure's outside wall.

§ 55-36. Defective Fixtures.

All installed fixtures found defective or in an unsanitary condition shall be repaired, renovated, replaced or removed within thirty (30) days upon written notice from the Plumbing Inspector.

§ 55-37. Required Inspections.

All piping, traps and fixtures of a plumbing system shall be inspected by the Plumbing Inspector to insure compliance with all the requirements of this code and the installation and construction of the system in accordance with the approved plans and the permit.

§ 55-38. Plumbing Inspector's Right of Entry.

- A. For the purpose of enforcing the requirements of the laws and regulations relating to plumbing and house drainage, the Plumbing Inspector shall be

permitted to enter any house or building, ground or premises in the City at all times during the twenty-four (24) hours, day or night, to thoroughly examine such plumbing, drainage or any nuisance that would affect the public health.

- B. The Plumbing Inspector shall notify or cause to be notified the owner, agent or occupant of the grounds or premises in or on which such violation or nuisance shall be found, to correct, remove or abate the same.
- C. Unless in case of emergency, no Inspector shall enter any dwelling, apartment or residence building between the hours of 7:00 PM and 7:00 AM of any day without the consent of the owner or person in charge of such building.

§ 55-39. Notification of Time of Tests.

- A. It shall be the duty of the plumber to notify the Plumbing Inspector in accordance with inspection blanks.
- B. It shall be the duty of the plumber to make sure that the work will stand the test prescribed before giving the above notification.
- C. If the Plumbing Inspector finds that the work will not stand the test, the plumber shall be required to re-notify and retest the work as above stated.

§ 55-40. Materials and Labor For Tests.

The equipment, material, power and labor necessary for the inspection and test shall be furnished by the plumber.

§ 55-41. Systems Tests.

All the piping of a plumbing system shall be tested in accordance with the provisions of 9 N.Y.C.R.R. Part 907.

§ 55-42. Covering of Work.

No drainage or plumbing system or part thereof shall be covered until it has been inspected, tested and approved as herein prescribed.

§ 55-43. Uncovering of Work.

If any house drainage or plumbing system or part thereof is covered before being regularly inspected, tested and approved as herein prescribed, then it shall be uncovered upon the direction of the Plumbing Inspector.

§ 55-44. Defective Work.

If inspection or test shows defects, such defective work or material shall be replaced within ten (10) days and inspection and test repeated.

§ 55-45. Certificate of Approval.

Upon the satisfactory completion and final test of the plumbing system, a certificate of approval shall be issued by the Plumbing Inspector to the plumber, to be delivered to the owner.

§ 55-46. When Inspections and Tests Not Required.

No tests or inspections shall be required where a plumbing system or part thereof is set up for exhibition purposes and is not used for toilet purposes and not directly connected to a sewerage system; nor after the repairing or replacing of an old fixture, faucet or valve by a new one to be used for the same purpose; nor after forcing out stoppages and repairing leaks.

§ 55-47. Property Owner Responsibility.

Property owner is solely responsible for all portions of his or her drainage system up to, and including, the system's connection to the City sewer.

§ 55-48. Interpretation of Rules and Regulations.

- A. In the event that any of these rules and regulations are not fully understood, or in the event of inability to interpret any rule or regulation, before any work is done thereunder the interpretation and opinion of the Plumbing Inspector must be obtained.
- B. In the event of any disputes as to the interpretation or intent of any of the plumbing rules and regulations, final decision thereon will be given by the Examining Board of Plumbers.

§ 55-49. Penalties.

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a minimum fine of \$150.00, or a maximum fine of \$1,000.00, or by imprisonment in the City jail for a period not to exceed six months, or by both such fine and imprisonment. Each separate day or any portion thereof during which any violation of this chapter occurs, or continues, shall be deemed to constitute a separate offense, and upon conviction thereof, shall be punishable as herein provided.

§ 55-50. Appeals.

- A. An appeal may be taken to the Zoning Board of Appeals requesting a waiver from local standards that are more restrictive than the State Uniform Fire Prevention and Building Code.
- B. The grounds for such appeal shall include the following:
 - 1. Undue economic hardship or burden,
 - 2. Restriction from the achievement of a valid State or federal policy,
 - 3. Physical or legal impossibility,
 - 4. Impediment to the intended objective of the regulation,
 - 5. Application of the more restrictive provisions is unnecessary, in light of viable alternatives which meet the intended objective of the more restrictive local provisions.
- C. The application for appeal must be filed on or before thirty (30) days from the date of the municipality's determination.
- D. The rules of procedure for the Zoning Board of Appeals shall be followed as to the notification of interested parties, the conduct of the hearing and all other procedural matters, except those specified in this Chapter 55.
- E. The Zoning Board of Appeals shall notify the appellant of its decision within sixty (60) days of the final hearing on the matter.
- F. An appeal from the decision of the Zoning Board of Appeals may be pursued before the New York State Supreme Court under Article 78 of the New York State Civil Procedure Law and Rules.

CHAPTER 56

**PROPERTY MAINTENANCE CODE
[L.L. #13-1995 Adopted by the Common Council
of the City of Dunkirk on 5-9-95]**

**ARTICLE I
Adoption**

§ 56-1010 Property Maintenance Code5604
§ 56-1020 Adoption of Property Maintenance Code.....5604
§ 56-1030 Inconsistent Ordinances Repealed5604
§ 56-1040 Saving Clause5604
§ 56-1050 Date of Effect.....5605

**ARTICLE II
Administration**

§ 56-2010 Intent5606
§ 56-2020 Conflicts with Other Regulations5606
§ 56-2030 Severability.....5607
§ 56-2040 Duties and Powers of the Housing, Building and Zoning
Officer5607
[Amended 4-17-2007 as L.L. #4-2007]
§ 56-2050 Conflict of Interest5611
§ 56-2060 Violations.....5612
[Amended 4-3-2007 as L.L. #3-2007]
§ 56-2070 Emergency Measures5616
§ 56-2080 Demolition5617
§ 56-2090 Property Maintenance Board5618
[Amended on 2-20-1996 as L.L #2 (Intro No. 4) 1996]

**ARTICLE III
General Requirements**

§ 56-3010 General5620
§ 56-3020 Unsafe and Unlawful Structures and Equipment.....5620
§ 56-3030 Exterior Site Conditions5622
§ 56-3040 Exterior Structure Conditions.....5627
[Amended 4-3-2007 as L.L. #3-2007]
§ 56-3050 Interior Structure Condition.....5630
§ 56-3060 Rubbish and Garbage5630
[Amended 4-3-2007 as L.L. #3-2007]
§ 56-3070 Extermination.....5631

**ARTICLE IV
Light, Ventilation and Occupancy Limitations**

§ 56-4010	General	5632
§ 56-4020	Light.....	5632
§ 56-4030	Ventilation	5633
§ 56-4040	Occupancy Limitations	5634

ARTICLE V
Plumbing Facilities and Fixture Requirements

§ 56-5010	General	5637
§ 56-5020	Required Facilities.....	5637
§ 56-5030	Toilet Rooms	5638
§ 56-5040	Plumbing Fixtures	5638
§ 56-5050	Water System	5638
§ 56-5060	Water Heating Facilities	5639
§ 56-5070	Sanitary Drainage System.....	5639
§ 56-5080	Storm Drainage	5639
§ 56-5090	Fuel Gas.....	5639

ARTICLE VI
Mechanical and Electrical Requirements

§ 56-6010	General	5642
§ 56-6020	Heating Facilities	5642
§ 56-6030	Mechanical Equipment.....	5643
	[Amended 4-3-2007 as L.L. #3-2007]	
§ 56-6040	Electrical Facilities	5644
§ 56-6050	Electrical Equipment	5644
§ 56-6060	Elevators, Escalators and Dumbwaiters.....	5645

ARTICLE VII
Fire Safety Requirements

§ 56-7010	General	5646
§ 56-7020	Means of Egress	5646
§ 56-7030	Accumulations and Storage	5649
§ 56-7040	Fire Resistance Ratings	5649
§ 56-7050	Fire Protection Systems.....	5649
§ 56-7060	Elevator Recall	5651
§ 56-7070	Mechanical Equipment Control	5652

ARTICLE VIII
Board of Appeals

§ 56-8010	General	5653
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**ARTICLE IX
Definitions**

§ 56-9010 General5654
[Amended 4-3-2007 as L.L. #3-2007]

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 5-2-95 as L.L. #13-1995. Amended on 04-03-2007 as L.L. #3-2007. Amendments noted where applicable]

**ARTICLE I
Adoption**

§ 56-1010 Property Maintenance Code.

The City of Dunkirk Property Maintenance Code establishes the minimum regulations governing the conditions and maintenance of all property, buildings and structures in the City of Dunkirk. This law provides the standards for utilities and facilities and other physical characteristics and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use. This law also provides for the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures. This law shall be known as the City of Dunkirk Property Maintenance Code.

Be it ordained by the City Council of the City of Dunkirk as follows:

§ 56-1020 Adoption of Property Maintenance Code.

This document, three (3) copies of which are on file in the office of the City Clerk of the City of Dunkirk, as modeled from the Building Officials and Code Administrators International, Inc., is adopted as the **City of Dunkirk Property Maintenance Code**, in the State of New York for the control of buildings and structures as outlined in this law. Each and all of the regulations, provisions, penalties, conditions and terms of the City of Dunkirk Property Maintenance Code are referred to, adopted, and made a part of this law.

§ 56-1030 Inconsistent Ordinances and Laws Repealed.

The present Chapters 41 (Housing Standards), 56 (Property Maintenance) and 53 (Removal of Plant Growth) and all other ordinances, laws or parts of ordinances and laws in conflict are repealed.

§ 56-1040 Saving Clause.

Nothing in the City of Dunkirk Property Maintenance Code shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance repealed as cited in this law.

§ 56-1050 Date of Effect.

The City of Dunkirk City Clerk shall certify to the adoption of this law, and cause the same to be published as required by law. This law shall take effect and be in force from and after its approval as required by law.

ARTICLE II
Administration

§ 56-2010 Intent.

These regulations shall be known as the City of Dunkirk Property Maintenance Code. All repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this law shall be executed and installed in a workmanlike manner.

The City of Dunkirk Property Maintenance Code is intended to protect the public health, safety and welfare in all existing structures, residential and nonresidential, and on all existing premises by establishing minimum requirements and standards for premises, structures, equipment, and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; fixing the responsibility of owners, operators and occupants; regulating the occupancy of existing structures and premises, and providing for administration, enforcement and penalties.

This law is developed to ensure public health, safety and welfare as they are affected by the continued occupancy and maintenance of structures and premises in the City of Dunkirk. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required. The provisions in this law shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure which is dangerous, unsafe and unsanitary.

§ 56-2020 Conflicts with Other Regulations.

Where differences occur between provisions of this law and other referenced standards (e.g. the New York State Uniform Fire Prevention and Building Code), the more stringent provisions shall apply. Any repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the New York State Uniform Fire Prevention and Building Code and National Fire Protection Association regulations or other referenced standards.

This law shall not affect violations or any other ordinance, code or other regulation existing prior to the effective date, and any such violation shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed. All requirements of the American With Disabilities Act shall be adhered to and this law in no way impacts the effects of the ADA requirements.

§ 56-2030 Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this law shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this law which shall continue in full force and effect, and to this end the provisions of this law are declared to be severable.

§ 56-2040 Duties and Powers of the Housing, Building and Zoning Officer.

The Housing, Building and Zoning Officer shall enforce all of the provisions of this law. The responsibilities of the City of Dunkirk Housing, Building and Zoning Officer shall include:

1. The Housing, Building and Zoning Officer shall issue all necessary notices or orders to ensure compliance with this law.
2. The Housing, Building and Zoning Officer, upon proper notification and with sufficient cause, is authorized to enter the structure or premises at reasonable times to inspect. Prior to entering into a space not otherwise open to the general public, the Housing, Building and Zoning Officer shall make a reasonable effort to locate the owner or other person having charge or control of the structure or premises, present proper identification and request entry. If requested entry is refused or not obtained, the Housing, Building and Zoning Officer shall pursue recourse as provided by law.
 - (a) Every occupant of a structure or premises shall give the owner or operator, or agent or employee, access to any part of such structure or its premises at reasonable times for the purpose of making such inspection, maintenance, repairs or alterations necessary to comply with the provisions of this law.
 - (b) The Housing, Building and Zoning Officer shall carry proper identification when inspecting structures or premises in the performance of duties under this law.
3. Inspection of premises, the issuance of notices and orders and enforcement shall be the responsibility of the Housing, Building and Zoning Officer in the City of Dunkirk. Whenever inspections are necessary by any other City of Dunkirk Departments, the Housing, Building and Zoning Officer shall make reasonable effort to arrange for the coordination of such inspections so as to minimize the number of visits by inspectors, and to confer with the other City staff and officials for the purpose of eliminating conflicting orders before any are issued. A City Department shall not, however, delay the issuance of any emergency orders.
4. The Housing, Building and Zoning Officer shall have power as necessary in the interest of public health, safety and general welfare, to adopt and promulgate rules and regulations to interpret and implement the provisions of this law to secure the intent of and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this law or of violating accepted engineering practice involving public safety.
5. The Housing, Building and Zoning Officer, officer or employee charged with the enforcement of this law, while acting for the jurisdiction, shall not be rendered liable personally, and is relieved from all personal liability for

any act required or permitted in the discharge of official duties.

- (a) Any suit instituted against the Housing, Building and Zoning Officer, officer or employee because of an act performed in the lawful discharge of duties and under the provisions of this law shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The Housing, Building and Zoning Officer or any subordinate shall not be liable for costs in any action, suit or proceeding that is instituted in pursuance of the provisions of this law. Any officer of the Building Department, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or any reason of any act or omission in the performance of official duties.
6. An official record shall be kept of all business and activities of the Building Department or other City Department specified in the provisions of this law, and all such records shall be open to public inspection at all appropriate times, as outlined in the Freedom of Information Law, and according to reasonable rules to maintain the integrity and security of such records.
7. Violations of such provisions of this Chapter which are specifically covered by, or within the scope of, the Sanitary Code of the Chautauqua County Health District and/or the Public Health Law of the State of New York shall be referred to the County Commissioner of Health or the Commissioner's designated representative.
 - (a) These referrals shall be for the following purposes: To make inspections of such referred alleged violations and report, in writing, such findings to the Housing, Building and Zoning Officer.
 - (b) At the time of submitting such referral, the Housing, Building and Zoning Officer shall request that the Commissioner of Health or the Housing, Building and Zoning Officer's representative making the report, inform the Housing, Building and Zoning Officer in writing that all or part of the violations contained in the report will be administered by, and compliance secured in accordance with the provisions of such Sanitary Code and/or Public Health Law; or all or part of the violations contained in the report may be administered by, and compliance secured in accordance with the provisions of the City Code, and the inspector shall cooperate with the Housing, Building and Zoning Officer to obtain compliance.
 - (c) The items of violation contained in the report shall be included in any notice or order issued by the Housing, Building and Zoning Officer and in all legal proceedings pertaining thereto.

- (d) Where violations of this Chapter or Chapters 15 or 17 of the City Code exist and pose an immediate hazard or danger to the health, safety or welfare of the building occupants or of the public, the Housing, Building and Zoning Officer or the Housing, Building and Zoning Officer's duly authorized representative may issue an order citing the violation and directing such action by the City as is necessary to remove or abate the immediate hazard or emergency situation.
- (e) The Housing, Building and Zoning Officer, or his designee is authorized to issue citations for the following maintenance violations: **[Added 4-17-2007 as L.L. #4-2007]**
 - (1) Unregistered Vehicles. (§ 56-3030(1)(g) Exterior Site Conditions.) Except as provided for in other regulations, no unregistered or uninspected motor vehicle shall be parked, kept or stored on any premises not more than seven (7) days.
 - (2) Yard Refuse. (§ 56-3060(1) Rubbish and Garbage.) All exterior property and premises, basement, cellars, crawlspaces, porches, garages, storage sheds, and the interior of every structure shall be free from accumulations of rubbish, refuse or garbage. The following shall apply to all buildings and parcels in the City of Dunkirk.
 - (3) Semi Parking. (§ 56-3030(1)(g)(2) Exterior Site Conditions.) Tractors and/or trailers shall not be parked on private residential premises.
 - (4) Tag Items (Bulk). (§ 56-9010 General Refuse.) Refuse - Combustible and noncombustible waste materials that include discarded, abandoned or inoperable appliances, inoperable vehicles, ruined furniture, discarded unusable building material, uninhabitable mobile homes, unsightly boat trailers, campers that have come into disrepair due to lack of maintenance, discarded household items and similar material that is inoperable, ruined or discarded.
 - (5) High Grass. (§ 56-3030(1)(c)(3) Exterior Site Conditions.) Any grasses over six (6) inches in height, except for cereal grasses, grain or fodder, are hereby declared to be a nuisance.

- (6) Covered Rubbish Containers. (§ 56-3060(1)(b) Rubbish and Garbage.) Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers. Containers shall not be stored on front yards, front porches, decks, stoops or similar structures.
- (7) Dry Vegetation. (§ 305.1.1 NYS Property Maintenance Code.) Dry vegetation, combustible waste and refuse. Combustible waste, refuse and large quantities of dry vegetation, which by reason of their proximity to buildings or structures would constitute a fire hazard or contribute to the spread of fire, shall be removed.
- (8) Refrigerators, Appliances with Doors. (§ 305.2.2 NYS Property Maintenance Code.) Refrigerators and similar equipment shall not be discarded, abandoned, or stored on premises accessible to children without first removing the doors.

The fine for subsections 1 - 7 shall be Twenty-Five Dollars (\$25.00). The fine for subsection 8 shall be Fifty Dollars (\$50.00). Each individual cited shall have fourteen (14) business days from the issuance of the citation to pay the indicated fine to the City Clerk of the City of Dunkirk. Any fines not paid within fourteen (14) business days shall be subject to a late fee of Twenty Dollars (\$20.00) per violation.

§ 56-2050 Conflict of Interest.

An official or employee connected with the enforcement of this law, except one whose only connection is that of a member of the Property Maintenance Board, shall not be engaged in, or directly or indirectly connected with, the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building, or the preparation of construction documents, unless that person is the owner of the building. Such officer or employee shall not engage in any work that conflicts with official duties or with the interests of their responsibilities.

§ 56-2060 Violations.

1. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, demolish, maintain, fail to maintain, provide, fail to provide, occupy, let to another or occupy or permit another person to occupy any structure or equipment regulated by this law, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this law, or to fail to obey a lawful order of the Housing, Building and Zoning Officer, or to remove or deface a placard or notice

posted under the provisions of this law.

2. Whenever the Housing, Building and Zoning Officer determines that there has been a violation of this law or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible. Such notice shall:
 - a) Be in writing.
 - b) Include a description of the property sufficient for identification;
 - c) Include a statement of the reason or reasons why the notice is being issued, and;
 - d) Include a correction order allowing a reasonable time for the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this law.
 - e) Such notice shall be deemed to be properly served if a copy is:
 - (1) Delivered to the owner personally or;
 - (2) Sent by mail addressed to the owner at the address of record. If the letter is returned, a copy shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.
 - (3) Violations of this Chapter shall be punishable by any of the following, or combination thereof:
 - a) Imprisonment for not more than thirty (30) days;
 - b) A fine of not more than One Thousand Dollars (\$1,000.00);
 - c) A conditional discharge;
 - d) An unconditional discharge.
 - (4) Each day that a violation continues after due notice has been served shall be deemed a separate offense and shall be considered a continuing violation until the violation is corrected and shall be punishable by any of the above

remedies, or combination thereof, for each day that the property remains in violation.

- (5) All individuals that have been duly served with a notice of violation issued by the Housing, Building and Zoning Officer and who fail to correct the violations of this Chapter or Chapters 15 or 17 of the City Code, as directed therein, resulting in the issuance of appearance tickets for enforcement by City Court, shall be required to pay mandatory court costs in the amount of Fifty Dollars (\$50.00) for each and every appearance which is required in City Court, except for those cases where the City Court Judge makes a determination that there was no legal basis for the service of the notice of violation or appearance ticket. Such mandatory court costs shall be separate and independent from any fines or penalties imposed by this Chapter or other Chapters of the City Code, and shall be payable to the City in any manner directed by the City Court Judge. **[Amended 4-3-2007 as L.L. #3-2007]**
- (6) The City Attorney or the City Attorney's designee may, upon complaint of the Housing, Building and Zoning Officer, or upon his or her own motion, institute appropriate action to restrain, prevent, enjoin, abate, correct or remove violations of this Chapter and to take such other legal action as is necessary to carry out the terms and provisions of this Chapter.
- (7) The remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies provided by law.
- (8) Any and all remedies may be pursued concurrently or consecutively, and the pursuit of any remedy shall not be construed as an election or the waiver of any right to pursue any and all of the others.
- (9) An order to remedy that outlines legal action to be taken will be issued to the property owner if the violation is not corrected within the time frame outlined. Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Housing, Building and Zoning Officer shall post on the premises or on defective equipment, a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

- (10) In case of any unlawful acts, the Housing, Building and Zoning Officer shall institute an appropriate action or proceeding at law to exact the penalty provided in this law. Also, the Housing, Building and Zoning Officer shall ask the jurisdiction's legal representative to proceed in law or in equity against the person responsible for the violation of the purpose of ordering that person:
- a) To restrain, correct or remove the violation or refrain from any further execution of work;
 - b) To restrain or correct the erection, installation, maintenance, repair or alteration of such structure;
 - c) To require the removal of work in violation or;
 - d) To present the occupancy of the structure that is not in compliance with the provisions of this law.
- (11) Any person who shall occupy a placarded premises and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be liable for the penalties provided by this law. The Housing, Building and Zoning Officer shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Housing, Building and Zoning Officer shall be subject to the penalties provided by this law.
- (12) If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Housing, Building and Zoning Officer is authorized to post a placard of condemnation on the premises and order the structure closed up. Upon failure of the owner to close up the premises within the time specified in the order, the Housing, Building and Zoning Officer shall cause the premises to be closed through any available public agency such as the City of Dunkirk Department of Public Works or by contract or arrangement by private persons and the cost shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and/or personally recovered from the owner.

- (13) It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Housing, Building and Zoning Officer and shall furnish to the Housing, Building and Zoning Officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

§ 56-2070 Emergency Measures.

1. When, in the opinion of this Housing, Building and Zoning Officer, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of fire damage, explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the Housing, Building and Zoning Officer is authorized and empowered to order and require the occupants to vacate the premises. The Housing, Building and Zoning Officer shall cause to be posted at each entrance to such structure a notice reading as follows:

**"THIS STRUCTURE IS UNSAFE AND ITS
OCCUPANCY HAS BEEN PROHIBITED BY
THE CITY OF DUNKIRK HOUSING,
BUILDING AND ZONING OFFICER."**

2. It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or demolishing the same.
3. Whenever, in the opinion of the Housing, Building and Zoning Officer, there is imminent danger due to an unsafe condition, the Housing, Building and Zoning Officer shall order the necessary work to be done, including the boarding-up of openings, to render such structure temporarily safe whether or not the legal procedure described has been instituted. For the purpose of this Section, the Housing, Building and

Zoning Officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible. Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on approval of the Housing, Building and Zoning Officer. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

4. When necessary for the public safety, the Housing, Building and Zoning Officer shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.
5. Any person ordered to take emergency measures shall comply with such order. Any affected person shall, upon petition direct to the Property Maintenance Board, be afforded a hearing to discuss the situation.

§ 56-2080 Demolition.

1. The Housing, Building and Zoning Officer shall order the owner of any premises with any structure, which in the Housing, Building and Zoning Officer's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to raze and remove such structure. If such structure is capable of being made safe by repairs, the owner shall repair and make safe and sanitary or raze and remove (in compliance with the Housing, Building and Zoning Officer's instructions and conditions) at the owner's option. Where there has been a cessation of normal construction of any structure for a period of more than two years, the Housing, Building and Zoning Officer may order the owner to raze and remove such structure (in compliance with the Housing, Building and Zoning Officer's instructions and conditions).
2. If the owner of a premises fails to comply with a demolition order within the time prescribed, the Housing, Building and Zoning Officer shall notify the owner of his/her right to request a hearing between the owner of the structure and the City Council to allow the owner an opportunity to be heard and explain reasons for non-compliance. If the owner fails to request a hearing within ten (10) days of the date of the Housing, Building and Zoning Officer's letter, the matter shall go forward without a hearing. If a hearing is requested within the designated time, it shall be scheduled for the next available Council Meeting. A decision will be made at the hearing or within a reasonable time thereafter and the owner shall abide by the decision of the City Council. If the owner fails to comply with the decision of the City Council, the Building and Zoning Officer shall cause

the structure to be razed and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such razing and removal shall be charged against the areas estate upon which the structure is located and shall be a lien upon such real estate, and/or shall be recovered by Civil Action against the owner(s), and/or shall be added to the City tax levy against the relevant parcel.

3. When any structure has been ordered razed and removed, the City Council or other designated officer under said contract or arrangement shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such razing and removal, shall be remitted to the owner, with a report of such sale or transaction, including the items of expense and the amounts deducted for the person who is entitled, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

§ 56-2090 Property Maintenance Board. [Amended on 2-20-1996 as L.L. #2 (Intro No. 4) 1996]

1. Unless an alternate hearing is provided for herein or included in the notice or order issued by the Housing, Building and Zoning Officer, any person affected by a decision of the Housing, Building and Zoning Officer or a notice or order issued under this law shall have the right to appeal to the Property Maintenance Board, provided that a written application for appeal is filed within 10 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this law or the rules legally adopted have been incorrectly interpreted, the provisions of this law do not fully apply or the requirements of this law are adequately satisfied by other means.

ARTICLE III
General Requirements

§ 56-3010 General.

1. The provisions of this Article shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property. The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided in this law. A person shall not occupy as owner-occupancy or permit another person to occupy premises which do not comply with the requirements of this law. Owners who reside outside Chautauqua County shall be required to designate in writing an agent within Chautauqua County who is authorized to accept service on the owner's behalf of all notices, orders and appearance tickets relevant to the property. Such designation shall be filed with the Housing, Building and Zoning Officer within one (1) month of the filing of this Law or the purchase of the property by the owner.

2. All vacant structures and premises or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided so as not to cause a blighting problem or adversely affected the public health or safety.

3. Vacant buildings shall be kept secure. If boarding is necessary the material used shall be cut to fit the opening not beyond the frame of the window or door. The material shall be able to accept paint or stain and be painted or stained similar to the color of the surrounding material of the building. **[Added 4-3-2007 as L.L. #3-2007]**

§ 56-3020 Unsafe and Unlawful Structures and Equipment.

1. When a structure or equipment is found by the Housing, Building and Zoning Officer to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant the provisions of this law.
2. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is likely.
3. An unlawful structure is one found in whole or in part to be occupied by more persons permitted under this law, or was erected, altered or occupied contrary to law.
4. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.
5. A structure is unfit for human occupancy whenever the Housing, Building and Zoning Officer finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this law, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
6. Owners of premises shall be responsible for compliance with this Chapter and Chapters 15 and 17 of the City Code and shall remain responsible therefor, regardless of the fact that this Chapter may also place certain responsibilities on the occupants regardless of any agreements between owners and occupants as to which party shall assume such responsibility. Owners of premises shall be responsible for the proper maintenance,

condition and operation of service facilities and for furnishing heat and hot-water supply in dwellings.

7. Occupants of dwelling units shall be responsible for compliance of the following conditions:
 - (a) Limiting occupancy of that part of the premises which he or she occupies or controls to the maximum permitted by this Chapter and any other Chapter of the City Code.
 - (b) Maintaining that part of the premises which he or she occupies or controls in a clean, sanitary and safe condition.
 - (c) Maintaining all plumbing, cooking and refrigeration fixtures and appliances, as well as other building equipment and storage facilities, in that part of the premises which he or she occupies or controls in a clean and sanitary condition, and providing reasonable care in the operation and use thereof.
 - (d) Disposing of garbage and refuse into provided facilities in a clean and sanitary manner.
 - (e) Exterminating insects, rodents or other vermin within his or her dwelling unit, if his or her unit is the only one infested in the premises.
 - (f) Hanging and removing required screens.
 - (g) Keeping his or her domestic animals and pets in a lawful manner.

§ 56-3030 Exterior Site Conditions. [Amended 2-20-1996 as L.L. #2 (Intro No. 4) 1996]

1. All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupancy shall keep that part of the exterior property which such occupancy occupies or controls in a clean and sanitary condition. The following shall apply to the exterior of all structures in the City of Dunkirk:
 - (a) All premises with detention or retention areas shall be graded and maintained to prevent the accumulation of stagnant water, or within any structure located on site.
 - (b) All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

- (c) All premises and exterior property shall be maintained free from excessive weeds or plant growth.
- (1) Any weeds such as jimson, burdock, ragweed, thistle, cocklebur, poison ivy or other weeds or wild growth of a like kind are hereby declared to be a nuisance.
 - (2) Any plants other than trees, flowers, or ornamental bushes and plants are hereby declared to be a nuisance.
 - (3) Any grasses over six (6) inches in height, except for cereal grasses, grain or fodder, are hereby declared to be a nuisance. **[Amended 2-20-1996 as L.L. #2 (Intro No. 4) 1996]**
 - (4) It shall be unlawful for any owner of real property in the City to permit any weeds, plants or grasses herein declared to be a nuisance to grow or remain anywhere in the City.
 - (5) It shall be the duty of the owner of any real property in the City of Dunkirk to cut and remove such weeds, grasses or brush.
 - (6) It shall be the duty of the Housing, Building and Zoning Officer to serve a notice upon the owner of any property on which said plants are permitted to grow in violation of this chapter, and to demand abatement of the nuisance within seven (7) days. Notice shall be given either personally or in writing by certified mail addressed to the owner at his address as it appears on the current tax assessment roll of the City of Dunkirk. **[Amended 7-20-1999 as L.L. #5 (Intro No. 4) 1999]**
 - (7) If the owner so notified does not abate the nuisance within seven (7) days the Building Inspector shall order the removal of such nuisance and shall cause removal either by private contractor or the City of Dunkirk. All costs and expenses incurred by the City of Dunkirk in connection with said removal shall be assessed against the land and, if unpaid for thirty (30) days after billing, shall become a lien on the real property, and the City Treasurer shall be directed to file same as a special assessment to be levied, collected and enforced in the same manner, by the same proceedings and with the same penalties and having the same lien upon the property as special assessments and taxes. **[Amended 7-**

20-1999 as L.L. #5 (Intro No. 4) 1999]

- (d) All structures and exterior property shall be kept free from rodent and insect infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation.
- (e) Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.
- (f) All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.
 - (1) Any fence in a residential district shall be of open construction, such as an ornamental iron, wire, chain, or picket (iron or wood). No fence of any description, except a hedge, shall be built nearer the street line than the front line of the dwelling on such lot unless approved by the Property Maintenance Board.
 - (2) No fence or hedge shall be built nearer than two (2) feet of the inside of the street side of the property line. In any case where the rear lot line of a lot is adjacent to the side lot line of another lot, no fence, except a hedge, shall be built on the side of the rear lot line nearer the street line than the front line of the dwelling on such adjacent lot unless approved by the Property Maintenance Board.
 - (3) No hedge fence placed along the front property line shall exceed four (4) feet in height. This hedge fence shall also be the limit for the front and side of a corner lot abutting an open street.
 - (4) Any fence shall have the finished side of the fence facing the abutting property. All supporting posts shall be placed inside the property line.
 - (5) No hedge shall be planted directly on the property line but planting shall provide for growth of hedge. Hedges shall be planted a minimum of twelve (12) inches from the property line. The owner of such hedge fences shall keep the hedges trimmed in line with the abutting property line.

- (6) All fences shall be maintained in a safe and substantial condition. All exposed surfaces, shall be periodically protected with paint or other preservative to retard deterioration. Use of barbed wire for fencing is prohibited in any zone unless approved by the Property Maintenance Board.
- (7) Fences, whether hedge, ornamental iron, solid board, picket, interwoven, etc., where used for purposes of privacy, shielding of patio, etc., when exceeding the height limit, shall be built six (6) inches inside the property line for every foot of additional height and in no case shall exceed eight (8) feet in height.
- (g) Except as provided for in other regulations, no unregistered or uninspected motor vehicle shall be parked, kept or stored on any premises not more than seven (7) days.
 - (1) A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.
 - (2) Tractors and/or their trailers shall not be parked on private residential premises.
 - (3)
 - 1. If the vehicle is not removed within the seven (7) days specified, the Building Inspector may cause removal either by private contractor or the City of Dunkirk, in addition to any other available remedy. All costs and expenses incurred by the City of Dunkirk in connection with said removal shall be assessed against the land and, if unpaid for thirty (30) days after billing, shall become a lien on the real property, and the City Treasurer shall be directed to file same as a special assessment to be levied, collected and enforced in the same manner, by the same proceedings and with the same penalties and having the same lien upon the property as special assessments and taxes. **[Amended 2-20-1996 as L.L. #2 (Intro No. 4) 1996; Amended 7-20-1999 as L.L. #5 (Intro No. 4) 1999]**
 - 2. If, after notice and removal, the same unregistered or uninspected motor vehicle shall again be parked, kept or stored on any premises in violation of this local law,

an appearance ticket may be immediately issued and no seven (7) day period need elapse before such issuance. **[Amended 2-20-1996 as L.L. #2 (Intro No. 4) 1996; Amended 7-20-1999 as L.L. #5 (Intro No. 4) 1999]**

- (4) Motor vehicles, trailers, watercraft, recreational vehicles or any other vehicles not road worthy, not useable or are unsightly due to conditions from lack of maintenance, shall not be stored on the exterior of the property. **[Amended 4-3-2007 as L.L. #3-2007]**
- (h) All exterior sites shall be kept free from excessive rubbish and debris and yard refuse. Lumber intended for construction use may be stored on the property for a period not to exceed ninety (90) days.
- (i) Furniture, unless specifically manufactured and intended for exterior use, shall be prohibited on porches, decks or elsewhere on the exterior of the property. This includes, but not limited to, tables, chairs, equipment and upholstered furniture. Refuse shall not be stored on porches. **[Added 4-3-2007 as L.L. #3-2007]**
- (j) Material used for compost shall be of acceptable standards material. Compost shall be kept in bins properly designed for such use and kept at least three feet from property lines. Compost bins shall not be located in front yards, porches, decks or entry areas. **[Added 4-3-2007 as L.L. #3-2007]**
- (k) Driveways, parking lots, accessory structures and equipment shall be maintained in good condition. Driveways and parking lots shall be kept dust free and surfaces maintained in good condition. Structures and equipment shall be kept structurally sound and in good repair. **[Added 4-3-2007 as L.L. #3-2007]**

§ 56-3040 Exterior Structure Conditions. [Amended 4-3-2007 as L.L. #3-2007]

- 1. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare. The following shall apply to all structures in the City of Dunkirk:
 - (a) Each structure to which a street number has been assigned shall have such number displayed in a position easily observed and readable from the public right-of-way. All numbers shall be at least 3 inches high and 1/2 inch stroke. These numbers shall contrast

with their background and be applied by generally accepted lettering/numbering standards. **[Amended 4-3-2007 as L.L. #3-2007]**

- (b) All structural members shall be maintained free from deterioration and shall be capable of safely supporting the imposed dead and live loads.
- (c) All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents.
- (d) All exterior walls shall be free from holes, breaks, loose or rotting materials, including paint, and maintained weatherproof and properly surface coated, where unprotected, to prevent deterioration.
- (e) The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof water shall not be discharged in a manner that creates a public nuisance.
- (f) All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage in a safe condition.
- (g) All canopies, marquees, signs, metal awnings, stairways, fire escapes, standpipes, exhaust ducts and similar overhang extensions shall be maintained in good repair and be properly anchored so as to be kept in a safe and sound condition. When unprotected, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
- (h) All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
- (i) Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

- (j) Every window, door and frame shall be kept in sound condition, good repair and weather tight.
 - (k) All glazing materials shall be maintained free from cracks and holes.
 - (l) Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.
 - (m) During the period from April 15 to October 15, every door, window and other outside opening utilized or required for ventilation purposes serving any structure containing habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.
 - (n) All exterior doors and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guest rooms shall tightly secure the door. Exterior storm/screen or exterior doors without storm/screen doors shall be equipped with closers to close the door from any interior portion of the structure to protect the property from the weather. **[Amended 4-3-2007 as L.L. #3-2007]**
 - (o) Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.
 - (p) Graffiti shall be removed from all buildings, structures, signs, windows or wherever it may have been placed. **[Added 4-3-2007 as L.L. #3-2007]**
 - (q) Garage roll up, sliding, or swinging doors shall be properly installed on their tracks, hinges or rollers and shall be in good condition free from damaged, broken, missing panels. **[Added 4-3-2007 as L.L. #3-2007]**
2. Every basement window that is openable shall be supplied with rodent proof shields, storm windows or other approved protection against the entry of rodents.

§ 56-3050 Interior Structure Condition.

1. The interior of a structure shall be maintained in good repair, structurally sound and in a sanitary condition. Every occupant shall keep that part of the structure which such occupant occupies or controls in a clean and sanitary condition. Every owner of a structure containing a rooming house, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property. The following conditions shall apply to the interior condition of all buildings in the City of Dunkirk:
 - (a) The supporting structural members of every structure shall be maintained structurally sound, and be capable of supporting the imposed loads.
 - (b) All interior surfaces, including windows and doors, shall be maintained structurally sound, and be capable of supporting the imposed loads.
 - (c) All interior stairs and railings shall be maintained in sound condition and good repair.
 - (d) Toilet room, bathroom and laundry room floors shall be maintained in a water resistant condition. **[Added 4-3-2007 as L.L. #3-2007]**

§ 56-3060 Rubbish and Garbage.

1. All exterior property and premises, basement, cellars, crawlspaces, porches, garages, storage sheds, and the interior of every structure shall be free from any accumulation of rubbish, refuse or garbage. The following shall apply to all buildings and parcels in the City of Dunkirk. **[Amended 4-3-2007 as L.L. #3-2007]**
 - (a) Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers. The owner of every occupied premise shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.
 - (b) Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers. Containers shall not be stored on front yards, front porches, decks, stoops or similar structures. **[Amended 4-3-2007 as L.L. #3-2007]**
 - (c) The owner of every dwelling shall supply an approved leak proof,

covered, outside garbage container.

- (d) The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, leak proof approved containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

§ 56-3070 Extermination.

1. The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent re-infestation. The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property as well as each apartment, dwelling unit and/or room.

ARTICLE IV
Light, Ventilation and Occupancy Limitations

§ 56-4010 General.

1. The provisions of this Article shall govern the minimum conditions and standards for light, ventilation and space for the occupancy of a structure in the City of Dunkirk.
2. The owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements and the requirements of the New York State Uniform Fire Prevention and Building Code. A person shall not occupy as owner-occupant, or permit another person to occupy any premises that do not comply with the requirements of this law.
3. In lieu of the means for natural light and ventilation prescribed, artificial light or mechanical ventilation complying with the New York State Uniform Fire Prevention and Building Code and other applicable codes shall be permitted.

§ 56-4020 Light.

1. Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total window area, measured between stops, for every habitable space shall be eight (8) percent of the floor area of such room, except in kitchens and baths where artificial light is provided in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code. Wherever exterior walls or other portions of a structure face a window of any room and such obstructions are located less than three (3) feet from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.
2. Every common hall and stairway, other than in one and two family dwellings, shall be lighted at all times with at least a 60-watt standard incandescent light bulb or equivalent for each 200 square feet of floor area, provided that the spacing between lights shall not be greater than 30 feet. Every exterior stairway shall be illuminated with a minimum of 1 foot candle at floors, landings and treads.
3. All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe occupancy of the space and utilization of the appliances, equipment and fixtures.

§ 56-4030 Ventilation.

1. Every habitable space shall have at least one openable window. The total openable area of the window in every room shall be equal to at least four (4) percent of the total floor area of the building. The following requirements shall be complied with in the City of Dunkirk:
 - (a) Bathrooms - Every bathroom and toilet room shall comply with the ventilation requirements for habitable spaces as required by this law, except that a window shall not be required in spaces equipped with a mechanical ventilation system that complies with the following:
 - (1) Air exhausted by a mechanical ventilation system from a bathroom within a dwelling unit shall be exhausted to the exterior and shall not be recirculated to any space, including the space from which such air is withdrawn.
 - (2) Air exhausted by a mechanical ventilation system from all other bathrooms or toilet rooms shall be exhausted to the exterior without recirculation to any space, or not more than 85 percent of the exhaust air shall be recirculated where the system is provided with effective absorption and filtering equipment.
 - (b) Cooking Facilities - Unless approved through the certificate of occupancy, cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in a rooming unit or dormitory unit unless specifically approved, in writing, by the Housing, Building and Zoning Officer.
 - (c) Fumes - Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the exterior and not be recirculated to any space.
 - (d) Clothes Dryer - Clothes dryer venting systems shall be independent of all other systems and shall be vented to the exterior in accordance with the manufacturer's instructions.

§ 56-4040 Occupancy Limitations.

1. Dwelling units, hotel units, rooming units and dormitory units shall be

arranged to provide privacy and be separate from other adjoining spaces. The following provisions for occupancy limitations shall apply in the City of Dunkirk:

- (a) Sleeping rooms shall not constitute the only means of access to other sleeping rooms or habitable spaces. This provision does not apply to dwelling units that contain fewer than two bedrooms.
- (b) Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one person shall contain at least 50 square feet of floor area for each occupant thereof.
- (c) Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom.
- (d) Dwelling units shall not be occupied by more occupants than permitted by the New York State Uniform Fire Prevention and Building Code. This includes:
 - (1) In dwelling units, the maximum number of occupants shall be limited to the number determined on the basis of the floor areas of habitable rooms, other than kitchens, as follows:
 - (i) one (1) occupant per room having floor area of at least seventy five (75) but less than one hundred twenty (120) square feet;
 - (ii) two (2) occupants per room having floor area of at least one hundred twenty (120) but less than one hundred eighty (180) square feet and;
 - (iii) three (3) occupants per room having floor area of one hundred eighty (180) or more square feet.
 - (2) In lodging units, the maximum number of occupants shall be limited to the number determined on the same basis as for dwelling units.
 - (3) In building occupied as clubs, dormitories, sorority or fraternity houses and providing sleeping accommodations for more than five (5) persons, the maximum number of occupants so accommodated in any habitable room shall be limited to the number determined on the basis of the floor

area, in square feet, of the room divided by fifty (50) square feet per occupant.

- (4) No room in any dwelling unit or rooming unit shall be used for sleeping purposes unless there is a minimum floor space of seventy (70) square feet for the first occupant and a minimum floor space of fifty (50) square feet for each additional occupant.
- (e) Kitchens, nonhabitable spaces and interior public areas shall not be occupied for sleeping purposes.
- (f) Habitable spaces, other than kitchens, shall have a clear ceiling height of not less than 7 feet 6 inches. Hallways, corridors, laundry areas, bathrooms, toilet rooms and kitchens shall have a clear ceiling height of not less than 7 feet 6 inches. The following shall be considered exceptions:
 - (1) Beams or girders spaced not less than 4 feet on center and projecting not more than 6 inches below the required ceiling height, provided that the minimum clear height is not less than 7 feet.
 - (2) Dropped or furred ceilings over not more than one-half of the minimum floor area required by this law, provided that no part of such dropped or furred ceiling is less than 7 feet in height.
 - (3) Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a clear ceiling height of at least 7 feet over not less than one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area of such rooms with a clear ceiling height of 5 feet or more shall be included.
 - (4) Basement rooms in one and two family dwellings occupied exclusively for laundry, study or recreation purposes, having a ceiling height of not less than 6 feet 8 inches with not less than 6 feet 4 inches of clear height under beams, girders, ducts and similar obstructions.
- (g) A habitable room, other than a kitchen, shall not be less than 10 feet in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet between counter fronts and appliances or counter fronts and walls.

- (h) All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

ARTICLE V
Plumbing Facilities and Fixture Requirements

§ 56-5010 General.

- 1. The provisions of this Article shall govern the minimum plumbing facilities and plumbing fixtures to be provided. The owner of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any structure or premises which does not comply with the requirements of this law.

§ 56-5020 Required Facilities.

- 1. The following shall be required facilities for plumbing facilities in the City of Dunkirk:
 - (a) Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. Hot water at 130° F to 140° F shall be provided to every dwelling unit by acceptable plumbing equipment.
 - (b) Rooming Houses shall have at least one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.
 - (c) Where private water closets, lavatories, and baths are not provided in hotels, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten occupants.

- (d) A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.
- (e) Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler, or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in toilet rooms or bathrooms.
- (f) Privies, privy vaults and outhouses shall be prohibited.

§ 56-5030 Toilet Rooms and Bathrooms.

- 1. Toilet rooms and bathrooms shall provide privacy and shall not constitute the only passageway to a hall or other space or to the exterior. The following shall apply to toilet rooms in the City of Dunkirk:
 - (a) Hotel/Motel - Toilet rooms and bathrooms serving hotel/motel units, rooming units or dormitory units, shall have access by traversing not more than one flight of stairs and shall have access from a common hall or passageway.
 - (b) Employee Facilities:
 - (1) Toilet facilities shall have access from within the employees' regular working area. The required toilet facilities shall be located not more than one story above or below the employee's regular working area and the path of travel to such facilities shall not exceed a distance of 500 feet. Employee facilities shall either be separate facilities or public customer facilities.
 - (2) Facilities that are required for employees in storage structures or kiosks, and which are located in adjacent structures under the same ownership lease or control, shall not exceed a travel distance of 500 feet. Employee facilities shall either be separate facilities or public customer facilities.

§ 56-5040 Plumbing Fixtures.

- 1. Plumbing fixtures shall have adequate clearances for usage and cleaning.

§ 56-5050 Water System.

- 1. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to the City of Dunkirk public water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water.

2. The water system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

§ 56-5060 Water Heating Facilities.

1. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110° Fahrenheit. A gas-burning water heater shall not be located in any bathroom, kitchen, toilet room, bedroom or other occupied room normally kept closed. An approved combination temperature and pressure relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

§ 56-5070 Sanitary Drainage System.

1. All plumbing fixtures shall be properly connected to the City of Dunkirk public sewer system. Every plumbing stack, vent waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

§ 56-5080 Storm Drainage.

1. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance and shall not be discharged into any combined sewers without the approval of the Housing, Building and Zoning Officer and the Department of Public Works.

§ 56-5090 Fuel Gas.

1. General requirements.
 - (a) Fuel gas piping systems shall be installed and maintained so as to remain gastight, safe and operative under conditions of use.
 - (b) Fuel gas piping systems shall provide a supply of gas sufficient to meet the maximum expected demand of the installed gas-burning appliances connected thereto.
2. Shutoff valves.
 - (a) Gas piping systems shall have at least one (1) accessible means

for shutting off all gas supply, and such means shall be maintained in good operating condition.

- (b) An easily accessible shutoff valve or cock shall be provided in the piping in close proximity to, and ahead of, every outlet for gas appliance.
3. Service equipment for gas supplied from utility mains. Gas services, gas meters and gas pressure regulators shall be located so that they are protected from damage.
 4. Gas refrigerators and ranges. Gas refrigerators and ranges shall be installed with clearance for ventilation and shall be maintained in good operating condition.
 5. High-pressure gas. Any service connection supplying gas at a pressure in excess of one (1) pound per square inch gauge shall be provided with a device to reduce such pressure to not more than one-half (1/2) pound per square inch gauge prior to entering the meter, except where such service supplies equipment using gas at high pressures.
 6. Liquefied petroleum gas.
 - (a) Undiluted liquefied petroleum gas in liquid form shall not be conveyed through piping equipment and systems in buildings.
 - (b) Liquefied petroleum gas shall not be vaporized by devices utilizing open flame or open electrical coil.
 - (c) Where two (2) or more containers are installed, connection shall be arranged so that containers can be replaced without shutting off the flow of gas to equipment.
 - (d) Containers shall be designed, stored and located so as not to be a hazard to the premises served or to the surrounding property.
 - (e) Systems shall be provided with safety devices to relieve excessive pressures and shall be arranged so that the discharge terminates at a safe location.
 - (f) Systems shall have at least one (1) accessible means for shutting off the gas. Such means shall be located outside the building and shall be maintained in good operating condition.

ARTICLE VI
Mechanical and Electrical Requirements

§ 56-6010 General.

1. The provisions of this Article shall govern the minimum mechanical and electrical facilities and equipment to be provided. The owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements.
2. A person shall not occupy as owner-occupant or permit another person to occupy any premises which does not comply with the requirements of this Article.

§ 56-6020 Heating Facilities.

1. Heating facilities shall be provided in structures as required by this Article and the New York State Uniform Fire Prevention and Building Code:
 - (a) Every dwelling shall be provided with heating facilities capable of maintaining a room temperature of 68 degrees Fahrenheit in all habitable rooms, bathrooms, kitchens and toilet rooms based on the outside design temperature required by the New York State Uniform Fire Prevention and Building Code. Occupied dwellings shall be provided with such heating facilities in full working condition from October 15th to May 15th.
 - (b) Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guest room on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 15th to May 15th to maintain room temperatures at a minimum of 68° Fahrenheit.
 - (c) When the outdoor temperature is below the outdoor design temperature, the owner or operator shall not be required to maintain the minimum room temperatures, provided that the heating system is operating at full capacity, with supply valves and dampers in a full open position.
 - (d) Every enclosed occupied work space shall be supplied with sufficient heat during the period from October 15 to April 15 to maintain a temperature of not less than 65° Fahrenheit during all working hours. Exemptions include:

- (1) Processing, storage and operation areas that require cooling or special temperature conditions;
 - (2) Areas in which persons are primarily engaged in vigorous physical activities.
2. The required room temperatures shall be measured at a point 5 feet above the floor and 3 feet from the exterior walls.

§ 56-6030 Mechanical Equipment.

1. All mechanical equipment, fireplaces and solid fuel-burning appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function. The following shall apply:
 - (a) All cooking and heating equipment, components and accessories in every heating, cooking and water-heating device shall be maintained free from leaks and obstructions.
 - (b) All fuel burning equipment and appliances shall be connected to an approved chimney or vent. Fuel-burning equipment and appliances shall be connected to an approved chimney or vent.
 - (1) Exception: unvented room heaters shall be installed per New York State Uniform Fire Prevention and Building Code, Title 19 (NYCRR), Chapter XXXIII, Subchapter A. **[Added 4-3-2007 as L.L. #3-2007]**
 - (c) All required clearances to combustible materials shall be maintained.
 - (d) All safety controls for fuel-burning equipment shall be maintained in effective operation.
 - (e) A supply of air for complete combustion of the fuel and for ventilation of the space shall be provided for the fuel-burning equipment.
 - (f) Devices purporting to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless labeled for such purpose and the installation is specifically approved.

- (f) Fuel burning equipment shall be permanently fastened and connected in place. Fuel supply connection to such equipment shall be made with pipe or tubing of solid metal.

§ 56-6040 Electrical Facilities.

1. Every occupied building shall be provided with an electrical system in compliance with the requirements of this Article and generally accepted standards. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities. Every dwelling shall be served by a main service that is not less than 60 amperes, three wires.
2. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the Housing, Building and Zoning Officer shall require the defects to be corrected to eliminate the hazard.

§ 56-6050 Electrical Equipment.

1. All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner. The following shall be required in the City of Dunkirk:
 - (a) Every habitable space in a dwelling shall contain at least two separate and remote grounded type receptacle outlets. Every laundry area shall contain at least one grounded type receptacle. Every bathroom shall contain at least one grounded type receptacle.
 - (b) Every public hall, interior stairway, water closet compartment, bathroom, laundry room and furnace room shall contain at least one electric lighting fixture.

§ 56-6060 Elevators, Escalators and Dumbwaiters.

1. Elevators, dumbwaiters and escalators shall be maintained to sustain safely all imposed loads, to operate properly, and to be free from physical and fire hazards.
2. In buildings equipped with passenger elevators, at least one elevator shall be maintained in operation at all times when the building is occupied. Buildings equipped with only one elevator shall be permitted to have the elevator temporarily out of service for testing or servicing.

3. Elevators, dumbwaiters, escalators and similar lifts shall be inspected at least once yearly or more often as indicated by a certified elevator inspector.

ARTICLE VII
Fire Safety Requirements

§ 56-7010 General.

1. The provisions of this Article shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided in the City of Dunkirk.
2. The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises that do not comply with the requirements of this Article.

§ 56-7020 Means of Egress.

1. A safe, continuous and unobstructed means of egress shall be provided from the interior of a structure to a public way. The following provisions shall be adhered to for all structures in the City of Dunkirk.
 - (a) The capacity of the exits serving a floor shall be sufficient for the occupant load thereof as determined by the New York State Uniform Fire Prevention and Building Code.
 - (b) In nonresidential buildings, every occupied story more than six stories above grade shall be provided with not less than two independent exits. In residential buildings, every story exceeding two stories above grade shall be provided with not less than two independent exits. In stories where more than one exit is required, all occupants shall have access to at least two exits. Every occupied story which is both totally below grade and greater than 2,000 square feet shall be provided with not less than two independent exits.
 - (c) A single exit is acceptable under any one of the following conditions:
 - (1) Where the building is equipped throughout with an automatic sprinkler system and automatic fire detection system with smoke detectors located in all corridors, lobbies and common areas.
 - (2) Where the building is equipped throughout with an automatic fire detection system and the exit is an approved smoke proof enclosure or pressurized stairway.
 - (3) Where an exiting fire escape conforming to the New York State Uniform Fire Prevention and Building Code is provided in addition to the single exit.
 - (4) Where permitted by the New York State Uniform Fire Prevention and Building Code.
 - (d) Exits from dwelling units, rooming units, guest rooms and dormitory units shall not lead through other such units, or through toilet rooms or bathrooms.
 - (1) Safe, continuous and unobstructed exit shall be provided from the interior of the building to the exterior at street or grade level.

- (2) Exits shall be arranged, constructed and proportioned so that occupants may escape safely from the building in case of emergency.
- (3) In one and two family dwellings, in addition to a primary exit from each dwelling unit, there shall be provided a secondary exit placed remotely from the primary exit.
- (4) In multiple dwellings, approved exits shall be provided.
- (e) All means of egress shall be indicated with approved "Exit" signs where required by the New York State Uniform Fire Prevention and Building Code. All "Exit" signs shall be maintained visible and all illuminate "Exit" signs shall be illuminated at all times that the building is occupied.
- (f) Arrangements of chairs or tables and chairs shall provide for ready access by aisle access ways and aisles to each egress door. The minimum clear width of each aisle in occupancies shall be maintained in accordance with the requirements of the New York State Uniform Fire Prevention and Building Code. In all other occupancies, aisles shall have a minimum required clear width of 44 inches where serving an occupant load greater than 50 people, and 36 inches where serving an occupant load of 50 or less people. The clear width of aisles shall not be obstructed by chairs, tables or other objects.
- (g) Every exterior and interior flight of stairs having three or more risers, and every open portion of a stair, landing or balcony which is more than 18 inches above the floor or grade below shall have guards. Handrails shall not be less than 30 inches nor more than 36 inches high, measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. Guards shall not be less than 30 inches high above the floor of the landing or balcony.
- (h) A sign shall be provided at each floor landing in all interior stairways more than three stories above grade, designating the floor level above the floor of discharge. All elevator lobby call stations on all floor levels shall be marked with approved signs in accordance with the requirements for new buildings in the New York State Uniform Fire Prevention and Building Code.
- (i) An emergency sign shall not be required for elevators that are part of an accessible means of egress complying with the New York State Uniform Fire Prevention and Building Code.

- (j) Locks or fasteners shall not be installed on egress doors except in accordance with the following conditions:
 - (1) In mental, penal or other institutions where the security of inmates is necessary, in which case properly trained supervisory personnel shall be continuously on duty and approved provisions are made to remove occupants safely in case of fire or other emergency.
 - (2) In problem security areas, special-purpose door alarms or locking devices shall be approved prior to installation. Manually operated edge or surface-molded flush bolts are prohibited.
 - (3) Where the door hardware conforms to that permitted by the New York State Uniform Fire Prevention and Building Code.

§ 56-7030 Accumulations and Storage.

- 1. Rubbish, garbage or other materials shall not be stored or allowed to accumulate in stairways, passageways, doors, windows, fire escapes or other means of egress.
- 2. Combustible, flammable, explosive or other hazardous materials, such as paints, volatile oils and cleaning fluids, or combustible rubbish, such as wastepaper, boxes and rags, shall not be accumulated or stored unless such storage complies with the applicable requirements of the New York State Uniform Fire Prevention and Building Code.

§ 56-7040 Fire Resistance Ratings.

- 1. The fire resistance rating of floors, walls, ceilings, and other elements and components shall be maintained as required by the New York State Uniform Fire Prevention and Building Code. All required fire doors and smoke barriers shall be maintained in good working order, including all hardware necessary for the proper operation thereof. Fire doors shall not be held open by door stops, wedges and other unapproved hold-open devices.

§ 56-7050 Fire Protection Systems.

- 1. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be properly maintained. This includes:
 - (a) Fire suppression systems shall be in proper operating condition at all times.

- (1) Control valves shall be in the fully open position.
 - (2) Sprinklers shall be clean and free of corrosion, paint and damage. Stock shall be at least 18 inches below sprinkler deflectors.
 - (3) Piping shall be properly supported and shall not support any other loads.
- (b) Standpipe systems shall be in proper operating condition at all times.
- (1) Water supply control valves shall be in the fully open position.
 - (2) Hose connections shall be identified and have ready access thereto.
 - (3) Where provided, the hose shall be properly packed, dry and free from deterioration.
- (c) All portable fire extinguishers shall be visible, provided with ready access thereto, and maintain in an efficient and safe operating condition. Extinguishers shall be of an approved type.
- (d) A minimum of one approved single-station or multiple-station smoke detector shall be installed in each guest room, suite or sleeping area in occupancies installed in each guest room, suite or sleeping area in occupancies in Use Groups R-1 and R-2, and in dwelling units in the immediate vicinity of the bedrooms in occupancies in Use Groups R-2 and R-3. In all residential occupancies, smoke detectors shall be required on every story of the dwelling unit, including basements. In dwelling units with split levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
- (1) All detectors shall be installed in accordance with the New York State Uniform Fire Prevention and Building Code. When actuated, the smoke detectors shall provide an alarm suitable to warn the occupants within the individual room or dwelling unit.
 - (2) The power source for smoke detectors shall be either an AC primary power source or a motorized battery primary power source.

- (3) No person shall at any time make any required safety device or electrical protective device inoperative, except where necessary during tests, inspections or maintenance.
- (e) Fire protective signaling systems shall be in proper operating condition at all times.
 - (1) The "power on" indicator shall be lit. Alarm or trouble indicators shall not be illuminated.
 - (2) All manual fire alarm boxes shall be operational and unobstructed.
 - (3) All automatic fire detectors shall be operational and free from any obstructions that prevent proper operation, including smoke entry.
- (f) A complete written record of all tests and inspections of fire protection systems shall be maintained on the premises by the owner or occupant in charge of said premises.

§ 56-7060 Elevator Recall.

- 1. All elevators having a travel distance of 25 feet or more above or below the primary level of elevator access for emergency fire-fighting or rescue personnel shall conform to the requirements of the New York State Uniform Fire Prevention and Building Code.

§ 56-7070 Mechanical Equipment Control.

1. Approved smoke or heat detectors shall be installed in return air ducts or plenums in each recirculating air system with a capacity of more than 2,000 cfm and serving more than one floor in buildings that exceed six stories in height in accordance with the New York State Uniform Fire Prevention and Building Code. Actuation of the detector shall stop the fan(s) automatically and shall be of the manual-reset type. Automatic fan shutdown is not required where the system is part of an approved smoke control system.

ARTICLE VIII Appeals

§ 56-8010 Board of Appeals.

1. There is hereby created a Property Maintenance Board of Appeals consisting of three (3) members, each appointed for terms of three (3) years, by the Mayor, upon confirmation by the Common Council.
2. All appointments to fill vacancies shall be for the unexpired term.
3. No member of the Board shall hold public office or be a member of any other board or commission of the City.
4. The Board shall choose its own Chairman, and the Housing, Building, and Zoning Officer or the Housing, Building and Zoning Officer's duly authorized representative shall act as Secretary but shall not vote on any issues presented to the Board.
5. It shall be the duty of the Secretary to prepare an agenda and minutes for each meeting which briefly explain the nature of each matter to be considered by the Board and the Housing, Building and Zoning Officer shall send a copy of such agenda to each member of the Board and to the City Attorney. The Board shall meet upon call by the Chairman.
6. The Property Maintenance Board of Appeals shall hear and determine appeals from any person presented with a notice of violation in accordance with the provisions of this Chapter.
7. Any person seeking relief from the Board following a notice of violation must file a notice of appeal with the Housing, Building and Zoning Officer or the Housing, Building and Zoning Officer's duly authorized representative of his or her desire to appeal to the Board prior to the expiration of the time limit for compliance stated in the notice of violation.
8. It shall be the function of the Board to vary or modify the application of any of the provisions of this Chapter when strict enforcement would result in practical difficulties or unnecessary hardship.

ARTICLE IX

Definitions

§ 56-9010 General.

Except where specifically defined, all words used in this Chapter shall carry their customary meanings. The following rules shall apply to the text of this Chapter:

1. words in the present tense include the future;
2. words in the singular include the plural and the plural the singular;

3. the word "shall" is intended to be mandatory;
4. the word "lot" shall include the word "plot" or "parcel";
5. the word "person" shall include an individual, firm or corporation;
6. the words "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied";
7. a building or structure includes any part;
8. the word "and" indicates that all connected items, conditions, provisions or events shall apply;
9. the word "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination;
10. the words "either...or" indicates that the connected items, conditions, provisions or events may apply singly but not in any combination.

Where terms are not defined in this Chapter and are defined in the other building, plumbing or mechanical codes, such terms shall have the meanings ascribed to them as in those codes. For the City of Dunkirk Property Maintenance Code, the following definitions shall apply.

APPROVED - Approved by the Housing, Building and Zoning Officer.

BATHROOM - A room containing plumbing fixtures including a bathtub or shower.

BUILDING - Any structure occupied or intended for supporting or sheltering any occupancy.

BUILDING CODE - The New York State Uniform Fire Prevention and Building Code adopted by the legislative body of the State of New York or other such codes officially designated by the State of New York for the regulation of construction, alteration, addition, repair, removal, demolition, location, occupancy and maintenance of buildings and structures.

CONDEMN - To adjudge unfit for occupancy.

CONSTRUCTION DOCUMENTS - All the written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of the project necessary for obtaining a building permit. The construction drawings shall be drawn to an appropriate scale.

DORMITORY - A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group.

DWELLING UNIT - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

HOTEL/MOTEL - Any building containing six or more guest rooms, intended or designed to be occupied, or which are rented or hired out to be occupied, for sleeping purposes by guests.

ONE FAMILY DWELLING - A building containing one dwelling unit with not more than four lodgers or boarders.

TWO FAMILY DWELLING - A building containing two dwelling units with not more than four lodgers or boarders per family.

ROOMING HOUSE - A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one-family dwelling or a two-family dwelling.

ROOMING UNIT - Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

EXTERIOR PROPERTY - The open space on the premises and on adjoining property under the control of owners or operators of such premises.

EXTERMINATION - The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods that are environmentally sound.

FAMILY - One (1) or more persons living together in one (1) dwelling unit and maintaining a common household, including domestic servants and gratuitous guests, together with boarders, roomers or lodgers not in excess of four (4) unrelated persons occupying a dwelling unit and living together as a single housekeeping unit.

GARBAGE - The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

HABITABLE SPACE - Space in a structure for living, sleeping or eating. Bathroom, toilet compartments, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.

HOUSING, BUILDING and ZONING OFFICER - The City of Dunkirk Housing, Zoning and Housing, Building and Zoning Officer who is charged with the administration and enforcement of this code, or any duly authorized representative.

INFESTATION - The presence, within or contiguous to, a structure or premises of insects, rodents, vermin or other pests.

LET FOR OCCUPANCY - To permit possession or occupancy of a dwelling, dwelling unit, rooming unit, building or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

OCCUPANCY - The purpose for which a building or portion thereof is utilized or occupied.

OCCUPANT - Any person living or sleeping in a building; or having possession of a space within a building.

OPENABLE AREA - That part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

OPERATOR - Any person who has charge, care or control of a structure or premises which is let or offered for occupancy.

OWNER - Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PERSON - An individual, corporation, partnership or any other group acting as a unit.

PLUMBING - The practice, materials and fixtures utilized in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances within the scope of the plumbing code.

PLUMBING FIXTURE - A receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom; or discharges waste water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises; or which requires both a water supply connection and a discharge to the drainage system of the premises.

PREMISES - A lot, plot or parcel of land including any structures thereon.

PUBLIC NUISANCE - Includes the following:

- (1) The physical condition or occupancy of any premises regarded as a public nuisance at common law or;
- (2) Any physical condition or occupancy of any premises or its appurtenances considered an attraction to children, including, but not limited to, abandoned wells, shafts, basements, excavations and unsafe fences or structures or;
- (3) Any premises that has unsanitary sewerage or plumbing facilities or;
- (4) Any premises designated as unsafe for human habitation or;
- (5) Any premises that is manifestly unsafe or unsecured so as to endanger life, limb or property or;
- (6) Any premises from which the plumbing, heating or facilities required by this code have been removed, or from which utilities have been disconnected, destroyed, removed or rendered ineffective, or the required precautions against trespassers have not been provided or;
- (7) Any premises that is unsanitary, or that is littered with rubbish or garbage, or that has an uncontrolled growth of weeds or;
- (8) Any structure that is in a state of dilapidation, deterioration or decay, faulty construction; overcrowded; open, vacant or abandoned; damaged by fire to the extent so as not to provide shelter; in danger of collapse or failure; and dangerous to anyone on or near the premises.

REFUSE - Combustible and noncombustible waste materials that include discarded, abandoned or inoperable appliances, inoperable vehicles, ruined furniture, discarded unusable building material, uninhabitable mobile homes, unsightly boats, trailers, campers that have come into disrepair due to lack of maintenance, discarded household items and similar material that is inoperable, ruined or discarded. **[Added 4-3-2007 as L.L. #3-2007]**

RUBBISH - Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust and other similar materials.

STRUCTURE - Anything constructed or erected which requires permanent location on the ground or attachment to something having such location having a minimum floor area of 25 square feet.

TOILET ROOM - A room containing a water closet or urinal but not a bathtub or shower.

VENTILATION - The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

WORKMANLIKE - Executed in a skilled manner; e.g., generally, plumb, level, square, in line, undamaged, and without marring adjacent work.

YARD - An open space on the same lot with a structure.

YARD, FRONT – An open space extending the full width of the lot between a main building and the front lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the front of the main building. **[Added 4-3-2007 as L.L. #3-2007]**

CHAPTER 57

PUBLIC RECORDS, ACCESS TO

§ 57-1.	Definitions	5701
§ 57-2.	Designation of Records Access Officer and Appeals Officer	5701
§ 57-3.	Procedure for Obtaining Records	5701
§ 57-4.	Exempted Records	5703
§ 57-5.	Fees	5703
§ 57-6.	Invasion of Privacy	5704
§ 57-7.	Grant or Denial of Access to Records	5704

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 3-5-1992. Amendments noted where applicable.]

§ 57-1. Definitions.

AGENCY - The City Council and its committees and all offices, departments, commissions, agencies and boards of City government presently existing, or which may hereafter be created.

BUSINESS DAY - Any day, except Saturday, Sunday, a public holiday or a day on which the offices of the City of Dunkirk are otherwise closed for general business.

RECORD - That information kept, held, filed, produced or reproduced, by, with, or for an agency in any physical form, as listed in Public Officers Law Section 86.

§ 57-2. Designation of Records Access Officer and Appeals Officer.

- A. The City Clerk is hereby designated as the Records Access Officer for all agencies.
- B. The Mayor is hereby designated as the Appeals Officer for the purpose set forth in these regulations.

§ 57-3. Procedure for Obtaining Records.

- A. The City Clerk shall designate the locations where records shall be available for public inspection and copying.
- B. The City Clerk shall designate the times when records shall be available for public inspection and copying.

- C. Any person wishing to inspect and/or obtain a copy of a record in the possession, and under the control, of an agency may make an application to the Records Access Officer.
- D. Such application shall be in writing on a form to be prescribed by the City Clerk.
- E. Blank forms may be obtained from the City Clerk, City Hall, 342 Central Avenue, Dunkirk, New York 14048, or by mail addressed to such office.
- F. Completed forms may be submitted to the Records Access Officer either personally, on any business day between the hours of 9:30 A.M. to noon, and 1:00 P.M. to 4:30 P.M., or by mail, addressed to such office.
- G. Upon receipt of such an application, in the proper form and at the appropriate time, the Records Access Officer shall search for the record requested, or cause a search to be made for the record requested.
- H. The Records Access Officer shall respond to any request reasonably describing the records sought within five (5) business days of receipt of the request.
- I. A request shall reasonably describe the record or records sought.
- J. Whenever possible, a person requesting a record shall supply information regarding date, file designation or other information that may help to describe the record sought.
- K. If the Records Access Officer does not grant, or denies, access to the record sought, within five (5) business days of receipt of a request, the Records Access Officer shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied.
- L. If access to records is neither granted nor denied within ten (10) business days after the date of acknowledgment of receipt of a request, the request may be construed as a denial of access that may be appealed.

§ 57-4. Exempted Records.

The Records Access Officer shall make available for public inspection and copying all records, except that access may be denied to records, or a portion thereof, in accordance with Public Officer Law Section 87.

§ 57-5. Fees.

- A. The fee for photocopies of records of all agencies, unless otherwise provided by law, shall be twenty-five cents (\$0.25) per photocopy, not in the excess of nine inches by fourteen inches.
- B. The Records Access Officer shall provide each recipient of the photocopy with a receipt specifying the number and nature of the records copied, and the fees charged by the Records Access Officer for such copies.
- C. There shall be no fee charged for the following:
 - (1) inspection of records;
 - (2) search for records; and
 - (3) any certification pursuant to this Chapter.
- D. The fee for copies of records not covered by § 57-5A, supra, shall not exceed the actual reproduction cost for copying a record, excluding fixed costs of the agency, such as operator salaries.
- E. If the applicant desires that the records be mailed, then the applicant shall pay, in addition to the fees set forth in § 57-5A and § 57-5D, supra, the cost of mailing.
- F. The fees set forth in § 57-5A and § 57-5D, supra, plus mailing charges, if such mailing charges are applicable, must be paid prior to transmittal of records to the applicant.
- G. The Records Access Officer shall keep a copy of each receipt.
- H. On or before the 10th day of each month, the Records Access Officer shall pay to the City Treasurer all monies received by the Records Access Officer during the previous month for photocopying records.

§ 57-6. Invasion of Privacy.

- A. The Records Access Officer may delete from any records identifying details, the disclosure of which would result in an unwarranted invasion of personal privacy, as defined in Public Officer Law Section 89.

§ 57-7. Grant or Denial of Access to Records.

- A. If the Records Access Officer determines that an application to inspect and/or copy records pertains to information required to be disclosed under Public Officers Law Section 87(2) or (3), and not exempt from disclosure

as an unwarranted invasion of personal privacy, or otherwise, the Records Access Officer shall grant the application.

- B. If the Records Access Officer determines that an application to inspect and/or copy records pertains to other information not exempt from disclosure as an unwarranted invasion of personal privacy, or otherwise, the Records Access Officer shall grant the application, unless the Records Access Officer determines that to do so would adversely affect the public interest.
- C. If the Records Access Officer determines that an application to inspect and/or copy records pertains to information specifically exempted from disclosure by Public Officers Law Sections 87(2), 89(2), 89(7) or Section 57-6, supra, the Records Access Officer shall deny such application, and shall advise the applicant in writing of such denial, and the reasons for the denial.
- D. If denying any application to inspect and/or copy records, the Records Access Officer shall advise the applicant of the applicant's right to appeal such denial to the Appeals Officer.
- E. If the Records Access Officer fails to respond to a request within five (5) business days of receipt of a request as required, such failure shall be deemed a denial of access by the Records Access Officer.
- F. Any person denied access to records may appeal within thirty (30) days of denial.
- G. The time of deciding an appeal by the Appeals Officer shall commence upon receipt of a written appeal identifying:
 - (1) the date and location of a request for records;
 - (2) the records that were denied; and
 - (3) the name and return address of the appellant.
- H. The Records Access Officer shall transmit to the New York State Committee on Open Government copies of all appeals, upon receipt of such appeals.
- I. The Appeals Officer shall inform the appellant, and the Committee on Open Government, of the Appeals Officer's determination, in writing, within seven (7) business days of receipt of the appeal. The determination shall be transmitted to the Committee on Open Government in the manner set forth in Section 57-7H, supra.

- J. A final denial of access to a requested record, as provided for in Section 57-71, supra, shall be subject to CPLR Article 78 review.

CHAPTER 58

PUBLIC RECORDS MANAGEMENT PROGRAM

§ 58-1.	Definitions	5801
§ 58-2.	Program Statement.....	5801
§ 58-3.	Program Objections	5802
§ 58-4.	Program Responsibility.....	5802
§ 58-5.	Program Elements	5802
§ 58-6.	Records Management Officer	5803
§ 58-7.	Records Advisory Board	5803

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 2-18-1993. Amendments noted where applicable.]

§ 58-1. Definitions.

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

CITY - The City of Dunkirk.

RECORDS - As defined in Section 58.17(4) of the Arts and Cultural Affairs Law.

RETENTION PERIOD - As defined in Section 58.17(5) of the Arts and Cultural Affairs Law.

RECORDS RETENTION and DISPOSITION SCHEDULE - As defined in Section 58.17(6) of the Arts and Cultural Affairs Law.

RECORDS MANAGEMENT OFFICER - Dunkirk City Clerk.

RECORDS ADVISORY BOARD - Board which advised the records management officer on the legal, fiscal, administrative or historical value of records.

§ 58-2. Program Statement.

Records management is a continuing administration function of City government. It is the responsibility of all City employees to contribute to the accomplishment of the program objectives listed in Section 58-3, infra.

§ 58-3. Program Objectives.

The objectives of the records management program are to:

- A. facilitate the creation of usable records containing accurate and complete information;
- B. save tax dollars through efficient administration of information resources;
- C. prevent the creation of unnecessary records;
- D. make recorded information available and readily accessible when needed, thereby minimizing time spent searching for files and documents;
- E. ensure the systematic legal disposition of obsolete records;
- F. encourage the lasting survival of archival records – those identified as having sufficient legal, administrative, fiscal or historical value to warrant their permanent retention.

§ 58-4. Program Responsibility.

The City Clerk is the local official designated as the records management officer, and as such, is responsible for implementation of the records management program.

§ 58-5. Program Elements.

The following constitute the elements of the City's records management program:

- A. Surveying existing records to determine which ones may be transferred to inactive storage.
 - (i) Inactive storage is for those records no longer required for the conduct of current business, but whose retention periods have not expired.
 - (ii) A survey will determine which records are worthy of permanent retention as well as those obsolete records which may be disposed of.
 - (iii) Guidelines and procedures governing the disposition of records are listed in State Archives' Records Retention and Disposition Schedules.
 - (iv) The records program will adhere strictly to the Archives' Schedules developed in accordance with Section 58.25 of the Arts and Cultural Affairs Law.

- B. Planning for the use of modern technology, including computers and microfilm, taking into account the size and financial situation of the City.
- C. Organizing files and records so that pertinent information can be readily retrieved by officials or the public. Information should be indexed, described and accessible.
- D. Developing procedures regarding records management and archival practices. An internal procedures manual for use by all office personnel has been developed to provide guidelines for the handling of records, including how they are filed, where they are located, whether or not indices exist, and when inactive records may be removed for them office.

§ 58-6. Records Management Officer.

- A. The Records Management Officer is responsible for working with other local officials at all levels in the development and maintenance of the records management program.
- B. The Records Management Officer is responsible for the implementation of Article 58-A of the NYS Arts and Cultural Affairs Law for the City.

§ 58-7. Records Advisory Board.

- A. The Records Advisory Board shall consist of the City Historian, City Attorney, Fiscal Affairs Officer, Mayor and the Councilperson-at-large.
- B. The Records Advisory Board shall have the following responsibilities:
 - (1) provide advice, guidance and support to the records program;
 - (2) work with local government officials and their professional associations;
 - (3) promote public awareness;
 - (4) advise the Records Management Officer;
 - (5) provide advice on archival records;
 - (6) review requests for the disposition of records;
 - (7) Work with the NYS Archives and Records Administration.

CHAPTER 59

RAILROADS

§ 59-1. Speed Limit at Grade Crossings5901
§ 59-2. Penalties for Offenses5901
§ 59-3. Effective Date5901

[HISTORY: Adopted by the Common Council of the City of Dunkirk 12-1-1970 as Chapter XVII of the Ordinances of the City of Dunkirk. Amendments noted where applicable.]

GENERAL REFERENCES

Vehicles and traffic - See Ch.76.

§ 59-1. Speed Limit at Grade Crossings.

It shall not be lawful for any railroad to propel or run any engine or train across any public street at grade in the City of Dunkirk, New York, at a rate of speed in excess of forty (40) miles per hour.

§ 59-2. Penalties for Offenses.

Any person or corporation convicted of a violation of this chapter shall be subject to a fine not exceeding One Hundred Dollars (\$100.00).

§ 59-3. Effective Date.

This chapter shall take effect on the 10th day of December, 1970.

CHAPTER 60

REAL ESTATE ACQUIRED BY TAX FORECLOSURE

§ 60-1.	Review by Assessor	6002
§ 60-2.	Public Auction.....	6002
	[Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-3.	Advertisement of Auction	6002
	[Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-4.	Bid Deposit.....	6002
	[Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-5.	Auctioneer	6003
	[Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-6.	Sale of Property	6003
	[Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-7.	Sale to Former Owner	6003
	[Amended 12-15-1992 by L.L. #16-1992; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-8.	Time Limitation	6003
	[Amended 12-15-1992 by L.L. #16-1992; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-9.	Processing Fee	6003
	[Amended 12-15-1992 by L.L. #16-1992; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-10.	Sale to City Employee	6003
	[Amended 12-15-1992 by L.L. #16-1992]	
§ 60-11.	Failure to Complete Purchase	6004
	[Added 6-17-1993 as L.L. #11-1993; Amended 6-19-1996 as L.L. #8 (Intro No. 9) 1996]	
§ 60-12.	Backup Bidder	6004
	[Added 6-17-1993 by L.L. #11-1993; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]	

[HISTORY: Adopted by the Common Council of the City of Dunkirk 5-21-1992 as L.L. #5-1992. **Editor's Note: This local also repealed former Chapter 60, Real Estate Acquired by Tax Foreclosure, Sale of, adopted 9-16-1967 as Chapter V of the Ordinance of the City of Dunkirk; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996. Amendments noted where applicable.]**

GENERAL REFERENCES

Taxation -	See Ch. 68.
Tax exemption for Senior Citizens -	See Ch. 69.
Tax on Utilities-	See Ch. 70.

§ 60-1. Review by Assessor.

The City Assessor shall annually prepare a written property evaluation description sheet for each parcel pursuant to its in rem foreclosure proceedings under Article 11, Title 3 of the Real Property Tax Law.

§ 60-2. Public Auction. [Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

The properties acquired by the City through its in rem foreclosure proceeding may be sold at public auction, or by any other means that complies with the law, including by the passage of a local law by the Common Council providing for such sale. Such property may also be retained by the City.

§ 60-3. Advertisement of Auction. [Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, the public auction will be advertised in the official newspaper of the City and such other newspapers as the Common Council deems advantageous, at least once in two (2) successive weeks. The City Treasurer shall advertise such properties in a timely manner, so that the date of the auction shall be not less than three (3) days after the date of the second publication in the official newspaper.

§ 60-4. Bid Deposit. [Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, the City requires a deposit of ten percent (10%) of the bid price, in the form of cash, money order or certified check, to be applied to the purchase price. If, at public auction, the highest bidder tenders a certified check or money order in excess of ten percent (10%) of the high bid, and then fails to complete the purchase, the City shall retain ten percent (10%) of the bid price. The excess shall be returned to the highest bidder within a reasonable time after the public auction.

§ 60-5. Auctioneer. [Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, the public auctions shall be conducted by such individual or individuals as the Common Council deems appropriate.

§ 60-6. Sale of Property. [Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, all property shall be sold to the

highest bidder upon adoption of a resolution by the Common Council. However, the Common Council reserves the right to reject any and all bids.

§ 60-7. Sale to Former Owner. [Amended 12-15-1992 by L.L. #16-1992; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, no property shall be sold to the former owner at the public auction for less than the amount of any taxes, penalties, interest and other charges due on the property, including those which may have been extinguished by the judgment of foreclosure.

§ 60-8. Time Limitations. [Amended 12-15-1992 by L.L. #16-1992; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, no property shall be sold to the former owner without competitive bidding if tender of payment of taxes, penalties, interest and other charges due on the property, including those City charges, liens or mortgages which may have been extinguished by the judgment of foreclosure, is made less than 15 business days prior to the date of the public auction.

§ 60-9. Processing Fee. [Amended 12-15-1992 by L.L. #16-1992; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, sale of tax title property to a former owner in accordance with the preceding paragraph shall be subject to a per parcel processing fee of \$150.00.

§ 60-10. Sale to City Employee. [Amended 12-15-1992 by L.L. #16-1992]

No sale of tax title property shall be made to any officer, employee or agent of the government of the City of Dunkirk.

§ 60-11. Failure to Complete Purchase. [Added 6-17-1993 by L.L. #11-1993; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, failure to tender the balance due to the City within thirty (30) days from the date of bid acceptance by the Common Council will result in the forfeiture of the bid deposit by the highest bidder.

§ 60-12. Backup Bidder. [Added 6-17-1993 by L.L. #11-1993; Amended 6-18-1996 as L.L. #8 (Intro No. 9) 1996]

If the property is to be sold at public auction, the following apply:

- A. If the highest bidder fails to tender the balance due to the City within thirty (30) days from the date of bid acceptance by the Common Council, the second highest bidder shall be notified that the Common Council will

consider sale of the property to the second highest bidder at the high bid price.

- B. The second highest bidder shall notify the City within thirty (30) days after notification by the City as to whether the second highest bidder will tender the high bid price to the City.
- C. Failure of the second highest bidder to tender the entire bid price within thirty (30) days after notification by the City shall result in the property being placed on the next auction list.

CHAPTER 61

(RESERVED)

CHAPTER 62

(RESERVED)

CHAPTER 63

Sewer Use

**ARTICLE I
Purpose**

§ 63-1. Purpose 6304

**ARTICLE II
Definitions**

§ 63-2. Terms Defined..... 6305

**ARTICLE III
Use of Public Sewers Required**

§ 63-3. Unsanitary Deposits on Public or Private Property 6313
§ 63-4. Prohibited Discharges Into Natural Outlets 6313
§ 63-5. Septic Tanks and Cesspools..... 6313
§ 63-6. Connections With Available Sewers Required..... 6313

**ARTICLE IV
Private Sewage Disposal**

§ 63-7. Connection to Private System Where Public Sewer
Is Not Available 6314
§ 63-8. Written Permit Required For Construction of Private System 6314
§ 63-9. Permit Not Effective Until Installation Completed to
Satisfaction of Chautauqua County Health Department 6314
§ 63-10. System Shall Comply With State Health
Department Requirements..... 6314
§ 63-11. As Public Sewers Become Available, Connections to Same
Shall Be Made 6315
§ 63-12. Owner Shall Operate and Maintain System in Sanitary
Manner 6315
§ 63-13. This Article Shall Not Interfere With Any Requirements
Imposed By Chautauqua County Health Officer 6315

**ARTICLE V
Building Sewers and Connections**

§ 63-14.	Plumbing Permit Required	6316
§ 63-15.	Appropriate Provisions of Dunkirk Plumbing Code Incorporated	6316

**ARTICLE VI
Prohibited Sewer Uses**

§ 63-16.	Discharge	6317
§ 63-17.	Permits Required	6317
§ 63-18.	Prohibited Discharge	6317
	[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]	
§ 63-19.	Interceptors	6321

**ARTICLE VII
Industrial Use of Public Sewers**

§ 63-20.	Permits Required For Discharge	6322
§ 63-21.	Sewer Use Permits	6322
§ 63-22.	Permit Duration	6322
§ 63-23.	Permit Transfer	6323
§ 63-24.	Revocation of Permit	6323
§ 63-25.	Applications For Sewer Use Permits	6323
§ 63-26.	Limitations on Permit Issuance	6327
§ 63-27.	Federal Categorical Pretreatment Standards	6327
§ 63-28.	Local Pretreatment Option	6330
§ 63-29.	Commercial Collectors	6331
	[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]	
§ 63-30.	Facilities For Sampling and Flow Measurement Requirement	6331

**ARTICLE VIII
Protection from Damage**

§ 63-31.	Arrest	6334
----------	--------------	------

**ARTICLE IX
Powers and Authority of Inspectors**

§ 63-32.	Entering Company Premises For Inspection	6335
§ 63-33.	Safety Rules	6335

**ARTICLE X
Administration and Enforcement**

§ 63-34.	Affirmative Defenses	6336
----------	----------------------------	------

§ 63-35.	Division of Enforcement Responsibilities	6337
§ 63-36.	Compliance Monitoring Procedures and Documentation.....	6338
§ 63-37A.	Enforcement Responses	6339
	Notice of Violation (NOV).	
	Administrative Fines.	
	Economic Penalties.	
	Administrative Orders.	
	Cease & Desist Orders.	
	Consent Orders.	
	Show Cause Hearing.	
	Compliance Orders.	
	Civil Litigation.	
	Consent Decrees.	
	Injunctive Relief.	
	Civil Penalties & Cost Recovery.	
	Termination of Sewer Service.	
§ 63-37B.	Supplemental Enforcement Responses	6340
	Public Notices	
	Water Service Termination.	
	Performance Bonds/Liability Insurance.	
	Increased Monitoring and Reporting.	
	Short Term Permits.	

ARTICLE XI
Validity

§ 63-38.	Conflict With the Ordinances	6346
§ 63-39.	Severability.....	6346

ARTICLE XII
Ordinance In Force

§ 63-40.	Effective Date	6346
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[HISTORY: Original Ordinance adopted by the Common Council of the City of Dunkirk on 7-2-1992. Local Law #4 of the Year 1994 adopted on 6-21-1994. Amended on 8-6-1996 as L.L. #13 (Intro No. 15) 1996. Amendments noted where applicable.]

ARTICLE I
Purpose

§ 63-1. Purpose.

The purpose of this Chapter is to provide for the use of the City-owned sewage facilities by residences, businesses, institutions and industries located in the City of

Dunkirk and within those special districts with which the City has contracted to accept their sewage without damages to the physical facilities of the sewage works, without impairment of the normal function of collecting, treating and discharging sewage from the area served, and to ensure that all discharges by the City-owned sewage treatment plant are in compliance with its permitted discharge permit under the applicable laws of the United States and the State of New York, and the rules, regulations and orders of their regulatory agencies.

This Ordinance sets forth uniform requirements for direct and indirect contributions into the wastewater collection and treatment system for the City of Dunkirk and enables the City to comply with all applicable State and Federal laws required by the Clean Water Act of 1977 and the General Pretreatment Regulations (40 CFR, Part 403). The objectives of this Ordinance are:

- (a) To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;
- (c) To improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and
- (d) To provide for equitable distribution of the cost of the municipal wastewater system.

This Ordinance provides for the regulation of direct and indirect contributors to the municipal wastewater system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customers' capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

ARTICLE II Definitions

§ 63-2. Terms Defined.

Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

Sec. 1. **“Act or the Act”** shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et. seq.

Sec. 2. “Approval Authority” shall mean the Director in an NPDES state with an approved State Pretreatment Program and the Regional Administrator of the EPA in a non-NPDES State or NPDES State without an approved State Pretreatment Program.

Sec. 3. “Authorized Representative of Industrial User” shall mean (1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation; (2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively; (3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

Sec. 4. “BOD” (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter.

Sec. 5. “Building Drain” shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

Sec. 6. “Building Sewer” shall mean the extension from the building drain to the public sewer or other place of disposal.

Sec. 7. “Categorical Standards” shall mean National Categorical Pretreatment Standards or Pretreatment Standard.

Sec. 8. “Chlorine Demand” (expressed in milligrams per liter) shall mean the difference between the amount of chlorine added to wastewater and the amount of residual chlorine remaining at the end of a specific contact period.

Sec. 9. “City” shall mean the City of Dunkirk, New York.

Sec. 10. “COD” (denoting Chemical Oxygen Demand) shall mean the amount of oxygen required for the complete chemical oxidation of organics and oxidizable inorganics in a liquid.

Sec. 11. “Combined Sewer” shall mean a sewer receiving both surface runoff and sewage.

Sec. 12. “Commercial Collector” shall mean any person, partnership or corporation regularly engaged in the business of collecting for profit, sewage or other discharge for deposit at the sewage treatment facility.

Sec. 13. “Control Authority” shall refer to the "Approval Authority", defined

herein; or the Director of Public Works if the City has an approved Pretreatment Program under the provisions of 40 CFR 403.11.

Sec. 14. “**Cooling Water**” shall mean the water discharged from any system of condensation, air conditioning, cooling, refrigeration, or other sources.

Sec. 15. “**DEC or NYSDEC**” shall mean the New York State Department of Environmental Conservation.

Sec. 16. “**Director**” shall mean the Chief Administrative Officer of a State or Interstate Water Pollution Control Agency with NPDES permit program approved pursuant to Section 402(b) of the Act and an approved State Pretreatment Program.

Sec. 17. “**Direct Discharge**” shall mean the discharge of treated or untreated wastewater directly to the waters of the State of New York.

Sec. 18. “**Director Of Public Works**” shall mean the Director of Public Works of the City of Dunkirk, New York, or his authorized representative.

Sec. 19. “**Dwelling Unit**” shall mean any house, apartment or other building designed or used for human habitation by one family and providing complete housekeeping facilities therefor. For the purposes of this chapter, "family" shall mean one person or two (2) or more persons related by blood or marriage, or not more than four (4) unrelated persons occupying a dwelling unit and living together as a single housekeeping unit; and "complete housekeeping facilities" shall include, but not be limited to or by, separate kitchen and bathroom facilities.

Sec. 20. “**Effluent**” shall mean wastewater after some degree of treatment flowing out of any treatment device or facilities.

Sec. 21. “**Environmental Protection Agency or EPA**” shall mean the U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Administrator or other duly authorized official of said agency.

Sec. 22. “**Grab Sample**” shall mean a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

Sec. 23. “**Garbage**” shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and from the handling, storage, and sale of produce.

Sec. 24. “**Holding Tank Waste**” shall mean any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum -

pump tank trucks.

Sec. 25. “Indirect Discharge” shall mean the introduction of pollutants from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

Sec. 26. “Industrial User” shall mean a source of Indirect Discharge which does not constitute a "discharge of pollutants" under the regulations issued pursuant to Section 402 of the Act. (33 U.S.C. 1342).

Sec. 27. “Industrial Wastes” shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

Sec. 28. “Industry” shall mean any establishment which uses water in a product or generates a wastewater during the manufacturing of a product or the rendering of a service where such service results in the creation of a wastewater which differs in character from normal domestic sewage.

Sec. 29. “Interference” shall mean a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations); Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Sec. 30. “National Categorical Pretreatment Standard” shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of Industrial Users.

Sec. 31. “National Prohibitive Discharge Standard Or Prohibitive Discharge Standard” shall mean any regulation developed under the authority of Section 307(b) of the Act and 40 CFR Section 403.5.

Sec. 32. “National Pollutant Discharge Elimination System or NPDES” shall mean a permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

Sec. 33. “New Source” shall mean any source, the construction of which is

commenced after the publication of proposed regulations prescribing a Section 307(c) (33 U.S.C. 1317) Categorical Pretreatment Standard which will be applicable to such source, if such standard is thereafter promulgated within 120 days of proposal in the Federal Register. Where the standard is promulgated later than 120 days after proposal, a new source means any source, the construction of which is commenced after the date of promulgation of the standard. The determination of whether or not a source is a "new source" shall be made in accordance with the criteria set forth in 40 CFR 403.3(k), in addition to the criteria set forth herein.

Sec. 34. **“Pass Through”** shall mean a discharge which exits the POTW into the waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirements of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Sec. 35. **“Person”** shall mean any individual, firm, company, association, society, corporation, governmental entity, or group.

Sec. 36. **“Ph”** shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Sec. 37. **“Pollutant”** shall mean any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

Sec. 38. **“Pollution”** shall mean the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

Sec. 39. **“Premises”** shall mean any parcel of real property including land, improvements or appurtenances, such as buildings, grounds, etc.

Sec. 40. **“Pretreatment Requirements”** shall mean any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard imposed on an Industrial User.

Sec. 41. **“Pretreatment or Treatment”** shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except as prohibited by 40 CFR 403.6(d).

Sec. 42. **“Private Living Quarters”** shall mean any building or part thereof

which may legally be used for human habitation which does not provide separate housekeeping facilities therefor.

Sec. 43. “Properly Shredded Garbage” shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any dimension.

Sec. 44. “Public Sewer” shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

Sec. 45. “Publicly-Owned Treatment Works (POTW)” shall mean a treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292) which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this Ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City's POTW.

Sec. 46. “POTW Treatment Plant” shall mean that portion of the POTW designed to provide treatment to wastewater.

Sec. 47. “Sanitary Sewer” shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

Sec. 48. “Sewage” shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.

Sec. 49. “Sewer” shall mean a pipe or conduit for carrying sewage.

Sec. 50. “SHALL” is mandatory; “may” is permissive.

Sec. 51. “Significant Industrial User” shall mean an Industrial User of the City's wastewater disposal system who (i) has a flow or load (BOD, TSS) greater than or equal to 25,000 gallons per day or greater than or equal to 5% of that carried by the treatment plant receiving the waste; or (ii) manufacturing industries using, on an annual basis, more than 10,000 pounds or 1,000 gallons of raw material containing priority pollutants (as defined in 40 CFR 401.15) or substances of concern, and discharging a measurable amount of these pollutants to the sewer system from the process using these pollutants; or (iii) is subject to promulgated categorical pretreatment standards, or (iv) is found by the Director of Public Works, NYSDEC, or USEPA to have a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

Sec. 52. “Slug” shall mean any discharge of water, sewage, or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.

Sec. 53. “State” shall mean the State of New York.

Sec. 54. “Standard Industrial Classification (SIC)” shall mean a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, or its most recent edition.

Sec. 55. “Storm Drain (sometimes termed "Storm Sewer")” shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Sec. 56. “Storm Water” shall mean any flow occurring during or following any form of natural precipitation and resulting therefrom.

Sec. 57. “Substances Of Concern” shall mean any substance which, when discharged to the sewer system in sufficient quantities, offers the potential to: interfere with any sewage treatment process, constitute a hazard in the receiving waters of the effluent from the sewage treatment plant, pose a hazard to men working in the sewer system or constitute a hazard to fish or animal life.

Sec. 58. “Suspended Solids” shall mean the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Sec. 59. “Toxic Pollutant” shall mean any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of the Clean Water Act 307(a) or other Acts or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing Section 405(d) of the Act.

Sec. 60. “Uncontaminated Wastewater” shall be defined as noncontact cooling water, storm water discharge from roof drains, storm water discharge from drainage swales, and all other waters discharged to the sanitary sewer which do not contain, either inherently or by process addition, any pollutants or substances of concern.

Sec. 61. “USEPA or EPA” shall mean the United States Environmental Protection Agency.

Sec. 62. “User” shall mean any person who contributes, causes or permits the contribution of wastewater into the City's POTW.

Sec. 63. “Wastewater” shall mean the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any ground water, surface water, and storm water that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

Sec. 64. “Waters of the State” shall mean all streams, lakes, ponds, marshes, watercourses, waterways, wells, wetlands, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

Sec. 65. “Wastewater Contribution Permit” shall mean as set forth in Article VI of this Ordinance.

The following abbreviations shall have the designated meanings:

BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
EPA	Environmental Protection Agency
l	Liter
mg	Milligrams
mg/l	Milligrams per Liter
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly-Owned Treatment Works
SIC	Standard Industrial Classification
SWDA	Solid Waste Disposal Act, 42 U.W.C. 6901, et. seq.
USC	United States Code
TSS	Total Suspended Solids

**ARTICLE III
Use of Public Sewers Required**

§ 63-3. Unsanitary Deposits on Public or Private Property.

It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City of Dunkirk, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

§ 63-4. Prohibited Discharges Into Natural Outlets.

It shall be unlawful to discharge to any natural outlet within the City of Dunkirk, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance.

§ 63-5. Septic Tanks and Cesspools.

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

§ 63-6. Connections With Available Sewers Required.

The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the City, is hereby required, at his expense, to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provision of this Ordinance, within ninety (90) days after date of official notice to do so, provided that said public sewer is within one hundred (100) feet of the property line.

**ARTICLE IV
Private Sewage Disposal**

§ 63-7. Connection to Private System Where Public Sewer is Not Available.

Where a public sanitary or combined sewer is not available under the provisions of Article III, Section 63-6, the building sewer shall be connected to an approved private sewage disposal system complying with the provisions of this article and the Chautauqua County Sanitary Code.

§ 63-8. Written Permit Required For Construction of Private System.

Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Health Commissioner of the Chautauqua County Health Department. The application for such permit shall be made on a form furnished by the Chautauqua County Health Department, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Health Commissioner of the Chautauqua County Health Department.

§ 63-9. Permit Not Effective Until Installation Completed to Satisfaction of Chautauqua County Health Department.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Chautauqua County Health Commissioner. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Chautauqua County Health Commissioner when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice by the Chautauqua County Health Commissioner.

§ 63-10. System Shall Comply With State Health Department Requirements

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Department of Health of the State of New York.

§ 63-11. As Public Sewer Becomes Available, Connection to Same Shall Be Made.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Article III, Section 63-6, hereof, a direct connection shall be made to the public sewer in compliance with this Ordinance, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be cleaned of sludge and filled with bank run gravel or dirt or other material approved by the Chautauqua County Health Commissioner.

§ 63-12. Owner Shall Operate and Maintain System in Sanitary Manner.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

§ 63-13. This Article Shall Not Interfere With Any Requirements Imposed By Chautauqua County Health Officer.

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Officer of Chautauqua County.

**ARTICLE V
Building Sewers and Connections**

§ 63-14. Plumbing Permit Required.

- (a) No building permit for any building construction or improvement involving any plumbing or connection to the sewage works shall be issued unless a plumbing permit has been issued by the Plumbing Inspector pursuant to Chapter 55 of the City Code which provides for connection to the sewage works or to a private disposal system approved by the Chautauqua County Commissioner of Health pursuant to Article IV hereof.
- (b) No person shall lay, alter or repair any private sewer or make any connection whatever with any sewage works or do any kind of work

connected with the laying of private sewers or make any repairs, additions to or alterations of any drain or sewer, designed to be connected with the sewage works without first having obtained a written permit from the Plumbing Inspector pursuant to the Plumbing Code. If said work involves a Private Sewage Disposal System, said work shall also comply with Article III hereof.

§ 63-15. Appropriate Provisions of Dunkirk Plumbing Code Incorporated.

This article hereby incorporates and makes applicable to this Ordinance all standards and regulations of the Dunkirk Plumbing Code as contained in Chapter 55 of the Code of the City of Dunkirk, New York.

**ARTICLE VI
Prohibited Sewer Uses**

§ 63-16. Discharge.

No person shall discharge or cause to be discharged any stormwater, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer, unless permitted pursuant to Section 63-17.

§ 63-17. Permits Required.

Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, approved by the Director of Public Works. Industrial cooling water or unpolluted process waters may be discharged to a storm sewer or combined sewer only upon approval of the Director of Public Works. Permits required by higher regulatory authorities or agencies shall be acquired by the User. Copies of such permits issued by higher authorities or agencies

shall be submitted to the Director of Public Works.

§ 63-18. Prohibited Discharge.

No User shall contribute or cause to be contributed, directly or indirectly any pollutant or wastewater which will pass through or interfere with the operation or performance of the POTW. These general prohibitions apply to all such Users of a POTW whether or not the User is subject to National Categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements. A User may not contribute the following substances to any POTW:

- (a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides, and any other substances which the City, the State, or EPA has notified the User is a fire hazard or a hazard to the system.
- (b) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half inch (1/2") in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (c) Any wastewater having a Ph less than 5.0, or greater than 10.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW. **[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]**
- (d) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitations set forth in a Categorical Pretreatment Standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant

to Section 307(a) of the Act.

- (e) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life result in toxic gasses, fumes, or vapors in quantities capable of causing acute health and safety problems for POTW personnel, or are otherwise sufficient to prevent entry into the sewers for maintenance and repair.
- (f) Oils and grease - Any commercial, institutional, or industrial wastes containing floatable fats, waxes, grease, or oils, or which become floatable when the wastes cool to the temperature prevailing, in the wastewater at the POTW treatment plant, during the winter season; also any commercial, institutional, or industrial wastes containing more than 100 mg/l of emulsified oil or grease; also any substances which will cause the sewage to become substantially more viscous, at any seasonal sewage temperature in the POTW; also petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- (g) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall the substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
- (h) Any substance which will cause the POTW to violate its NPDES and/or State Disposal System Permit or the receiving water quality standards.
- (i) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (j) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds 40°C (104°F).
- (k) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause Interference to the POTW. In no case shall a slug load have a flow rate or contain concentration or quantities of pollutants that exceed for any time period

longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.

- (l) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Director of Public Works in compliance with applicable State or Federal regulations.
- (m) Any pollutant having a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 CFR 261.21.
- (n) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (o) Any pollutants discharged by truck or hauled wastes to sanitary sewers except at points designated by the Director of Public Works.
- (p) Any substance, whether or not subject to other requirements contained herein, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261, except upon written notice [containing the information required by 40 CFR 403.12(p)] to the City, EPA and NYSDEC.

When the Director of Public Works determines that a User(s) is contributing to the POTW, any of the above enumerated substances in such amounts as to interfere with the operation of the POTW, the Director of Public Works shall:

- (1) Advise the User(s) of the impact of the contribution on the POTW; and
- (2) Develop effluent limitation(s) for such User to correct the Interference with the POTW.

No User shall discharge wastewater to the sanitary sewer system when any of the pollutant concentrations exceed the limits specified below unless permitted by the Director of Public Works upon finding that such concentrations do not interfere with the overall operation of the POTW and its ability to meet the State and Federal discharge requirements. These concentrations shall be applied to wastewater effluents at a point just prior to discharge into the City sewer system. With the express written consent of the Director of Public Works, Users with multiple discharge outfalls may combine waste streams by calculation to report on wastewater characteristics.

<u>Substance</u>	<u>Effluent Concentration Limit (mg/l)</u>
Arsenic	0.2
Barium	4.0
Cadmium	0.2
Chromium-hex	2.0
Chromium-total	8.0
Copper	3.0
Lead	0.5
Mercury	0.2
Nickel	8.0
Selenium	0.1
Silver	0.2
Zinc	5.0
Cyanide-Total	2.0
Phenol	4.0

§ 63-19. Interceptors.

- (a) Grease, oil and sand interceptors shall be provided when, in the opinion of the Director of Public Works, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Director of Public Works and shall be located as to be readily and easily accessible for cleaning and inspection.
- (b) Grease interceptors of a type and capacity approved by the Director of Public Works shall be required for all businesses engaging in food processing.

ARTICLE VII
Industrial Use of Public Sewers

§ 63-20. Permits Required For Discharge.

Any discharge of industrial wastes to the public sewer system shall be unlawful, unless specifically authorized by a Sewer Use Permit issued by the Director of Public Works.

§ 63-21. Sewer Use Permits.

It shall be unlawful to discharge without a City permit to any natural outlet within the City of Dunkirk, or in any area under the jurisdiction of said City, and/or to the POTW any wastewater except as authorized by the Director of Public Works in accordance with the provisions of this Ordinance.

- (a) Sanitary Sewer Use Permits shall be issued by the Director of Public Works authorizing the discharge of industrial wastewaters to the sanitary sewer system. The permits shall be specific in terms of the quantity of flow to be discharged and the contaminants contained therein.
- (b) Storm Sewer Use Permits shall be issued by the Director of Public Works to industries utilizing public storm sewers as a means of conveying treated uncontaminated cooling water not in excess of 150°F (65°C) receiving waters. It should be noted that industries utilizing public storm sewers as a means of discharge of cooling water, or any other pollutant, must also apply for a SPDES permit from the State.
- (c) No Sewer Use Permit is required for industries discharging only normal sanitary sewage from facilities such as toilets, urinals, sinks, showers, etc., and for that portion of each industry's flow which is comprised of strictly domestic sewage.

§ 63-22. Permit Duration.

Permits shall be issued for a specified time period, not to exceed three (3) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The User shall apply for permit reissuance a minimum of 180 days prior to the expiration of the User's existing permit. The terms and conditions of the permit may be subject to modification by the City during the term of the permit as limitations or requirements as identified in Section 2 are modified or other just cause exists. The User shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

§ 63-23. Permit Transfer.

Sewer Use Permits are issued to a specific User for a specific operation. A Wastewater Discharge Permit shall not be reassigned or transferred or sold to a new Owner, new User, different premises, or a new or changed operation without the approval of the City. Any succeeding Owner or User shall also comply with the terms and conditions of the existing permit.

§ 63-24. Revocation of Permit.

Any User who violates any condition of his Permit or of this Ordinance, or of any applicable state and federal regulations, is subject to having his Permit revoked.

§ 63-25. Applications For Sewer Use Permits.

General Permits - All Significant Industrial Users proposing to connect to or contribute to the POTW shall obtain a Sewer Use Permit before connecting to or contributing to the POTW. All existing Significant Industrial Users connected to or contributing to the POTW shall obtain a Sewer Use Permit within 180 days after the effective date of this Ordinance.

Industries presently discharging uncontaminated cooling waters to the storm sewer system shall immediately apply to the Director of Public Works under § 63-20 and § 63-21.

Permit Application - Users required to obtain a Sewer Use Permit shall complete and file with the City, an application in the form prescribed by the City. Existing Users shall apply for a Sewer Use Permit within ninety (90) days after the effective date of this Ordinance, and proposed new Users shall apply at least ninety (90) days prior to connecting to or contributing to the POTW. In support of the application, the User may be required to submit, in units and terms appropriate for evaluation, the following information:

- (a) Name, address, and location, (if different from address);
- (b) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972 as amended, or its most recent edition;
- (c) Wastewater constituents and characteristics including, but not limited to, those mentioned in Section 63-26 of this Ordinance as determined by a reliable analytical laboratory; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR 136, as amended;
- (d) Time and duration of contribution;
- (e) Average daily and maximum daily wastewater flow rates, including daily,

monthly and seasonal variations, if any;

- (f) Site plans, floor plans, mechanical and plumbing plans and details to show all sewer connections, and appurtenance by the size, location and elevation;
- (g) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;
- (h) Where known, the nature and concentration of any pollutants in the discharge which are limited by any City, State or Federal Pretreatment Standards or Requirements, and a statement regarding whether or not the pretreatment standards or requirements are being met on a consistent basis and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment is required for the User to meet applicable Pretreatment Standards or Requirements;
- (i) If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards or Requirements; the shortest schedule by which the User will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard or Requirement:

The following conditions shall apply to this Schedule:

- (1) The Schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet applicable Pretreatment Standards or Requirements (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- (2) No increment referred to in Paragraph (1) shall exceed nine (9) months.
- (3) Not later than 14 days following each date in the Schedule and the final date for compliance, the User shall submit a Progress Report to the Director of Public Works including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Director of Public Works.

- (j) Each product produced by type, amount, process or process and rate of production;
- (k) Type and amount of raw materials processed (average and maximum) per day;
- (l) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (m) Any other information as may be deemed by the City to be necessary to evaluate the Permit application.

The City will evaluate the data furnished by the User and may require additional information. After evaluation and acceptance of the data furnished, the City may issue a Sewer Use Permit subject to terms and conditions provided herein.

Permit Modifications - Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, the Sewer Use Permit of Users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a User, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Sewer Use Permit as required by Article VI of this Ordinance, the User shall apply for a Sewer Use Permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard. In addition, the User with an existing Sewer Use Permit shall submit to the Director of Public Works within 180 days after the promulgation of an applicable Federal Categorical Pretreatment Standard the information required by Paragraphs (h) and (i) of the preceding section.

Permit Conditions - Sewer Use Permits shall be expressly subject to all provisions of this Ordinance and all other applicable regulations, User charges and fees established by the City. Permits may contain the following:

- (a) The unit charge or schedule of User charges and fees for the wastewater to be discharged to a community sewer;
- (b) Limits on the average and maximum wastewater constituents and characteristics;
- (c) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization.
- (d) Requirements for installation and maintenance of inspection and sampling facilities;
- (e) Specifications for monitoring programs which may include sampling

locations, frequency of sampling, number, types and standards for tests and reporting schedule;

- (f) Compliance schedules;
- (g) Requirements for submission of technical reports or discharge reports;
- (h) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the City, and affording City access thereto;
- (i) Requirements for notification of the City or any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system.
- (j) Requirements for notification of slug discharges;
- (k) Requirements for development of a spill prevention program to prevent slug discharges due to the improper storage or handling of materials;
- (l) Other conditions as deemed appropriate by the City to ensure compliance with this Ordinance.

§ 63-26. Limitations On Permit Issuance.

- (a) No Sanitary Use Permit shall be issued at any time for the discharge of uncontaminated wastewaters and/or cooling waters to the sanitary sewer system where there is ample evidence that such wastewaters could be discharged directly to the storm sewers and/or receiving stream without further treatment.
- (b) No Storm Sewer Use Permit shall be issued, at any time, for a discharge to the storm sewer system of treated industrial effluents. It should be noted that, in addition to any permit issued by the Director of Public Works, industries utilizing public storm sewers as a means of discharge of cooling waters or storm waters (under certain circumstances as set forth in 40 CFR 122.26) must also apply for a SPDES permit from the State.
- (c) No Sanitary Sewer Use Permit shall be issued at any time permitting the discharge or infiltration into the public sewer of any substances described in Section 63-18 of this Ordinance.

§ 63-27. Federal Pretreatment Standards.

Upon the promulgation of the Federal Pretreatment Standards for a particular industrial subcategory, the Federal Standard, if more stringent than limitations imposed

under this Ordinance for sources in that subcategory, shall immediately supersede the limitations imposed under this Ordinance. The Director of Public Works shall notify all affected Users of the applicable reporting requirements under 40 CFR 403.12.

Modification of Federal Categorical Pretreatment Standards.

Where the City's wastewater treatment system achieves consistent removal of pollutants limited by Federal Pretreatment Standards, the City may apply to the Approval Authority for modification of specific limits in the Federal Pretreatment Standards. "Consistent Removal" shall mean the average of the lowest 50 percent of the removal measured according to the procedures set forth in 40 CFR Section 403.7 (b)(2) - "General Pretreatment Regulations for Existing and New Sources of Pollution" promulgated pursuant to the Act. The City may then modify pollutant discharge limits in the Federal Pretreatment Standards if the requirements contained in 40 CFR 403.7 are fulfilled and prior approval from the Approval Authority is obtained.

State Requirements.

State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Ordinance.

City's Right of Revision.

The City reserves the right to establish by Ordinance more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in this Ordinance.

Excessive Discharge.

No User shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a National Pretreatment Standard or Pretreatment Requirement or any pollutant-specific limitation developed by the City or State.

Accidental Discharges.

Each User shall provide protection from accidental discharge of prohibited materials or other substances regulated by this Ordinance. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the Owner's or User's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility. In the case of an accidental discharge, it is the responsibility of the User to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

Written Notice.

Following an accidental discharge, and within five (5) days of the Director of Public Works request, the User shall submit to the Director of Public Works a detailed written report describing the cause of discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the User of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

Fees.

Purpose - It is the purpose of this chapter to provide for the recovery of costs from Users of the City's wastewater disposal system for the implementation of the program established herein. The applicable charges or fees shall be set forth in the City's Schedule of Charges and Fees.

Charges and Fees - The City may adopt charges and fees which may include:

- (a) fees for reimbursement of costs of setting up and operating the City's Pretreatment Program;
- (b) fees for monitoring, inspections and surveillance procedures;
- (c) fees for reviewing accidental discharge of procedures and construction;
- (d) fees for permit applications;
- (e) fees for filing appeals;
- (f) fees for consistent removal (by the City) of pollutants otherwise subject to Federal Pretreatment Standards;
- (g) other fees as the City may deem necessary to carry out the requirements contained herein.

These fees relate solely to the matters covered by this Ordinance and are separate from all other fees chargeable by the City.

Pretreatment.

Users shall provide necessary wastewater treatment as required to comply with this Ordinance and shall achieve compliance with all Federal Categorical Pretreatment Standards and Requirements within the time limitations as specified by the Federal

Pretreatment Regulations. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the User's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under the provisions of this Ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City prior to the User's initiation of the changes.

All records relating to compliance with Pretreatment Standards and Requirements shall be made available to officials of the EPA or Approval Authority upon request.

§ 63-28. Local Pretreatment Option.

- (a) Where pretreatment and/or equalization are required, plans, specifications, design and installation of plant equipment for such equalization, and/or pretreatment facilities shall be subject to the review and approval of the Director of Public Works and subject to all applicable codes, Ordinances and laws. Approval shall in no way exempt the discharge or such facilities from complying with this Chapter or the rules, regulations and orders of the USEPA or NYSDEC. Such pretreatment facilities, when constructed, shall be maintained continuously in satisfactory and effective operation by the Owner at his expense. The Owner, subsequent to the commencement of operations of any pretreatment facilities, shall make periodic reports to the Director of Public Works setting forth therein data upon which he may determine the effectiveness and adequacy of such installation in reducing the concentrations to acceptable limits. Any approval by the Director of Public Works of a type, kind or capacity of an installation shall not relieve the Owner of the responsibility of revamping, enlarging or otherwise modifying an installation to accomplish its intended purpose to the degree necessary to comply with any and all rules and regulations.

Confidential Information.

Information and data on a User provided from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the User specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information processes or methods of production entitled to protection as trade secrets of the User.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination

System (NPDES) Permit, State Disposal System Permit and/or the Pretreatment Programs; provided, however, that such portions of a report shall be available for use by the United States and the State or Federal agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

Information accepted by the City as confidential, shall not be transmitted to the general public by the City until and unless a ten-day (10) notification is given to the User.

§ 63-29. Commercial Collectors.

- (a) The Director of Public Works may enter into agreements with commercial collectors of wastewater and sewage for disposal of same at an appropriate point in the City wastewater and sewage system facilities. The Director of Public Works shall establish standards for commercial collectors to be followed as part of such agreements, including the need for appropriate permits, etc. **[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]**
- (b) Commercial collectors shall be charged at a rate to be established by the Director of Public Works in an amount not to exceed \$100.00 per one thousand gallons (1M) or part thereof, of wastewater and/or sewage delivered. **[Amended on 8-6-96 as L.L. #13 (Intro No. 15) 1996]**
- (c) The City Attorney shall either approve or prepare any such agreement entered into by the City.

§ 63-30. Facilities For Sampling and Flow Measurement Required.

- (a) The Director of Public Works shall, at least once per year, sample each Significant Industrial Discharge and measure the volume of flow. The data collected shall be used in the calculation of sewer use charges and to determine compliance with these regulations.
- (b) The Director of Public Works shall require all Significant Industrial Users to determine, at a minimum twice per year at each discharge point to the City sewers, both the volume and characteristics of the wastewater discharged from their facility. The specific requirements of the self-monitoring to be performed shall be identified in the User's Wastewater Discharge Permit. The results of this self-monitoring are to be evaluated by the User with respect to the limits contained in the User's Wastewater Discharge Permit. If sampling performed by the Industrial User indicates a violation, the User shall notify the Director within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within 30 days after becoming aware of the violation.

- (c) Samples shall be taken and flow measurements made, whenever economically and technically feasible, at a common manhole into which all industrial wastes from such premise are combined. Such manhole shall be constructed by the Owner of such premises, at the Owner's expense, prior to the issuance of any Sewer Use Permit under Article VII, Section 63-20 of this Ordinance. Such manhole shall be maintained by the Owner so as to be safe and accessible at all times. Whenever the installation of such common manhole is deemed by the Owner to be economically and/or technically unfeasible, the Owner shall accept the burden of preparing and presenting to the Director of Public Works, an alternative plan whereby the City may obtain that information, (flow and analytical data) which the City deems necessary to the successful operation of their industrial wastewater monitoring program.
- (d) All measurements, tests and analyses of the characteristics of water and wastes to which reference is made in this Ordinance shall be determined in accordance with the methods specified in 40 CFR Part 136 or equivalent methods approved by USEPA, and shall be determined at the control manhole or upon suitable samples taken at said control manhole. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of any hazards.
- (e) All reports required to be submitted by Industrial Users under this Ordinance are required to be certified by a responsible corporate officer of the firm. The Industrial User is required to identify to the Director at the time of application, or of renewal of its Wastewater Discharge Permit, all responsible officers who would be authorized to certify any reports required to be submitted to the Director by this Ordinance.

ARTICLE VIII
Protection from Damage

§ 63-31. Arrest.

No person shall break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the sewage works. Any person violating this provision shall be subject to immediate arrest.

ARTICLE IX
Powers and Authority of Inspectors

§ 63-32. Entering Premises For Inspection.

The Director of Public Works and other duly authorized employees of the City USEPA or NYSDEC bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, testing or repair and maintenance of any portion of the sewage works lying within such premises in accordance with the provisions of this Ordinance.

The Director of Public Works or his representatives shall be permitted to access all areas of the facility, including areas where chemicals and raw materials are stored and records are kept.

§ 63-33. Safety Rules.

While performing the necessary work on private properties referred to in Article IX, Section 63-32 above, the Director of Public Works or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in Article VII, Section 63-30.

ARTICLE X
Administration & Enforcement

§ 63-34. Affirmative Defenses.

Treatment Upsets.

- (a) For the purposes of this section, "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. Any Industrial User which experiences such an upset shall inform the Director thereof immediately upon becoming aware of the upset. Where such information is given orally, a written report thereof shall be filed by the User within five (5) days. The report shall contain:
 - (i) A description of the upset, its cause(s), and impact on the discharger's compliance status
 - (ii) The duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance is continuing, the time by which compliance is reasonably expected to be restored
 - (iii) All steps taken or planned to reduce, eliminate, and prevent recurrence of such an upset.
- (b) Industrial User which complies with the notification provisions of this Section in a timely manner shall have an affirmative defense to any enforcement action brought by the Director for any noncompliance with this Ordinance, or an order or permit issued hereunder by the User, which arises out of violations attributable to and alleged to have occurred during the period of

the documented and verified upset.

Treatment Bypasses.

- (a) A bypass of the treatment system is prohibited unless all of the following conditions are met:
 - (i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (ii) There was no feasible alternative to the bypass, including the use of auxiliary treatment or retention of the wastewater; and
 - (iii) The Industrial User properly notified the Director described in paragraph (b) below.
- (b) Industrial Users must provide immediate notice to the Director upon discovery of an unanticipated bypass. If necessary, the Director may require the Industrial User to submit a written report explaining the cause(s), nature, and duration of the bypass, and the steps being taken to prevent its recurrence.
- (c) An Industrial User may allow a bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it is for essential maintenance to ensure efficient operation of the treatment system. Industrial Users anticipating a bypass must submit notice to the Director at least ten (10) days in advance. The Director may only approve the anticipated bypass if the circumstances satisfy those set forth in Paragraph (a) above.

§ 63-35. Division Of Enforcement Responsibilities.

This section identifies each member of the enforcement response team and establishes the role each is assigned in expeditiously carrying out enforcement actions.

Laboratory and Sampling Technicians.

The technicians are responsible for preliminary screening of compliance monitoring data. The laboratory and sampling technicians are not authorized to issue any warnings, citations, or violations to SIU's; but are responsible for making direct information requests to industrial users when, in their opinion, such information is necessary in order to establish compliance/noncompliance in either emergency or non-emergency situations. The technicians are required to report promptly and directly to the chief operator, who then acts on the information provided him/her.

Chief Operator.

This person is responsible for maintaining a current library of all regulatory changes and guidance documents pertaining to industrial pretreatment. The Chief Operator is vested with the primary responsibility of ensuring proper implementation of the City's Industrial Pretreatment Program (IPP) and will serve as primary contact with all industrial users. Consequently, the Chief Operator is responsible for independently issuing all Notices of Violation and Administrative Orders. The Chief Operator is also responsible (in non-emergency situations) for drafting all Industrial Wastewater Discharge Permits, the technical requirements of consent orders, assessing fines and penalties, and determining what is considered a "significant violation" of the industrial pretreatment program for annual publishing.

The Chief Operator of the wastewater treatment plant is responsible for compliance with the terms and conditions of the POTW's SPDES permit and for the overall operation and maintenance of the POTW. Thus he/she is responsible for employee safety, protection of the collection system and the treatment plant, effluent quality, and sludge use and disposal. In this role, the Chief Operator is authorized to take whatever actions are deemed necessary to protect the POTW in emergency situations (viz. the threatened health and safety of plant personnel, major treatment plant upset, or damage of POTW equipment).

Director of Public Works.

The Director of Public Works (DPW) acts as final review and evaluation of City policy regarding industrial pretreatment program issues. The Director is responsible for performing prompt review and approval of all pretreatment activities brought to his attention by the Chief Operator.

City Attorney.

The City Attorney advises the Director of Public Works and the Chief Operator on enforcement matters and serves as Counsel to the City in all administrative and judicial proceedings.

§ 63-36. Compliance Monitoring Procedures and Documentation.

The pretreatment program staff's compliance monitoring activities will detect and document violations in a manner that ensures that the results are both timely and admissible as evidence in judicial proceedings. All sampling will be performed in accordance with USEPA and NYSDEC-approved procedures and fully documented in bound notebooks.

In order to assure that the City's pretreatment program staff systematically inspects and samples each SIU on a regular basis and has adequate time to review the data collected for compliance/noncompliance; the due dates for industrial user reporting and

City sampling and inspections will be set in advance and staggered. All violations will be identified and a record made of the response, even where the decision is made to take "no action".

§ 63-37A. Enforcement Responses.

This section establishes the types of enforcement responses which may be enacted by the pretreatment program staff. The City will consider the following criteria when determining a proper enforcement response among the available enforcement options:

- (a) magnitude of the violation;
- (b) duration of the violation;
- (c) effect of the violation on the receiving water;
- (d) effect of the violation on the POTW;
- (e) compliance history of the industrial user; and
- (f) good faith of the industrial user.

Notice of Violation (NOV).

The NOV is a letter providing the industrial user with notice of the violation(s) and the opportunity to correct violations prior to the City's use of other enforcement remedies.

Administrative Fines.

An administrative fine is a monetary penalty assessed by the City for violations of pretreatment standards and requirements. Notwithstanding any other section of this Ordinance, any user who is found to have violated any provision of this Ordinance, or permits and orders issued hereunder, shall be fined in an amount not to exceed five thousand dollars (\$5,000) per violation per day for each day on which noncompliance shall occur or continue.

The user may, within 15 days of notification of such fine, petition the Chief Operator to modify or suspend the fine. Such petition shall be in written form and shall be transmitted to the Chief Operator by registered mail. The Chief Operator may:

- (1) Reject any frivolous petitions;
- (2) Modify or suspend the fine;
- (3) Request additional information from the user; or

- (4) Order the petitioner to show cause as described herein.

Administrative fines are punitive in nature and are not related to a specific cost borne by the City. Instead, fines are to recapture the full or partial economic benefit on noncompliance, and to deter future violations.

Economic Penalties.

An economic penalty is a monetary penalty assessed by the City for violations of permit limits on BOD discharges. Notwithstanding any other section of this ordinance, any permit holder who is found to have discharged in excess of the permit regarding BOD limits, shall be assessed a penalty equal to three times (300%) the surcharge rate provided in the City's fees ordinance, for all amounts in excess of the permit amounts.

Economic penalties are not punitive in nature, but are assessed to recover the additional costs the City incurs as a result of additional operating expenses resulting from violations, additional testing, analysis, and administrative time and expenses incurred in assisting the violator returning to compliance.

Administrative Orders.

Administrative Orders (Aos) are enforcement documents which direct industrial users to either undertake or to cease specified activities. Aos are utilized as the first formal response to significant noncompliance (unless judicial proceedings are more appropriate), and may incorporate compliance schedules, administrative penalties, and termination of service orders.

The four (4) types of Aos which the City may employ are:

Cease and Desist Orders.

A cease and desist order directs a non-compliant user to cease illegal or unauthorized discharges immediately or to terminate its discharge(s) altogether. The Chief Operator may issue a cease and desist order in situations where the discharge could cause interference or pass through, or otherwise create an emergency situation.

Consent Orders.

The consent order is an agreement between the City and the industrial user which will normally contain three elements: (1) compliance schedules; (2) stipulated fines or remedial actions; and (3) signatures of City and industry representatives.

Show Cause Hearing.

- (a) In addition to the provisions listed above and in no way limiting their application, the Director of Public Works may order any offender of a provision of this Ordinance to appear before him or his designated representative to show cause why such offense should not be discontinued. A written notice shall be served upon the offending party, specifying the time and place of said hearing and directing the offending party to show cause why an order should not be issued directing the discontinuance of the offense. The notice shall be served personally or by Certified or Registered mail at least five (5) days prior to the date of hearing; service may be made on any agent or officer of a corporation.
- (b) The Director of Public Works shall request the City Attorney or his designated representative to be present at such show cause hearings.
- (c) Witnesses may be called by either party to such an action.
- (d) A record shall be made of all testimony and evidence presented at the hearing. A transcript of the proceedings shall be made.
- (e) The officer presiding at the hearing shall render his decision and findings of fact, based on the evidence, and issue an appropriate order in accordance therewith within a reasonable period of time.

Compliance Orders.

A compliance order directs the user to achieve or restore compliance by a date specified in the order. The compliance order is usually issued when noncompliance cannot be resolved without construction, repair, or process changes, or when requiring industrial users to develop management practices, spill prevention programs and related pretreatment program requirements.

The compliance order will document the noncompliance and state required actions to be accomplished by specific dates, including interim and final reporting requirements.

Civil Litigation.

Civil litigation is the formal process of filing lawsuits against industrial users to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW of the noncompliance. The City Attorney is authorized to commence civil litigation in a court of competent jurisdiction to obtain injunctive relief, penalties and damages under any applicable Local, State or Federal statute.

Consent Decrees.

Consent decrees are agreements between the City and the industrial user reached after a lawsuit has been filed. To be binding, the decree must also be signed by the judge assigned to the case.

Injunctive Relief.

Whenever an Industrial User has violated or continues to violate the provisions of this Ordinance or permit or order issued hereunder, the Director, through Counsel, may petition the Court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the Industrial User.

Civil Penalties and Cost Recovery.

Civil litigation may be necessary to recover costs associated with noncompliance and to impose civil penalties. A civil suit commenced by the City Attorney in a court of competent jurisdiction will seek to require the industrial user to pay for all expenses which the City incurred in responding to the noncompliance, including restoration of the City's POTW, payment for medical treatment of injured employees, and indemnification of the City for all fines assessed against it for SPDES permit violations.

Termination of Sewer Service.

Termination of service is the revocation of an industrial user's privilege to discharge industrial wastewater into the City's sewer system. Termination may be accomplished by physical severance of the industry's connection to the collection system, by issuance of an AO which compels the user to terminate its discharge, or by a court ruling.

§ 63-37B. Supplemental Enforcement Responses.

This section outlines the "supplemental" enforcement responses available to the City to complement the more traditional responses described in the preceding sections. Normally, these responses will be used in conjunction with more traditional approaches.

Public Notices.

According to USEPA regulations, the City of Dunkirk must comply with the public participation requirements of 40 CFR 403.8(f)(2)(vii). Among these requirements is annual publication of a list of industrial users which were significantly violating applicable pretreatment standards or requirements.

The criteria for determining significant non-compliance are set forth in 40 CFR 403.8(f)(2)(vii) and include one or more of the following:

1. chronic violations (exceedences 66 percent of the time or more during a six

month period) of the same parameter limits;

2. technical review criteria (TRC) violations [33 percent or more of measurements for each pollutant parameter taken during a six month period equal or exceed the TRC (1.4 times the limit for conventionals or 1.2 times the limit for toxics)];
3. causing pass through or interference;
4. a discharge of imminent endangerment to human health, welfare, or the environment, or which required the POTW to use its emergency authorities;
5. violations of a compliance schedule milestone by 90 days or more;
6. violations of report submittal deadlines by 30 days;
7. failure to report noncompliance; or
8. any other violation deemed significant by the Control Authority.

Water Service Termination.

Whenever a User has violated or continues to violate a provision of this Ordinance or an order or permit issued hereunder, water service to the User may be severed and service will only recommence, at the users expense, after it has satisfactorily demonstrated its ability to comply.

The user may, within 15 days of severance, petition the Chief Operator to reconnect water supply service. Such petition shall be in written form and shall be transmitted to the Chief Operator by registered mail. The Chief Operator may:

- (1) Reject any frivolous petitions;
- (2) Reconnect the water supply;
- (3) Request additional information from the user; or
- (4) Order the petitioner to show cause as described herein.

Performance Bonds/Liability Insurance.

The City may require, through an AO or as part of a consent agreement, a noncompliant industrial user to post a performance bond covering expenses which the POTW might incur in the event of future violations. This action may require the industry to obtain sufficient liability insurance to cover the cost of restoring the treatment works in the event a second upset occurs.

Increased Monitoring and Reporting.

Industrial users demonstrating a history of noncompliance will be subject to increased surveillance (i.e., sampling and inspections) by the City. Since recurring violations indicate that at least one chronic problem exists at the facility, the City will monitor the user closely and require additional user self-monitoring until the problem is corrected and consistent compliance is demonstrated. For example, where a pretreatment system is found to be inadequate to meet applicable limits, an AO requiring the installation of additional technology may also include increased self-monitoring frequency.

Short Term Permits.

The length of a permit's effective period is a discretionary matter. The City can use a permit's duration to force an "early look" at a noncompliant industry by issuing it a short-term permit. In addition to scheduling a comprehensive review of the industrial user's circumstances, a short-term permit may be used to increase self-monitoring and reporting requirements as well as to impose a compliance schedule which concludes shortly before permit expiration.

ARTICLE XI
Validity

§ 63-38. Conflict with the Ordinances.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

§ 63-39. Severability.

The invalidity of any section, clause, sentence, or provision of this Ordinance as finally determined by a court of competent jurisdiction, shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid parts or parts.

CHAPTER 64

Sex Offenders

[Added 6-06-06 as L.L. #4-2006]

§ 64-1. Intent, Purpose and Findings6401
 § 64-2. Definitions6402
 § 64-3. Restrictions6402
 § 64-4. Prospective Effect6402
 § 64-5. Penalties6402
 § 64-6. Severability.....6402
 § 64-7. Effective Date6403

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 6-06-2006. Amendments noted where applicable.]

§ 64-1. Intent, Purpose and Findings

- A. The highest priority of government is the safety and protection of its residents, especially its children. The City of Dunkirk has had places in its borders a large number of registered sex offenders, some of who have committed criminal sexual offenses against minors. A number of these sex offenders have been categorized as Level II sex offenders who have been determined to pose a moderate risk of committing another sexual crime. A number of these sex offenders have been categorized as Level III Sex Offenders who have been determined to pose a high risk of committing another sexual crime.
- B. The City of Dunkirk Common Council finds and determines that it is essential to assure residents of Dunkirk that the City government continues to make every effort to protect children from sex offenders.
- C. This Council further finds and determines that it is in the best interests of the City of Dunkirk citizens to establish residency and proximity restrictions for sex offenders who have committed criminal sexual offenses against minors.
- D. This Council further finds that residency in close proximity to areas where minors are required to be present or congregate for recreation purposes pose an unacceptable level of danger.

§ 64-2. Definitions.

- A. The term “sex offender” shall mean a person who has received a Level II or III designation as defined by the Sex Offender Registration Act contained in Article 6-C of the New York State Correction Law.

§ 64-3. Restrictions.

- A. A sex offender shall not reside within one thousand (1,000) feet of a public or private school, nursery school, pre-school, child care facility, playground, or park.
- B. A sex offender shall not enter into any public or private school, nursery school, pre-school, child care facility, playground, or park.

§ 64-4. Prospective Effect.

This law shall not require any person to move from their residence as established prior to the enactment of this law.

§ 64-5. Penalties.

Any violation of the provisions of this Local Law shall be a Class A Misdemeanor punishable by a fine not exceeding \$1,000.00; or imprisonment for a term not exceeding one year; or both such fine and imprisonment.

§ 64-6. Severability.

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

§ 64-7. Effective date.

This Local Law shall take effect immediately upon filing with the Secretary of State.

CHAPTER 65

SIDEWALKS AND STREETS

[Adopted by the Common Council of the City of Dunkirk on 3-18-1993]

§ 65-1.	Definitions	6502
§ 65-2.	Numbering Of Buildings On Streets	6502
§ 65-3.	Street Closings	6502
§ 65-4.	Removal Of Safety Devices Or Survey Stakes	6503
§ 65-5.	Discharge Of Stormwater Onto Streets	6503
§ 65-6.	Street Obstruction - Time Limit	6503
§ 65-7.	Street Encumbrances	6503
§ 65-8.	Street Encumbrance - Permit Conditions	6504
§ 65-9.	Street Encumbrance - Permit Applications	6504
§ 65-10.	Banners and Signs	6504
§ 65-11.	Public Service Corporations	6504
§ 65-12.	Work Within Street Right-of-Way-Permit	6505
§ 65-13.	Work Within Street Right-of-Way-Restoration	6506
§ 65-14.	Work Within Street Right-of-Way-Insurance	6506
§ 65-15.	Maintenance and Protection of Traffic.....	6506
§ 65-16.	Moving Buildings	6507
§ 65-17.	General Obstructions	6507
	[Amended 7-20-1999 as L.L. #6 (Intro No. 5) 1999]	
§ 65-18.	Tree Cutting.....	6507
§ 65-19.	Curbs	6507
§ 65-20.	Parades.....	6508
§ 65-21.	Local Improvement Assessments.....	6508
§ 65-22.	Use and Location of Sidewalks	6508
§ 65-23.	Sidewalk Measurements	6508
§ 65-24.	Sidewalk Materials.....	6508
§ 65-25.	Sidewalk Repair and Maintenance	6509
	[Added 7-5-2000 as L. L. #5 (Intro No. 7) 2000]	
§ 65-26.	Sidewalk Removal	6509
§ 65-27.	Notice to Owner to Repair; Cost of Repairs by City of Dunkirk	6509
§ 65-28.	Sidewalk Repair Program	6510
§ 65-29.	Awnings.....	6513
§ 65-30.	Littering	6514
	[Added 12-2-1993]	
§ 65-31.	Removal of Snow and Ice; Marking of Obstructions	6514
	[Amended on 7-20-1999 as L.L. #6 (Intro No. 5) 1999]	
§ 65-32.	(Reserved)	6516
§ 65-33.	Penalties	6516

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 3-18-1993;

Amended on 12-2-1993; Amended on 7-20-1999 as L.L. #6 (Intro No. 5) 1999; Amended 7-5-2000 as L.L. #5 (Intro No. 7) 2000. Amendments noted where applicable.]

§ 65-1. Definitions.

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

CITY - the City of Dunkirk.

PERSON - any individual, partnership, firm, association, corporation, or any combination of the same.

PUBLIC SERVICE CORPORATION - any corporation regulated under the New York State Public Service Law.

§ 65-2. Numbering Of Buildings On Streets.

- A. All buildings erected or hereafter to be erected shall be numbered as directed by the Director of Public Works.
- B. No person owning a building shall fail to procure from the Director of Public Works the proper number or numbers assigned therefore, nor shall any such owner fail to place and maintain the same thereon as hereafter provided.
- C. Numbers shall be not less than two and one-half (2 1/2) inches in height, of proportionate width, of a color contrasting to that on which the numbers are installed, and shall be placed and maintained in a permanent and durable manner where they can be seen at all times from the street.

§ 65-3. Street Closings.

- A. The Director of Public Works may, when he/she deems it necessary for the performance of his/her duties, and the Chief of the Fire Department may, when necessary, for his/her fire-fighting purposes, close any street or part thereof to travel.
- B. No individual or corporation may close a street without authorization of the Director of Public Works, Police Chief and Fire Chief.
- C. The closing of streets for block parties or other special events may only be done by Common Council approval, under such terms and conditions as may be determined by the Common Council.

§ 65-4. Removal Of Safety Devices Or Survey Stakes.

No person, without authority from the Director of Public Works, shall remove, cause to be removed or in any manner interfere with any barrier, sign or guard erected for public safety or any survey stake or monument placed to locate the line of any street, sidewalk or public improvement in the City.

§ 65-5. Discharge Of Stormwater Onto Streets.

- A. No person or corporation shall cause to be discharged any stormwater or drainage onto any City street in a manner so as to cause damage or dangerous conditions to the street.
- B. All discharges shall be approved by the Director of Public Works prior to commencement.

§ 65-6. Street Or Sidewalk Obstruction - Time Limit.

No person shall stop a vehicle on any roadway or sidewalk in such a manner as to hinder or obstruct pedestrian or vehicular traffic thereon, except when necessary to load or unload therefrom, and then in such case for such time as shall be actually necessary, and in no case to exceed ten (10) minutes.

§ 65-7. Street Encumbrances.

- A. No person shall place or cause to be placed in a highway any building or other material or snow, grass, leaves or refuse from adjoining premises, or place or project into a highway any sign or encumbrance whatever without the prior written permit, revocable at any time, of the Director of Public Works.
- B. There is no charge for this permit.

§ 65-8. Street Encumbrance - Permit Conditions.

No person shall place, project or allow any such material or encumbrance to remain in a highway contrary to the terms or conditions of such permit.

§ 65-9. Street Encumbrance - Permit Applications.

- A. Applications for a permit must be in writing, particularly describing the structure and place and such other information as the Director of Public Works may require.

- B. The consent shall be in writing and shall state the character of the structure, the place, the manner of securing the same and such other conditions as the Director of Public Works may impose.

§ 65-10. Banners And Signs.

- A. No person shall hang or float over any public property, any temporary flag, banner or sign, without written permission from the Director of Public Works.
- B. Existing banners or signs extending more than three (3) feet into a public right-of-way, if removed, shall not be replaced.
- C. No person, partnership, corporation, joint-stock company, limited liability company, limited liability partnership, or syndicate shall deposit, place or caused to be deposited or placed into any right of way any sign or other obstruction or encumbrance, whether permanent or temporary in nature.
[Amended 7-20-1999 as L.L. #6 (Intro No. 5) 1999]
- D. No advertising signs shall be permitted within the street right-of-way.
[Amended 7-5-2000 as L.L. #5 (Intro No. 7) 2000]

§ 65-11. Public Service Corporations.

- A. The Director of Public Works shall have power to grant permits to public service corporations for opening, refilling and repaving streets, avenues and public places in the City for the constructing, laying, repairing and maintaining of mains, pipes, services, conduits, manholes, railroad and railway tracks and appurtenances thereto under the provisions of City laws and ordinances.
- B. Before any such permit is granted, the applicant shall file with the Director of Public Works such maps, plans, specifications and information regarding the proposed work as the Director of Public Works may require, and the Director of Public Works shall have power to prescribe such conditions and methods of doing the work as he/she may deem for the best interests of the City.
- C. After completion of the work, the applicant shall keep such pavement at all times free from defects and settlements caused by the work for which the permit was granted for a period of one year.
- D. Should the person or corporation to whom the permit was granted fail to properly repair the pavement within five (5) days after the written notice from the Director of Public Works, the Director of Public Works shall have the power to have such repairs made, and the expense therefore shall

become a charge against such person or corporation to whom such permit was granted, or the sureties of his/her bond, except that, in an emergency, when the Director of Public Works deems the pavement to be in dangerous condition, the Director of Public Works may have such repairs made without notice, and the expense therefore shall become a charge against such person or corporation or their sureties.

- E. In case of nonpayment of bills for repairs, made as hereinbefore provided, the Director of Public Works may also withhold further permits from such person or corporation until such bills are paid.

§ 65-12. Work Within Street Right-of-Way-Permit.

- A. No person other than an authorized City employee shall dig in a right-of-way without the prior written permit, revocable at any time, of the Director of Public Works.
- B. Permits will be issued at the discretion of the Director of Public Works. The Department of Public Works will have the authority to determine whether the proposed work is extensive as to warrant the issuance of the permit.

§ 65-13. Work Within Street Right-of-Way-Restoration.

Any person, other than an authorized employee, who shall dig in a right-of-way, shall restore the same and maintain it for one (1) year thereafter.

§ 65-14. Work Within Street Right-of-Way-Insurance.

- A. As a condition for the permit, the Director of Public Works shall require the applicant to submit proof of liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) per individual and Five Hundred Thousand Dollars (\$500,000.00) per occurrence.
- B. The applicant shall also be required to execute a hold-harmless agreement indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the applicant's work. Such hold-harmless agreement shall be covered by a protective policy of insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) and shall be subject to the approval of the City Attorney.
- C. As a condition of the permit, a one (1) year maintenance bond will be required.

- D. The Director of Public Works may issue special requirements regarding work within the right-of-way including, but not limited to, excavation, backfill, pavement and landscape restoration and maintenance and protection of traffic.

§ 65-15. Maintenance and Protection Of Traffic.

- A. A person causing work in a right-of-way shall keep the same fenced, barricaded and guarded by a lighted lantern or lanterns approved by the Director of Public Works.
- B. A person making or causing an excavation or having an excavation on his/her premises within five (5) feet of the line of a highway shall keep the same protected by a fence approved by the Director of Public Works.
- C. The provisions of 17 NYCRR Part 300 are incorporated by reference herein.

§ 65-16. Moving Buildings.

No person shall move a building, or part thereof, upon a street, except by written permit of the Director of Public Works and then only upon the terms and conditions therein stated.

§ 65-17. General Obstructions.

No person, partnership, corporation, joint-stock company, limited liability company, limited liability partnership, or syndicate shall deposit, place or caused to be deposited or placed into any right-of-way any object, obstruction or encumbrance without the prior written approval of the Director of Public Works; such approval revocable upon notice to the permittee. **[Amended 7-20-1999 as L.L. #6 (Intro No. 5) 1999]**

No person shall interfere with or obstruct or use in any way not authorized by law any street, public park, public sidewalk, building, sewer, water carrier or watercourse. **[Amended 7-5-2000 as L.L. #5 (Intro No. 7) 2000]**

§ 65-18. Tree Cutting.

- A. No person shall cut down or trim any shade tree located in the street right-of-way limits of the City, unless the person shall have obtained a permit therefore from the Director of Public Works.
- B. The permit will provide that the person to whom it is granted will hold the City free from any liability that may result from the cutting down of such tree, either to the City or to any other person, firm or corporation.

- C. Insurance may be required under such limits as may be determined by the City Attorney.

§ 65-19. Curbs.

- A. No person shall construct or cut down any curb in any of the streets of the City unless the owner of the property in front of which it is proposed to construct, cut down or lower the curb shall have obtained a permit from the Director of Public Works.
- B. The permit shall provide that the work of cutting down, constructing or lowering such curb will be done in accordance with the requirements of the Director of Public Works.

§ 65-20. Parades.

- A. No person, society, show troupe or other organization shall conduct any parade in, along, over or through any of the streets in the City without first having secured a permit from the Common Council.
- B. The permit shall state the occasion for such parade, the streets over which the same shall pass, and such conditions as the Council shall deem necessary to prescribe.

§ 65-21. Local Improvement Assessments.

Local improvement assessments shall be made in accordance with §§ 2-5.51 – 2-5.59 of the City Code.

§ 65-22. Use And Location Of Sidewalks.

- A. The public sidewalks within the City shall be used solely for the passage over of persons on foot.
- B. Such sidewalks shall be constructed within the street lines of the public streets of the City.

§ 65-23. Sidewalk Measurements.

No person, shall construct or cause to be constructed any concrete sidewalk in the City upon a residence street without first obtaining from the Director of Public Works the proper sidewalk line and grade, nor shall any person construct upon any residence street in such City, or cause to be constructed, a concrete sidewalk which shall be less than five (5) feet in width, unless otherwise approved by the Director of Public Works.

§ 65-24. Sidewalk Materials.

No person owning or controlling any real property upon any street in the City shall construct or cause or permit the construction of a sidewalk in front of such property on such street of any material other than concrete, unless otherwise approved by the Director of Public Works.

§ 65-25. Sidewalk Repair And Maintenance.

- A. It shall be the duty of every owner of any property fronting on any public street or ground to keep the sidewalk of the same in good order and repair, and the owner shall allow no accumulation of refuse to remain thereon.
- B. The owner or agent of such owner with property so abutting and fronting upon any public street, ground or sidewalk(s) shall be liable for any injury or any damages caused to any person or property caused wholly or in part by the failure of said owner or agent to so maintain and repair said public sidewalk(s). Each such owner or agent of owner shall be liable to the City for all losses to the City or recoveries from the City for damages to persons or property of others caused by failure of owner or agent of owner to repair and keep in good order and reasonably safe condition all such sidewalks abutting and fronting such property upon any street, ground or sidewalk within the corporate limits of the city. **[Added as L.L. #5 (Intro No. 7) 2000]**

§ 65-26. Sidewalk Removal.

- A. No person owning or controlling real estate bordering on any street or highway within the City whereon there is constructed a sidewalk, shall remove or cause the removal of such existing sidewalk, except for purposes of replacement within twenty (20) days of removal, without the written consent of the Director of Public Works.
- B. Sidewalk areas which have been removed contemplating replacement shall be barricaded to protect the general public.

§ 65-27. Notice To Owner To Repair; Cost Of Repairs By City.

- A. Whenever the Director of Public Works of the City shall find that any sidewalk has become dangerous or unsafe or has become a nuisance through heaving, settling or breaking, the Director shall serve a notice upon the owner thereof to immediately repair the sidewalk.
- B. In the event that the owner of such sidewalk shall fail to comply within sixty (60) days of the service of such notice, the Director of Public Works shall repair the same and the cost thereof shall be charged against the

owner of such property. The Director of Public Works may reduce the compliance period for conditions deemed hazardous.

- C. Should the owner not pay such charge, it shall become a lien against the property and shall be billed with the next City tax.
- D. If payment is not forthcoming, then it shall be collected as are unpaid taxes.

§ 65-28. Sidewalk Repair Program.

A. Funding.

- (1) This program shall be contingent upon funds being made available by, or to, the City for such program.
- (2) This program is expressly limited by the funds made available therefore in each City fiscal year.
- (3) When the allocated or available funds for any given fiscal year are expended, the program shall be terminated for that year.
- (4) The reimbursement rate per square foot shall be set by the Common Council.

B. Applications For Program.

- (1)
 - (i) Application for this program shall be limited to owners of real property within the City.
 - (ii) Applications shall be made to the Department of Public Works on form provided for such purpose by the Department of Public Works.
 - (iii) All applications must be submitted between January 1, and May of any given year in order to receive consideration for a share of available funds during such year.
 - (iv) The Director of Public Works may extend the application period, should funding be available.
 - (v) Applications will not be carried over from year to year.
- (2)
 - (i) This program shall only be applicable to sidewalk area within, or adjacent to, the City's right-of-way and running parallel thereto and considered the public way. Privately

installed sidewalks, including, but not limited to, sidewalks between the sidewalk and curb, are not eligible.

- (ii) A homeowner may apply for the replacement of a presently existing sidewalk or to have a sidewalk put in where one does not exist. For streets not having existing sidewalks, the Director of Public Works shall make the determination whether such sidewalk installation is in the best interest of the City.
 - (iii) Sidewalks replaced under this program shall be limited to five (5) feet, unless otherwise approved by the Director of Public Works.
- (3)
- (i) The Department of Public Works shall make an inspection of the applicant's sidewalk.
 - (ii) If the Department of Public Works determines that the applicant's sidewalk is eligible for participation in this program, then the applicant shall be so notified.
 - (iii) The Department of Public Works shall make a determination of the estimated number of square feet to be allowed to the applicant under this program.
 - (iv) No more than 1,000 square feet shall be allowed per property in any given year.

C. Responsibility For Work.

- (1) (i) The owner of such real property is solely responsible for seeing that the work is done.
- (ii) Such owner may either hire a contractor of the owner's own choosing, or replace the sidewalk himself or herself.
- (iii) The City is not responsible for supplying any work, labor or services with regard to the replacement of such sidewalk.
- (iv) The owner, either through the owner's contractor should one be utilized, or individually, shall be responsible for the removal of any old sidewalk and the disposal of such old sidewalk material.
- (v) The City is not responsible for the removal or disposal of any old sidewalk material.

- (vi) The owner shall comply with all requirements as outlined by the Director of Public Works.
- (2) (i) No applicant under this program will be reimbursed for his/her allowable portion of the cost, until all old sidewalk material has been properly removed and disposed.
- (ii) Sidewalks not installed in an approved manner may be ordered removed and replaced or may cause forfeiture of the reimbursement at the discretion of the Director of Public Works.

D. Payment by City.

- (1) (i) Upon the completion of any sidewalk area under this program, the owner thereof shall notify the Department of Public Works within a seven day period.
- (ii) The Department of Public Works shall then make a final inspection and verify the amount of square footage completed under the owner's applications.
- (iii) The City shall reimburse such owner for the final amount under the owner's application.
- (2) (a) All requests for reimbursement must be received on or before November 1 of the year in which the work is completed.
- (b) Failure to present requests for payment by that date shall cause the owner to forfeit his/her right to such reimbursement.

E. No Warranty By City.

- (1) (a) The City shall not be held responsible for liable for any workmanship or contractual obligations with any contractors with regard to this program.
- (b) The City expressly makes no warranties or promises of any nature with regard to such program.
- (2) The sole exception to Subsection E(1) herein shall be that the City agrees to reimburse the property owner for the agreed-upon amount of the owner's application upon the owner's compliance

with all the terms of this chapter.

- F. This section shall not limit the provisions of § 65-30 of this Code.

§ 65-29. Awnings.

- A. Definitions.

As used in this section, the following term shall have the meaning indicated:

AWNING - A structure affixed to the face of a building which projects over property owned by the City, including sidewalks, and which shelters persons passing under the awning from sun, rain or snow.

- B. Approval.

1. Awnings located as defined above shall not be installed without written approval of the Director of Public Works.
2. Awnings located as defined above shall be subject to the applicable provisions of the City's Zoning Code.

§ 65-30. Littering. [Added 12-2-1993]

- A. No person shall throw, leave, deposit or permit to be thrown, left or deposited in, or upon any public place or in any place not authorized by the owner of such place, any bottle, can, paper or other substance.
- B. No person shall upset or tamper with a public or private receptacle designed or used for the deposit of litter, or cause or permit its contents to be deposited or strewn in, or upon, any public place or private premises.

§ 65-31. Removal of snow and ice; marking of obstructions. [Amended 7-20-1999 as L.L. #6 (Intro No. 5) 1999]

- A. Definitions.

The following definitions shall apply in the interpretation and enforcement of this section:

PARKWAY - The land lying between the street curb and the outer limits of the sidewalk running parallel with such street curb. The words "outer limits of the sidewalk" mean the outer or street side of any sidewalk. In localities where the sidewalk is not clearly visible because of a covering of cement or blacktop or otherwise, the "outer limits of the sidewalk" shall be

determined to be a projection of the outer line of the sidewalk measured along the entire length of the street.

ROADWAY - That portion of a street or highway improved, designed or ordinarily used for vehicular traffic exclusive of the berm or shoulder.

SIDEWALK - That portion of the street between the curblines or the lateral lines of the roadway and the adjacent property lines intended for the use of pedestrians.

STREET or HIGHWAY - The entire width between the boundary lines of every way publicly maintained when any part thereof is open to use of the public for purpose of vehicular traffic.

- B. Every person, partnership, corporation, joint-stock company, limited liability company, limited liability partnership, or syndicate in charge or control of any building or lot of land within the City fronting or abutting on a sidewalk, whether as owner, tenant, occupant, lessee or otherwise, shall remove and clear away or cause to be removed or cleared away snow and ice from so much of the sidewalk as is in front of or abuts on said building or lot.
- C. The foregoing notwithstanding, in the event that snow and ice on a sidewalk has become so hard that it cannot be removed without likelihood of damage to the sidewalk, the person or entity charged with its removal shall cause enough sand or other abrasive to be put on the sidewalk to make travel thereon reasonably safe and shall then, as soon thereafter as weather permits, cause a path in said sidewalk to be thoroughly cleaned.
- D. No person, partnership, corporation, joint-stock company, limited liability company, limited liability partnership, or syndicate shall deposit or cause to be deposited any snow, gravel or stone or other debris or material on or against a fire hydrant or any sidewalk, highway, street or roadway or loading and unloading areas of a public transportation system, except that snow and ice may be pushed, brushed, blown, plowed, swept or shoveled to any parkway area within the City of Dunkirk where necessary to effect the removal of snow from sidewalks and driveways; provided, however, that such snow does not encroach onto the roadway or highway between the outside faces of the curb nor obstruct the view of vehicular traffic; and provided, further, that such snow does not obstruct any sidewalk nor impede, impair or obstruct any pedestrian traffic; and provided, further, that such snow does not obstruct any established terraced sidewalks.
- E. No person, partnership, corporation, joint-stock company, limited liability company, limited liability partnership, or syndicate shall leave any ditch, excavation of the highway or other hole or pile of dirt, material or building

materials on the surface of the highway or sidewalk without having placed a barricade, fence, covered walk or other protection as may be required by the Director of Public Works or any law or regulation of the State of New York, including, but not limited to, the Vehicle and Traffic Law, and during the hours from sunset to sunrise display on and around the obstructed part or parts of the street or sidewalk such number and type of amber or red lights as shall be deemed proper and necessary by the Director of Public Works.

- F. No person, partnership, corporation, joint-stock company, limited liability company, limited liability partnership, or syndicate shall deposit or cause to be deposited any snow, gravel or stone or other debris or material on, upon or against any property for which such party does not have ownership and/or control and/or authority to so deposit or cause to be deposited such material

§ 65-32. (Reserved)

§ 65-33. Penalties.

The violation of any of the provisions of this chapter shall be considered an offense, and any person, upon being convicted of such offense, shall be punishable by a fine of not more than Two Hundred Fifty Dollars (\$250.00) or by imprisonment for a term not exceeding fifteen (15) days, or both

CHAPTER 65A

SNAKES

§ 65A-1.	Purpose and Intent	6501A
§ 65A-2.	Regulations and Restrictions Upon Snakes	6501A
§ 65A-3.	Penalties For Offenses	6501A
§ 65A-4.	Effective Date	6501A

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 2-7-1995 under Local Law #3 of 1995. Amendments noted where applicable.]

§ 65A-1. Purpose and Intent.

The purpose and intent of this chapter shall be to preserve the public peace and good order in this City and to promote the general welfare and the preservation and protection of the property and the person of residents of this City by the enforcement of regulations and restrictions on activities of snakes within the municipality.

§ 65A-2. Regulations and Restrictions Upon Snakes.

Any person owning, possessing or harboring a snake, whether poisonous or nonpoisonous, who fails to exercise due care in safeguarding the public from bodily harm from said snake, has created a public nuisance and threat to public safety. A person owning, possessing or harboring a snake shall be considered not exercising due care unless the snake appearing in public is properly caged to avoid bodily harm. For purposes of this section, "in public" shall mean any location other than the immediate indoor dwelling area of the person owning, possessing or harboring a snake. Any person failing to properly cage a snake shall be in violation of this section and be subject to the penalties as outlined in § 65A-3.

§ 65A-3. Penalties For Offenses.

Any person, upon being convicted of a violation of any of the provisions of this Chapter, shall be punishable by a fine of not more than One Hundred Fifty Dollars (\$150.00) or by imprisonment for not more than one hundred fifty (150) days, or by both such fine and imprisonment.

§ 65A-4. Effective Date.

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

CHAPTER 66

SOLID WASTE MANAGEMENT AND RECYCLING

§ 66-1.	Definitions	6601
§ 66-2.	Prohibited Disposal of Solid Waste	6604
§ 66-3.	Receptacles	6604
§ 66-4.	Responsibility of Owner or Occupant	6604
§ 66-5.	Construction and Demolition Debris	6604
§ 66-6.	Yard Waste	6605
§ 66-7.	Tire Disposal	6605
§ 66-8.	Large Household Furnishings.....	6605
§ 66-9.	Major Appliances	6605
§ 66-10.	Commercial Waste	6605
§ 66-11.	Industrial Waste	6606
§ 66-12.	Restrictions on Use of Vehicles.....	6606
§ 66-13.	Transport of Recyclable Materials Into City Prohibited.....	6606
§ 66-14.	Disposal of Solid Waste or Recyclables From Outside City Prohibited	6606
§ 66-15.	Use of Trash Receptacles on City Property Restricted	6606
§ 66-16.	Materials Subject to Mandatory Recycling	6607
§ 66-17.	Materials Preparation	6607
§ 66-18.	Exceptions to Source Separation	6607
§ 66-19.	Alternate Disposal Methods	6607
§ 66-20.	Source Separation Implementation	6608
§ 66-21.	Solid Waste Collection	6608
§ 66-22.	Household Hazardous Waste Collection and Disposal.....	6611
§ 66-23.	Fee Schedule and Unit Assignment	6611
	[Amended 12-20-05 as L.L. #4-2005]	
§ 66-24.	Enforcement; Penalties For Offenses	6613

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 8-20-1992 as L.L. #11-1992. Amendments noted where applicable.]

§ 66-1. Definitions.

Whenever used in this chapter, or in the rules and regulations duly adopted by the Director of Public Works, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following words shall have the respective meanings hereinafter set forth:

CITY - The City of Dunkirk.

COLLECTOR - Any person, other than the City, who picks up solid waste and transports that solid waste for hire to a solid waste disposal facility, recycling center, or transfer station for recycling or disposal.

COMMERCIAL WASTE - Solid waste generated by stores, offices, institutions, restaurants, warehouses, vehicle repair shops, gasoline stations, temporary residences and non-manufacturing activities at industrial facilities.

CONSTRUCTION and DEMOLITION DEBRIS - Uncontaminated waste resulting from construction, remodeling, repair and demolition of structures, road building, and land clearing; such wastes include, but are not limited to, bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving material, and tree and brush stumps.

DISPOSAL - The act of transferring possession of discarded materials for the ultimate purpose of recycling, land burial or extraction of energy through incineration.

HAZARDOUS or TOXIC WASTE - Waste defined in Article 27-0903 of the New York Environmental Conservation Law, as amended, and the regulations thereunder, and in Section 1004 of the Federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6903, and the regulations thereunder.

HOUSEHOLD HAZARDOUS WASTE - Household waste which, but for its point of generation, would be a hazardous waste under 42 U.S.C. §6903, or 6 NYCRR Part 371, including pesticides as defined in Article 33 of the Environmental Conservation Law.

HOUSEHOLD WASTE - Solid waste discarded from single or multiple dwellings.

INDUSTRIAL WASTE - Solid waste generated by manufacturing or industrial processes.

LARGE HOUSEHOLD FURNISHING - All large or bulky articles, excluding major appliances, actually used in the home and which equip it for living, such as chairs, sofas, tables, beds, sinks, and bathtubs.

MAJOR APPLIANCES - Large and/or bulky household mechanisms such as refrigerators, washers, dryers, stoves, ordinarily operated by gas or electric current.

NYSDEC - New York State Department of Environmental Conservation.

NYS DOT - New York State Department of Transportation.

PERSON - An individual, trust, firm, joint-stock company, corporation, partnership, association or any interstate body.

PERSON-IN-CHARGE - A natural person, association, partnership, firm or corporation that occupies, manages, uses or controls a premises.

RECYCLABLE MATERIAL - Any material designated, from time to time, by the Director of Public Works, which is separated from the waste stream and held for its material recycling or reuse value.

RECYLERS - Those who deal with recyclable material such as collectors, separators and marketers, including not-for-profit corporations and charitable corporations, which collect recyclables for fundraising purposes.

RECYLING CENTER - A facility where material, previously separated from the waste stream, is stored for its materials recycling or reuse value, or where such material is processed for reuse.

SOLID WASTE - As defined in 6 NYCRR Part 360.

SOLID WASTE DISPOSAL FACILITY - An area upon which solid waste is deposited for land burial or incineration.

SOURCE SEPARATION - The segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

STORAGE - The containment of solid waste for a period of over sixty (60) days in such a manner as not to constitute disposal of such waste.

VEHICLE TIRES - Tires from cars, trucks, and other vehicles.

YARD WASTE - Grass clippings, leaves, and cuttings from shrubs, hedges and trees, but excluding tree and brush stumps; yard waste does not include household waste or recyclable material, as defined herein.

§ 66-2. Prohibited Disposal of Solid Waste.

- A. No person shall place, throw or deposit or cause to be placed, thrown or deposited any solid waste upon any sidewalk, street, alley, lane, gutter or any public ground in the City or into any stream or upon the banks of any stream running through, or adjacent to, the City.

- B. No person shall place, throw or deposit or cause to be placed, thrown or deposited any solid waste upon the private property of another person.

§ 66-3. Receptacles.

- A. Every owner or occupant of any building, premises or place of business shall provide sufficient containers with close-fitting covers for receiving and holding solid waste.
- B. Container and contents shall not exceed sixty-five (65) pounds in weight. If a plastic bag is utilized in lieu of a rigid container, then the contents shall not exceed 15 pounds in weight.
- C. No person shall bury or openly burn or cause to be buried or openly burned, any solid waste within the City limits.
- D. It shall be unlawful to place or permit to remain anywhere in the City any solid waste or other material subject to decay, other than yard waste, in an uncovered container.

§ 66-4. Responsibility of Owner or Occupant.

- A. Solid waste and recyclable material must be brought to the curb by the owner or occupant no earlier than 9:00 PM of the day before scheduled collection.
- B. It shall be unlawful to permit the accumulation of solid waste on premises of the owner or occupant for a period of more than two (2) weeks.

§ 66-5. Construction and Demolition Debris.

Construction and demolition debris shall not be mixed with solid waste, and must be disposed of by the owner or occupant of the property at a site approved by the NYSDEC.

§ 66-6. Yard Waste.

- A. Yard waste may be disposed of in accordance with such rules and regulations as may be established by resolution of the Director of Public Works.
- B. Brush and shrubs shall not exceed four (4) feet in length and shall be bound in bundles not to exceed eighteen (18) inches in diameter and sixty-five (65) pounds in weight.

- C. Brush and shrubs shall be reduced in volume as much as possible and shall be compactly and firmly bound so as to permit safe and rapid handling.

§ 66-7. Tire Disposal.

Vehicle tires may be disposed of at a transfer station by any person, upon such terms and conditions as are established by the Director of Public Works.

§ 66-8. Large Household Furnishings.

Large household furnishings may be disposed of in accordance with such rules and regulations as may be established by resolution of the Director of Public Works.

§ 66-9. Major Appliances.

- A. Major appliances may be disposed of in accordance with such rules and regulations as may be established by resolution of the Director of Public Works.
- B. The City may pick up and dispose of one or more types of major appliances. The fee to be charged by the City will be \$10.00 for the first item, and \$5.00 for each additional item picked up at the same time.

§ 66-10. Commercial Waste.

Unless otherwise provided by the Common Council, persons generating commercial waste shall be responsible for contracting with a private collector for removal of commercial waste, solid waste and recyclables.

§ 66-11. Industrial Waste.

Persons generating industrial waste shall be responsible for contracting with a private collector for removal of industrial waste, solid waste and recyclables.

§ 66-12. Restrictions on Use of Vehicles.

- A. The collection, removal and carrying of solid waste on any highway, street, alley or lane of the City must be done in covered, watertight vehicles, which shall be in accordance with the rules and regulations of the City, NYSDEC, NYSDOT, and Chautauqua County.
- B. No solid waste or recyclable material shall be spilled or scattered along the streets or public places, and the vehicles used for the collection and transportation of such material shall not be allowed to stand along the public

street for a longer time than shall be reasonably necessary for the loading of the same.

§ 66-13. Transport of Recyclable Materials Into City Prohibited.

It shall be a violation for nonresidents of the City to transport, or cause to be transported, recyclable materials into the City for disposal through a City-operated recycling program.

§ 66-14. Disposal of Solid Waste or Recyclables From Outside City Prohibited.

It shall be a violation for any resident of the City, owner, lessee or person in control of real property within the City to permit any person to bring in, place or deposit any solid waste or recyclables originating from outside the City on any real property owned or leased by him or her, or under his or her control, for the purpose of disposal or recycling under the City-operated solid waste disposal and recycling program.

§ 66-15. Use of Trash Receptacles on City Property Restricted.

It shall be a violation to place any materials into a trash receptacle located on City property, unless such waste was generated at that location. Permitted waste would include picnic waste.

§ 66-16. Materials Subject to Mandatory Recycling.

For the purpose of being able to react promptly to recycling requirements of Chautauqua County and the State of New York, the Director of Public Works is hereby empowered to adopt an official list of mandatory recyclable materials. The list may be changed from time to time. Failure to recycle materials on this official list, except where otherwise accepted by this chapter, shall be a violation of this chapter.

§ 66-17. Materials Preparation.

- A. The Director of Public Works is hereby empowered to adopt, rules and regulations pertaining to solid waste management in regard to materials, preparation requirements and such other rules and regulations as may be necessary to effectively and efficiently ensure sound management of this chapter.
- B. The provisions of this chapter shall incorporate by reference such rules and regulations as are in effect and compliance with the provisions of this chapter shall require compliance with such rules and regulations.

- C. The rules and regulations may be changed from time to time by the Director of Public Works.
- D. Failure to comply with the rules and regulations, except where otherwise accepted in this chapter, shall constitute a violation of this chapter.

§ 66-18. Exceptions To Source Separation Provisions.

The provisions for source separating waste need not be complied with when the person contracts with a private collector, and the private collector permits waste of all types to be mixed together in a dumpster or other suitable container which will then be properly separated and disposed of, or recycled, by the private collector.

§ 66-19. Alternate Disposal Methods.

- A. Nothing in this chapter shall be deemed to prohibit any person from contracting with a private collector for removal of waste and recyclables. The person who utilizes this alternate method shall still pay the fee set forth in Section 66-23D, *infra*, unless the person presents to the Director of Public Works not less than 15 days before the start of a calendar year, a written contract with a private collector, licensed to collect in the City.
- B. Nothing in this chapter shall be deemed to prohibit any person from disposing or causing to be disposed of waste and recyclables at a landfill or transfer station operated by the County of Chautauqua, or the County's duly designated representatives. Persons utilizing this alternate disposal method shall still be responsible to pay the fee set forth in Section 66-23D, *infra*.

§ 66-20. Source Separation Implementation.

- A. Each collector shall submit a plan for approval to the City not more than thirty (30) days after the adoption of this Local Law to provide for collection of solid waste and recyclable materials. Such plan shall include, but not be limited to, the description of the type of waste, frequency of collection, and provision for collecting and marketing recyclable material. Such a plan shall also propose a schedule of implementation, which implementation shall take effect no later than January 1, 1993.
- B. The Director of Public Works shall approve the schedule of implementation for collection of recyclable material throughout the City.

§ 66-21. Solid Waste Collection.

- A. Effective January 1, 1993, any collector who collects solid waste in the City must possess a valid permit issued by the City.

- B. Any collector who wishes to collect solid waste must make application to the Director of Public Works for a permit on application forms to be provided by the Department of Public Works. An annual fee of \$100.00 plus \$25.00 per vehicle to be used in transporting the solid waste or recyclable materials to a solid waste disposal facility, recycling center or transfer station shall accompany the application for a permit to collect solid waste.
- C. Collectors shall annually submit an updated plan, as described in Section 66-20A, supra, with the permit application form referred to in § 66-21B, supra.
- D. If, after a hearing, the City deems that the collector operates in a manner not in compliance with the provisions hereof, or in a manner such as to cause a nuisance or hazard to the public, the City may suspend or revoke the collector's permit.
- E. A permit which has been revoked or suspended shall be surrendered forthwith to the Director of Public Works.
- F. Service of any notice, order or decision shall be made as follows:
 - 1. By mailing a copy of any notice, order or decision by certified mail, return receipt requested, and in a postpaid envelope, directed to the person affected thereby at the person's residence or business address;
 - or
 - 2. By leaving a copy of such notice, order or decision with the person, or the person's agent.
- G. Service of any notice shall be made upon the Common Council or Director of Public Works by mailing the notice in a postpaid envelope directed to the City Clerk and the Director of Public Works.
- H. The collector must operate in compliance with the following requirements:
 - 1. The owners and operators of all vehicles used for the collection of solid waste shall:
 - (a) insure that there is no liquid spillage from the vehicle;
 - (b) insure that there is no spillage or blowing of solids from the vehicle;
 - (c) maintain the vehicle and keep it clean;

- (d) affix the name of the owner or business on both sides of the vehicle and of a color contrasting with the background;
 - (e) insure that the vehicle is capable of discharging contents from a stationary position;
 - (f) guarantee that the vehicle is licensed and insured in accordance with all applicable federal, state and local laws, rules and regulations;
 - (g) insure that regular, reliable collection of solid waste and recyclable materials is provided to each customer.
- 2. All vehicles used for the collection of solid waste shall be stored in a manner as not to create a nuisance.
 - 3. Collectors shall handle solid waste containers in a manner so that no solid waste is spilled during the transfer from the container to the collection vehicle, and so that the container is not damaged during such handling or as a result of such handling. Damage to containers not meeting the specifications set forth herein shall not be covered by this section.
 - 4. The collectors shall dispose of the solid waste at a site approved by the NYSDEC, or outside the state.
 - 5. The collectors must provide reports to the Director of Public Works listing the quantity and types of solid waste and recyclable material handled by the collectors, on forms supplied by, and at a frequency determined by, the Director of Public Works.
- I. Storage of all solid waste by collectors shall be in containers which completely confine the material.
 - J. The structure of the containers to confine the aforementioned solid waste shall be such that they:
 - 1. prevent the exit and entrance of insects, rodents or other animals;
 - 2. can be easily cleaned;
 - 3. will not crack when subject to cold temperatures;
 - 4. will not break or burst when lifted;

5. are easily unloaded;
6. shall be of sufficient integrity to confine such waste for a time determined by the Director of Public Works.

K. All containers shall be kept in a clean and sanitary condition.

§ 66-22. Household Hazardous Waste Collection and Disposal.

- A. All household hazardous waste shall be placed in a container determined by the Director of Public Works.
- B. Household hazardous waste shall be delivered to such facility as the Director of Public Works shall designate, upon such terms and conditions as are established by the Director.

§ 66-23. Fee Schedule and Unit Assignment.

A. Units for determining the proportionate share of residential solid waste disposal cost shall be as follows:

(1) Residential premises.

- (a) A single-family dwelling unit within the City shall constitute one (1) unit.
- (b) Each family house, apartment house, mobile home or multiple dwelling shall consist of one (1) unit for each apartment or living quarters for such a separate family unit contained in or on such premises.

(2) Non-residential premises.

- (a) All types of structures or facilities not designated in § 66-23A(1), supra, shall not be serviced by the City for purposes of solid waste disposal or recyclable material, except that the owner, occupant or tenant of such structures or facilities may apply for such services to the City Department of Public Works.
- (b) The Public Works Director shall determine the requirements of the applicant for service and shall determine whether or not the City can effectively and economically provide service to the applicant. Should the Director find that service can be provided; the Director shall propose a fee for the service based on the amount of material to be removed, the

frequency of the pickups to the applicant's facility, the cost of disposal of the materials, as well as any other factor relating to the provision of waste disposal service to the applicant.

- (c) Upon acceptance of the proposed fee by the applicant and approval of the same by the Common Council, the City may provide service to the applicant. Such services may be terminated by the City on written notice should the City at its discretion determine that service can no longer be provided on an effective and/or economic basis to the City.
 - (3) Any fee structure approved herein shall be revised by the City at such times as the cost of disposal or other operating costs change but, in any event, not less than once per year.
- B. Following the effective date of this chapter, but in any event not later than January 15, 1990, and on or before January 1 of each year thereafter, the City Administration shall survey the City and assign to each structure, building and premises the number of units assigned each structure, building or premises. Once established, the structure, building or premises shall retain that unit assignment until such time as the City Administration changes such unit assignment or until such unit assignment is changed by a court of competent jurisdiction. In the event that the use of a structure or building shall change or a new structure or building is constructed within the City eligible for service herein, the City Administration shall assign the units for each such change or new structure or building, which assignment shall take effect immediately upon the structure's or building's being occupied initially or being utilized in its new capacity.
- C. Review of unit assignment upon assignment of units in the City.
- (1) The City Administration shall make available at the office of the City Clerk a list by property owners as appears on the last tax roll of the City, with the unit assignment for each of said premises therein. The City Clerk shall publish in the official City newspaper notice that such list is available and open for public inspection. Any interested person may appeal such unit assignment to the City Administration on a form to be provided for such purposes.
 - (2) The City Administration shall, upon receiving such appeal, cause an inspection to be made of the premises and shall determine the exact nature and character of the premises so as to assign the correct number of units. In the event that the interested person is not satisfied with the determination of the City in this regard, he/she shall have legal review of the unit assignment according to the Civil Practice Law and Rules of the State of New York.

- (3) The fact that a unit is vacant or unoccupied for any part of the year does not relieve responsibility for the unit charge set forth in Section 66-23D.
- D. The unit charge shall be One Hundred Forty Dollars (\$140.00) per unit, payable in quarterly installments, and shall be billed by the City and paid by the obligated party concurrently with the City's water and sewer bills. **[Amended 1-6-2004 as L.L. #1-2004; Amended 12-20-05 as L.L. #4-2005]**
- E. Effective January 1, 1993, any unpaid fees or charges shall be included with the annual tax levy, together with any interest and penalties thereon, in accordance with General Municipal Law Section 120-cc.

§ 66-24. Enforcement; Penalties For Offenses.

- A. The provisions of this chapter shall be enforceable by any peace officer, any police officer or any agent duly authorized by resolution of the Common Council.
- B. A person convicted of violating any provision of this chapter shall be guilty of a violation, which is punishable as follows:
 - (1) For a first conviction, by a fine of Twenty-five Dollars (\$25.00) or imprisonment for fifteen (15) days, or both.
 - (2) For a second conviction within one (1) year, by a fine of Fifty Dollars (\$50.00), or imprisonment for fifteen (15) days, or both.
 - (3) For a third conviction within one (1) year, by a fine of One Hundred Dollars (\$100.00), or imprisonment for fifteen (15) days, or both.
 - (4) For a fourth and all subsequent convictions within one (1) year, by a fine not less than Two Hundred Fifty Dollars (\$250.00), or imprisonment for fifteen (15) days, or both.

CHAPTER 67

SUBDIVISION REGULATIONS

**ARTICLE I
Introduction**

§ 67-1010 Intent 6703
§ 67-1020 Title..... 6703
§ 67-1030 Fees..... 6702

**ARTICLE II
Procedure**

§ 67-2010 Approval 6704
§ 67-2020 Minor Subdivision Review Procedure 6705
§ 67-2030 Major Subdivision Review Procedure 6709
§ 67-2040 Acceptance of Improvements 6715
§ 67-2050 Modifications of Designs After Approval 6715

**ARTICLE III
Design Standards and Required Improvements**

§ 67-3010 General 6716
§ 67-3020 Minor Subdivision Design Standards..... 6716
§ 67-3030 Major Subdivision Design Standards..... 6719

**ARTICLE IV
Application and Plat Requirements**

§ 67-4010 Minor Subdivision Application Requirements..... 6728
§ 67-4020 Major Subdivision Application Requirements..... 6729
§ 67-4030 Plat Requirements - Minor Subdivisions 6730
§ 67-4040 Plat Requirements - Major Subdivisions..... 6732

**ARTICLE V
Variances and Waivers**

§ 67-5010 Planning Board Authority 6737
§ 67-5020 Cluster Development..... 6737
§ 67-5030 Application For Variances 6737

**ARTICLE VI
Penalties and Severability**

§ 67-6010	Violations.....	6738
§ 67-6020	Penalties	6738
§ 67-6030	Severability.....	6739

**ARTICLE VII
Definitions**

§ 67-7010	General	6740
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[HISTORY: Adopted by the Common Council of the City of Dunkirk on 4-25-1995 as L.L. #12-1995. Amendments noted where applicable.]

**ARTICLE I
Introduction**

§ 67-1010	Intent.
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The City of Dunkirk will consider the land subdivision plats as part of a plan for the orderly efficient and economical development of the City. No subdivision of any lot, tract or parcel of land shall be effected, and no street, sanitary sewer, storm sewer, water main or other facilities in connection with the subdivision shall be laid out, constructed, opened or dedicated for public use and travel, or for the common use of occupants of buildings abutting the subdivision, except in strict accordance with the provisions of these regulations.

The regulations established by this Chapter are designed to assist in the systematic implementation of the comprehensive plan, Zoning Law and other regulations and to provide for public needs, health and safety, convenience and general welfare. Neither the approval nor conditional approval of the subdivision plat shall constitute or waive compliance with any other applicable provisions in the City of Dunkirk.

§ 67-1020 Title.

This law shall be known and may be cited as the "City of Dunkirk Subdivision Regulations".

§ 67-1030 Fees.

Fees for minor and major subdivision reviews shall be as established by the City Council in the City of Dunkirk as in effect at the time of application. The Planning Board may retain consulting services from engineers, architects, landscape architects, lawyers, planners or other professional services during the course of subdivision plat review conducted pursuant to this law; an agreement shall be made with the subdivider to retain these professional services. The subdivider shall pay any actual costs attributable to a consultant's review of an application. The Planning Board may require a subdivider to deposit such funds as may be necessary to pay for these services with the City in advance.

ARTICLE II
Procedure

§ 67-2010 Approval.

The subdivider, or his duly authorized agent, shall apply, in writing, for approval of a proposed subdivision:

- 1) whenever any subdivision of land is proposed to be made and;
- 2) before any contract for the sale of or any offer to sell any lots in such subdivision or any part is made and;
- 3) before any permit for the erection of a structure in such proposed subdivision shall be granted.

Proposed subdivision shall be determined by the Building Inspector to be either minor or major as defined in Article VII - Definitions and shall comply with all applicable application requirements, review procedures and design standards contained herein. The subdivision review procedure shall be as defined herein and consists of the following actions:

- 1) Minor Subdivision
 - a) sketch plan conference (optional but recommended)
 - b) submission or application for final plat approval procedure followed and the State Environmental Quality Review Act (SEQRA) process completed
 - c) Staff review and recommendation
 - d) Planning Board review
 - e) Public hearing
 - f) Final SEQRA action
 - g) Planning Board action on final plat
 - h) File plat with County Clerk (by subdivider)

- (2) Major Subdivision

- a) sketch plan conference (optional but recommended)
- b) submission of application for preliminary plat approval and the State Environmental Quality Review Act (SEQRA) process initiated
- c) staff review and recommendations
- d) planning Board review
- e) public hearing
- f) planning Board action on preliminary plat
 - g) submission of application for final plat approval
 - h) planning Board review
 - i) public hearing (optional - based on preliminary plat action)
 - j) final SEQRA action
 - k) planning Board action of final plat
 - l) file plat with County Clerk (by subdivider)

§ 67-2020 Minor Subdivision Review Procedure.

All applicants for minor subdivision review and approval shall follow the procedures of this Section.

- 1) Sketch Plan Conference

All potential subdividers are encouraged to meet with City of Dunkirk staff prior to the submission of a formal application for a minor subdivision approval. The applicant should consult with the following as applicable:

- a) Department of Planning and Development;
- b) Department of Public Works;
- c) Fire Department;
- d) Police Department;
- e) Building Department.

Such a meeting may be used to expedite the review process by allowing the City and applicant to be advised of the following:

- a) Classification of the project as a minor or major subdivision;
- b) Requirements under the State Environmental Quality Review Act (SEQRA);
- c) Applicability County Planning Board review;
- d) Applicable County or State reviews;
- e) Determination of wetlands and floodplains;
- f) Infrastructure requirements.

2) Application Procedure

The review procedure for a minor subdivision shall consist of a final application approval. The application procedure shall include:

- a) Submission of Application - All application and fees for minor subdivision final approval shall be submitted by the subdivider to the Building Inspector at least thirty (30) days prior to the Planning Board meeting at which the application is to be considered. The application shall contain all items as required in Article IV- Application and Plat Requirements of this law.
- b) Acceptance of Completed Application - The Building Inspector shall consider the application for completeness and shall:
 - i) classify the subdivision as minor or major;
 - ii) determine requirements of the State Environmental Quality Review Act;
 - iii) submit the application to the Chautauqua County Planning Board as required;
 - iv) determine if additional information should be submitted.
- c) Submission Date - The Planning Board shall establish an official submission date for the subdivision application. Such date shall be the date the following has occurred:
 - i) the application has been accepted as complete including all

information required in Article IV - Application and Plat Requirements of this law;

- ii) a draft environmental impact statement has been prepared if necessary;
 - iii) the recommendation of the Chautauqua County Planning Board has been received or the 30 day review period for the County has lapsed.
- d) Non Compliance with Zoning Law - Where the application shows lots that are not in compliance with the Zoning Law, the Planning Board may require the developer refer the application to the Zoning Board of Appeals for an area variance review prior to the commencement of the Planning Board review.
- e) Public Hearing - Following the review of the application for conformity to this law and negotiations with the subdivider on applicable changes, the Planning Board shall hold a public hearing. This hearing shall be held within forty five (45) days of the official submission date of the application. The subdivider or his agent shall attend the public hearing or the project will be tabled until the Board is contacted by the subdivider. This hearing may also fulfill the requirements of the State Environmental Quality Review Act (SEQRA) for the draft environmental impact statement when such hearing is required. The hearing shall be advertised at least once in the City's official newspaper at least five days prior to the hearing.
- f) Action on Final Application - The Planning Board shall by resolution:
- i) approve the subdivision;
 - ii) approve with modifications or;
 - iii) disapprove the application;

within forty five (45) days of the public hearing. This time frame may be extended by mutual consent of the subdivider and Planning Board. The subdivider shall be notified of the final action by the Planning Board within five (5) days.

If disapproved, the grounds for disapproval shall be stated in the record of the Planning Board including reference to the provisions violated by the application.

- g) Approval with Modifications - A copy of the approval with modifications shall be filed with the Planning Board and a copy

provided to the subdivider along with a statement of the requirements that shall accompany the application which, when completed, shall authorize the signing of the conditionally approved plat by the Planning Board Chairperson. Conditional approval of an application shall expire one hundred eighty (180) days after the date of the resolution granting conditional approval. The Planning Board may extend the expiration time, not to exceed two additional periods of ninety (90) days each.

Upon staff acceptance of the completion of the conditional approval requirements as stated in the conditional approval resolution, the Planning Board Chairperson shall sign the plat thus granting final approval.

- h) Filing Final Plat - The subdivider shall file the plat in the office of the Clerk of Chautauqua County, New York within thirty (30) days after the date of final approval. If the subdivider fails to file the plat, the plat shall be considered void and must again be submitted along with a complete application and appropriate fees to the Planning Board for approval.

A mylar copy of the approved subdivision will also be filed with the City of Dunkirk Department of Public Works.

§ 67-2030 Major Subdivision Review Procedure.

All applicants for major subdivision review and approval shall follow the procedures outlined in this Section.

- 1) Sketch Plan Conference

All potential subdividers are encouraged to meet with the City of Dunkirk staff prior to the submission of a formal application for a major subdivision approval. The applicant should consult with the following as applicable:

- a) Department of Planning and Development;
- b) Department of Public Works;
- c) Fire Department;
- d) Police Department;
- e) Building Department;
- f) Recreation Department.

Such a meeting may be used to expedite the review process by allowing the City and applicant to be advised of the following:

- a) classification of the project as a minor or major subdivision;
- b) requirements under the State Environmental Quality Review Act (SEQRA);
- c) applicability of County Planning Board review;
- d) applicable County or State reviews;
- e) determination of wetlands and floodplains.

2) Application Procedure

The review procedure for a major subdivision consists of a preliminary application approval and a final application approval. The procedures for preliminary and final applications are outlined below:

Preliminary Application

- a) Submission of Application - All applications and fees for preliminary application approval shall be submitted by the subdivider to the Building Inspector at least thirty (30) days prior to the Planning Board meeting at which the application is to be considered. The application shall contain all items as required in Article IV - Application and Plat Requirements of this law.
- b) Acceptance of Completed Application - The Building Inspector shall consider the application for completeness and shall:
 - i) classify the subdivision as minor or major;
 - ii) determine requirements of the State Environmental Quality Review Act;
 - iii) submit the application to Chautauqua County Planning Board as required;
 - iv) determine if additional information should be submitted.
- c) Submission Date - The Planning Board shall establish an official

submission date for the major subdivision preliminary application. Such date shall be the date the following has occurred:

- i) the major subdivision preliminary application has been accepted as complete including all information required in Article IV - Application and Plat Requirements of this law;
 - ii) a draft environmental impact statement has been prepared for the major subdivision, if necessary;
 - iii) The recommendation of the Chautauqua County Planning Board has been received or the 30 day review period has lapsed.
- d) Non-compliance with Zoning Law - Where the application shows lots which are not in compliance with the City of Dunkirk Zoning Law, the Planning Board may refer the application to the Zoning Board of Appeals for an area variance review prior to the commencement of the Planning Board review.
- e) Public Hearing for Preliminary Application - Following the review of the preliminary application submitted for conformity to this law and the negotiations with the subdivider on applicable changes, the Planning Board shall hold a public hearing. This hearing shall be held within forty five (45) of days of the official submission date of the application. The subdivider shall attend the public hearing or the project will be tabled until the Board is contacted by the subdivider. This hearing may also fulfill the requirements of the State Environmental Quality Review Act (SEQRA) for the draft environmental impact statement when such hearing is required. The hearing shall be advertised at least once in the City's official newspaper at least five days before the hearing.
- f) Action on Preliminary Application - The Planning Board shall by resolution:
- i) approve the preliminary application;
 - ii) approve the preliminary application with modifications or;
 - iii) disapprove the preliminary application;

within forty five (45) of days of the public hearing. This time frame may be extended by mutual consent of the subdivider and Planning Board. Within five (5) days, the action of the Planning Board shall be noted on three copies of the preliminary plat and a list of modifications attached. One copy shall be returned to the subdivider

and the other two copies retained by the Planning Board.

If disapproved, the grounds for disapproval shall be stated in the record of the Planning Board including reference to the provisions violated by the application.

- g) Preliminary Approval - Approval of a preliminary application shall not constitute approval of the final application, but shall be a guide to the preparation of the final plat. Before submission of the final plat or any portion for formal approval, the subdivider shall comply with these regulations and all requirements set forth by the Planning Board in their review of the preliminary plat.

Final Application

- a) Submission of Application - All major subdivisions shall require final application approval by the Planning Board. If the final application is not submitted for approval within six (6) months of preliminary application approval, the Planning Board may revoke the preliminary application approval. The subdivider shall file an application and all supporting documentation with the appropriate fees for final application approval with the Building Inspector at least ten (10) days prior to the Planning Board meeting at which the application is to be considered. The application shall contain all items as required in Article IV - Application and Plat Requirements of this law.
- b) Submission Date - The Planning Board shall establish an official submission date for the major subdivision final application. Such date shall be the date the Planning Board determines the application to be complete and include all items that were required as part of the preliminary application approval.
- c) Public Hearing (optional) - A public hearing may be held by the Planning Board after a complete application is filed and prior to rendering a final decision. This hearing shall be held within forty five (45) days of the official submission date of the application. The subdivider shall attend the public hearing or the project will be tabled until the Board is contacted by the subdivider. The hearing shall be advertised at least once in the City's official newspaper at least five days before the hearing.

The public hearing may be waived by the Planning Board if the final application is in substantial agreement with the preliminary application. If the final application is not in substantial agreement with the approved preliminary application, or additional hearings are required under SEQRA, then the public hearing shall be conducted.

- d) Guarantees for Required Improvements - The applicant shall enter into one of the following agreements with the City of Dunkirk to ensure the construction and installation of public improvements:
 - i) the subdivider will construct all improvements as required by these regulations and by the Planning Board prior to final approval of the application;
 - ii) the applicant shall file a performance bond in such amount and form as determined by the Department of Public Works to ensure that the public improvements are built in compliance with the approved subdivision
- e) The applicant shall guarantee all public improvements for a period of two (2) years after complete installation. Prior to the City Council accepting the improvements for the purpose of perpetual maintenance, the Department of Public Works shall review the condition of all construction and prepare a report of recommendation to the Council. All pavements or other improvements requiring replacement or repair shall be defined by the Department of Public Works and the subdivider shall complete all required replacement or repairs at his/her own expense prior to acceptance by the City Council.
- f) Action on Final Application - The Planning Board shall, by resolution:
 - i) approve the final application;
 - ii) approve the final application with modifications;
 - iii) disapprove the final application;

within forty five (45) of days of the public hearing. If the public hearing has been waived, the Planning Board shall act within forty five (45) days of the final application official submission date. This time frame may be extended by mutual consent of the subdivider and Planning Board. The subdivider shall be notified of the final action of the Planning Board.

If disapproved, the grounds for disapproval shall be stated in the record of the Planning Board including reference to the provisions violated by the application.
- g) Approval with Modifications - The final application approval shall be certified by the Planning Board within five (5) days of approval with

modifications. A copy shall be filed with the Planning Board and a copy provided to the subdivider along with a statement of all requirements that shall accompany the application that, once completed, will authorize the signing of the conditionally approved plat by the Planning Board Chairperson. Approval with modifications of the application shall expire one hundred eighty (180) days after the date of the resolution granting conditional approval. The Planning Board may extend the expiration time, not to exceed two additional periods of ninety (90) days each.

- h) Approval of Final Plat in Phases - Prior to granting conditional or final approval of a plat in final form, the Planning Board may permit the plat to be divided into two or more phases and may, in its resolution granting conditional or final approval, state such requirements as it deems necessary to insure the orderly development of the plat be completed before such phases may be signed by the Planning Board Chairperson. Conditional or final approval of the phases of the final plat, subject to any conditions imposed by the Planning Board, shall be granted concurrently with conditional or final approval of the plat.

In the event the owner shall file only one phase of such approved plat in the Office of the County Clerk, two copies of the entire approved plat shall be filed within thirty days of the filing of such phases with the City Assessor. Such phase shall encompass at least ten (10) percent 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 phases are filed in the Office of the County Clerk within three (3) years of the filing of the first section with the County Clerk. Segmentation, as defined by the State Environmental Quality Review Act, shall be avoided in all cases.

- i) Filing of Final Plat - The subdivider shall file the major subdivision final plat in the office of the Clerk of Chautauqua County, New York within thirty (30) days after the date of final approval. If the subdivider fails to file the plat, the plat shall be considered void and must again be submitted along with a complete application and appropriate fees to the Planning Board for approval.

§ 67-2040 Acceptance of Improvements.

The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the City of any street, park, playground, recreation area, easement, public utility or any other improvement. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning

Board may also require the filing of a written agreement between the applicant and the City Council covering future deed and title, dedication and provision for the costs of developing and maintaining such improvements.

§ 67-2050 Modifications of Designs After Approval.

If at any time it is demonstrated that unforeseen conditions make it necessary to modify the location or design of improvements required by the Planning Board, the Planning Board Chairperson may authorize such modifications, provided these modifications are within the spirit and intent of the Planning Board's approval and do not substantially alter the function of any such improvement required by the Planning Board. Any such authorization issued under this section shall be in writing and shall be reported to the Planning Board at the next regular meeting.

ARTICLE III
Design Standards and Required Improvements

§ 67-3010 General.

Land to be subdivided into lots shall be of such character that it can be used safely for building purposes without danger to the public safety and shall be in harmony with the City of Dunkirk's comprehensive plan including the zoning law. Parcels that can not be used safely for building purposes shall have a designated benefit including, but not be limited to, access, parks or natural areas. All required improvements shall be constructed or installed in conformance with City specifications outlined in this law.

§ 67-3020 Minor Subdivision Design Standards.

1) Subdivision Design

The following standards shall be incorporated into all minor subdivisions, as applicable:

- a) All side lines of lots shall be generally at right angles to street lines.
- b) All parcels shall comply with the provisions of the City of Dunkirk Zoning Law, except that the Planning Board may, in unique circumstances, approve substandard parcels in the following circumstances:
 - i) for street or access rights of ways;
 - ii) where the parcel is intended to be used permanently for non-structural recreational purposes;
 - iii) where the land is intended to be conveyed to an adjacent landowner for purposes of combination with an adjacent parcel;
 - iv) where the land is intended to be left permanently undeveloped or;
 - v) where the land is to be used for essential facilities as defined by the Zoning Law.
- c) The Planning Board shall, wherever possible, preserve all natural features which add value to residential developments and the community, such as large trees or groves, water courses, beaches, historic sites, vistas and other similar irreplaceable natural assets.

- d) The lot arrangement shall be such that in constructing a building in compliance with the City of Dunkirk Zoning Law there will be no foreseeable difficulties for reasons of natural conditions.
- e) Land subject to flooding or land deemed by the Planning Board to be uninhabitable shall not be platted for residential occupancy, nor for such other uses as may increase danger to health, life or property or aggravate the flood hazard. Such land within the plat shall be set aside for such uses as shall not be endangered by periodic or occasional inundation or improved in a manner satisfactory to the Planning Board to remedy said hazardous conditions. Subdivided areas in flood hazard areas are subject to the City of Dunkirk Zoning Law.

2) Access

- a) All lots shall be designed so as to allow for safe access.
- b) All lots shall be designed so as to allow for the construction of driveways within the street right of way not exceeding an eight (8) percent grade.
- c) When a watercourse separates a street from abutting lots, provisions shall be made for access to all lots by means of culverts or other structures.

3) Utility Easements

Where lot configuration is such as to make impractical the inclusion of utilities within the street rights of way, perpetual unobstructed easements shall be otherwise provided with satisfactory access to the street. Such easements shall be cleared and graded where required.

4) Monuments

Permanent monuments shall be set at the subdivision boundaries at all corners and at such other points as required by the Planning Board. Such monuments shall be iron rods or pipes or concrete monuments.

5) Water Supply

All developable lots in minor subdivisions shall be connected to the City of Dunkirk municipal water supply in compliance with NYS Health Department and City of Dunkirk regulations. The final plat shall show all proposed

connections.

6) Sanitary Sewage System

All developable lots in minor subdivisions shall be connected to the City of Dunkirk sanitary sewage system in accordance with the City's Department of Public Works regulations. The final plat shall show all proposed connections.

7) Storm Sewage Management

The following shall apply to all minor subdivisions:

- a) Surface water shall be carried off site by pipe and connected to the City of Dunkirk storm water system where required by the Planning Board. Drainage facilities shall be located in the street right of way when feasible or in perpetually unobstructed easements of appropriate width.
- b) Culverts or other drainage facilities shall be sized to accommodate potential run-off from the entire upstream drainage area whether inside or outside the subdivision. All storm water facilities shall be sized to accommodate a one hundred (100) year storm under conditions of total potential development permitted by the City of Dunkirk Zoning Law.
- c) Water shall not be discharged, retained or detained in such a way that it will negatively impact abutting or adjacent property
- d) The rate of runoff upon completion of the development will not increase from the pre-development rate of storm water runoff.

§ 67-3030 Major Subdivision Design Standards.

1) Subdivision Design

The following standards shall be incorporated into all major subdivisions, as applicable:

- a) All parcels shall comply with the provisions of the City of Dunkirk Zoning Law, except that the Planning Board may, in unique circumstances, approve substandard parcels in the following circumstances:
 - i) for street or access rights of ways;

- ii) where the parcel is intended to be used permanently for non-structural recreational purposes;
 - iii) where the land is intended to be conveyed to an adjacent landowner for purposes of combination with an adjacent parcel;
 - iv) where the land is intended to be left permanently undeveloped or;
 - v) Where the land is to be used for essential facilities as defined by the Zoning Law.
- b) All side lines of lots shall be generally at right angles to street lines.
 - c) The Planning Board shall, wherever possible, preserve all natural features which add value to residential developments and the community, such as large trees or groves, water courses, beaches, historic sites, vistas and other similar irreplaceable assets.
 - d) The lot arrangement shall be such that in constructing a building in compliance with the City of Dunkirk Zoning Law there will be no foreseeable difficulties for reasons of natural conditions.
 - e) Land subject to flooding or land deemed by the Planning Board to be uninhabitable shall not be platted for residential occupancy, nor for such other uses as may increase danger to health, life or property or aggravate the flood hazard. Such land within the plat shall be set aside for such uses as shall not be endangered by periodic or occasional inundation or improved in a manner satisfactory to the Planning Board to remedy said hazardous conditions. Subdivided areas in flood hazard areas are subject to the City of Dunkirk Zoning Law.

2) Access

- a) All lots shall be designed so as to allow for safe access.
- b) All lots shall be designed so as to allow for the construction of driveways within the street right of way not exceeding an eight (8) percent grade.
- c) When a watercourse separates a street from abutting lots, provisions shall be made for access to all lots by means of culverts or other structures.
- d) Subdivisions containing twenty (20) or more lots shall have at least

two access points.

3) Utility Easements

Where lot configuration is such as to make impractical the inclusion of utilities within the street rights of way, perpetual unobstructed easements shall be otherwise provided with satisfactory access to the street. Such easements shall be cleared and graded where required.

4) Monuments

Permanent monuments shall be set at the subdivision boundaries at all corners and at such other points as required by the Planning Board. Such monuments shall be iron rods or pipes or concrete monuments.

5) Water Supply

All developable lots in major subdivisions shall be connected to the City of Dunkirk municipal water supply in accordance with NYS Health Department and City of Dunkirk regulations. The final plat shall show all proposed connections.

6) Sanitary Sewage System

All developable lots in major subdivisions shall be connected to the City of Dunkirk sanitary sewage system in accordance with the City's Department of Public Works regulations. The final plat shall show all proposed connections.

7) Storm Sewage Management

The following shall apply to all major subdivisions:

- a) Surface water shall be carried off site by pipe and connected to the City of Dunkirk storm water system where required by the Planning Board. Drainage facilities shall be located in the street right of way when feasible or in perpetually unobstructed easements of appropriate width.
- b) Culverts or other drainage facilities shall be sized to accommodate potential run-off from the entire upstream drainage area whether inside or outside the subdivision. All storm water facilities shall be sized to accommodate a one hundred (100) year storm under

conditions of total potential development permitted by the City of Dunkirk Zoning Law.

- c) Water shall not be discharged, retained or detained in such a way that it will negatively impact abutting or adjacent property. Where it is anticipated that the additional run-off incident to the development of the subdivision will adversely impact downstream lands or overload an existing downstream drainage facilities during a five (5) year storm or greater, the Planning Board shall not approve the subdivision until provision has been made by the developer for mitigating the condition.
- d) The rate of runoff upon completion of the development will not increase from the pre-development rate of storm water runoff.

8) Street Layout and Design Standards

Public streets shall be of sufficient width, suitably located and adequately constructed to conform to the City of Dunkirk comprehensive plan. Streets shall accommodate the anticipated traffic and afford access for fire fighting vehicles, snow removal and other street maintenance equipment. The arrangement of streets shall not cause undue hardship to adjoining properties and shall be coordinated to comprise an efficient and convenient system.

Public streets shall be graded and improved in accordance with the New York State Department of Transportation Highway Design Manual. Storm drainage facilities, water mains, sewers, lighting, signs, street trees and fire hydrants shall be provided in accordance with the NYS Uniform Fire Prevention and Building Code, the NYS Department of Transportation Highway Design Manual, the City of Dunkirk Water Regulations and City of Dunkirk Plumbing Code.

- a) Street Layout - The street plan of the proposed subdivision shall bear a logical relationship to the topography and other natural features of the site. All streets shall be arranged to ensure a maximum number of building sites are at or above the grade of the streets.
- b) Street Grades - Street grades shall conform in general to the terrain and shall not be less than one half (0.5) percent nor more than six (6) percent for major or collector streets or eight (8) percent for minor streets. No grade shall be more than three (3) percent within fifty (50) feet of any intersection.

All changes in grade shall be connected by vertical curves of length

and radius to ensure clear visibility is provided for a safe distance. A combination of steep grades and curves shall be avoided.

c) Street Linkages - The arrangement of streets in subdivisions proposed in the City of Dunkirk shall provide for the continuation of principal streets of adjoining subdivisions and for proper projection of principal streets into adjoining properties which are not yet subdivided. This will help ensure necessary fire protection, movement of traffic and the construction or extension, presently or when required in the future, of needed utilities and public services such as sewers, water and drainage facilities.

d) Major Streets - When a subdivision abuts or contains an existing or proposed major street, the Planning Board may require:

- i) a marginal access street;
- ii) reverse lot frontage with screen planting contained in a non-access reservation along the rear property line;
- iii) deep lots with rear service alleys;
- iv) other treatment as may be necessary;

for adequate protection of residential properties and to afford separation of through and local traffic.

e) Minor Streets - Minor streets shall be configured to discourage their use by through traffic.

f) Dead End Streets - The creation of dead end or cul-de-sac residential streets will be allowed whenever such type of development will not interfere with normal traffic circulation in the area. An easement may be required to continue pedestrian walkways and utilities to the next street.

Streets designed to be permanently dead ended shall not exceed five hundred (500) feet in length. Such streets shall be terminated in a circular turn around having a minimum radius of sixty (60) feet and a pavement radius of fifty (50) feet.

g) Street Widths - Streets shall have the following minimum widths:

<u>Street</u>	<u>Right-of-Way</u>	<u>Pavement Width</u>
Major Streets (2 lanes)	66 Feet	40 Feet

Collector Street	60 Feet	28 Feet
Minor Streets	50 Feet	28 Feet

Street right of ways and pavement widths may be increased as deemed necessary by the Planning Board to accommodate on street parking.

- h) Intersections - In general, all streets should intersect so that for a distance of at least one hundred (100) feet, the road is approximately at right angles to the road it joins. Intersections of minor streets with collector or major streets should, in general, be at least two hundred (200) feet apart. Center line offsets of two streets less than one hundred twenty five (125) feet should be avoided.
- i) Curve Radii - In general, road lines shall be connected with a curve, the radius of which for the center line of road shall not be less than four hundred (400) feet for major streets, two hundred (200) feet for collector streets and one hundred (100) feet on minor streets.
- j) Commercial Service Roads - Paved rear service roads or alleys of not less than twenty (20) feet in width or adequate off street loading space, suitably surfaced, shall be provided in connection with lots designed for commercial use.
- k) Street Names - Streets shall be named so as not to be confused in sound or spelling with existing street names. Streets that join or align with roads of an abutting or neighboring property shall bear the same name. General, no street should change direction by more than ninety (90) degrees without a change in name. Signs bearing road names shall be erected by the subdivider at all intersections.
- l) Utilities in Roadways - Underground utilities shall be placed, wherever possible, in the street right of way within the paved roadway to simplify location and repair of utilities. Underground service connections shall be installed to the lot line of each lot for all required utilities prior to road pavement.

Fire hydrants shall be spaced and installed in conformity with all requirements of the New York State Uniform Fire Prevention and Building Code.

When natural features make the inclusion of utilities within street right of ways impractical, perpetual unobstructed easements at least twenty (20) feet in width shall be provided with satisfactory access to the street. Wherever possible, easements shall be continued from block to block and shall present as few irregularities as possible.

Such easement shall be cleared and graded when required.

Road lighting shall be in conformance with the lighting system of the City of Dunkirk in conformance with City regulations.

- m) Blocks - The length, width and shape of blocks shall be determined and consider the following:
 - i) provision of adequate sites for buildings of the type proposed;
 - ii) zoning requirements;
 - iii) topography;
 - iv) requirements for safe and convenient vehicular and pedestrian circulation.

Blocks generally should not be less than two hundred (200) feet nor more than one thousand two hundred (1200) feet in length. In general, no block width shall be less than twice the normal lot depth.

In blocks exceeding eight hundred (800) feet in length, the Planning Board may require the reservation of a twenty foot easement through the block to provide for crossing utilities and pedestrian traffic and may specify a five (5) feet wide walkway.

- n) Pedestrian Circulation - Sidewalks, walkways and pedestrian paths shall be determined and included in the subdivision design. The circulation patten will connect the site with off site pedestrian circulation systems and other significant features.

9) Parks, Playgrounds and Open Space

Upon a finding by the Planning Board that a proper case exists for requiring that a park or recreational space be suitably located on the plat for playgrounds or other recreation purposes, the Planning Board may require the developer satisfactorily develop any such area shown on the plat. Any such findings shall include an evaluation of existing studies of the present and anticipated future needs for park and recreational facilities in the City based on projected population growth to which the particular subdivision plat will contribute.

Upon such finding, the Planning Board shall require a maximum of ten (10) percent of the total area of the subdivision be allocated for park or recreational use; the selection of the park site will be a mutual agreement of the Planning Board and subdivider to ensure a proper site is chosen. Such area may be dedicated to the City of Dunkirk by the subdivider if the City

Council approves such dedication. Alternatively, park or recreational space may be dedicated to the homeowners association for control and joint private ownership and maintenance.

In the event that an area to be used for a park or playground is required, the subdivider shall submit a site plan to the Planning Board, prior to final approval, in conformance with the City of Dunkirk Zoning Law. The plan shall include, but not be limited to:

- a) the survey and deed showing the boundaries of the area, giving lengths and bearings of all straight lines, radii, lengths, central angles and cord distances of all curves;
- b) existing and, if applicable, proposed changes in grade and contours of the said area and of areas immediately adjacent to the park or playground.

Should the Planning Board make a finding that the proposed subdivision plat presents a proper case for requiring a park or recreational area, but that a suitable area of adequate size to meet the requirement cannot be properly located on such plat, the Planning Board may require a sum of money in lieu of the park land as outlined in the City's fee schedule.

In making a determination of suitability, the Planning Board shall assess the size and suitability of lands shown on the plat 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 pursuant to this Section shall be deposited into a trust fund to be used by the City exclusively for park, playground or other recreational purposes, including the acquisition of property.

Reserve strips of land which might be used to control access from the proposed subdivision to any neighboring property, or to any land within the subdivision shall be prohibited.

10) Street Trees

All subdivisions shall include a total of one street tree/lot and shall be installed by the subdivider. Street trees shall be selected from a "list" of approved trees and shall meet the specifications prepared by the City's Department of Public Works.

ARTICLE IV
Application and Plat Requirements

§ 67-4010 Minor Subdivision Application Requirements.

The following shall be submitted with all minor subdivision applications submitted to the City of Dunkirk:

- 1) application form
- 2) non-refundable application fee
- 3) a certificate issued by the authorized City, County and School official verifying that no unpaid taxes or special assessments are due and payable at the time of application approval on any of the lands included in the plat.
- 4) a copy of such covenants or deed restrictions as is intended to cover all or part of the tract
- 5) ten (10) copies of the minor subdivision plat that includes all information outlined in Article IV - Application and Plat Requirements. The Building Inspector shall distribute copies of the application to the following:
 - a) Department of Planning and Development;
 - b) Department of Public Works;
 - c) Fire Department;
 - d) Police Department;
 - e) Planning Board members;
 - f) Other Review Agencies, as required.
- 6) where applicable, a statement of the nature and extent of the interest of any State or City employee or officer in the applicant;
- 7) an environmental assessment form, when applicable.

§ 67-4020 Major Subdivision Application Requirements.

The following shall be submitted with all major subdivision applications submitted to the City of Dunkirk:

- 1) fifteen (15) copies of the application form
- 2) non-refundable application fee
- 3) certificate issued by the authorized City, County and School official verifying that no unpaid taxes or special assessments are due and payable at the time of application approval on any of the lands included in the plat.
- 4) a copy of covenants or deed restrictions as is intended to cover all or part of the tract
- 5) If the application is for a phased subdivision covering only a portion of the subdivider's entire holding, a map of the entire subdivision, drawn at an appropriate scale shall be submitted. The map shall include:
 - a) an outline of the platted area;
 - b) proposed streets and probable future streets system with grades and drainage indicated on the remaining portion of the subdivision;
 - c) the probable future drainage layout of the entire subdivision.

The phase submitted shall be considered in the context of the entire subdivision.

- 6) 15 copies of the preliminary subdivision plat that includes all information outlined Article IV - Application and Plat Requirements. The Building Inspector shall distribute copies of the application to the following:
 - a) Department of Planning and Development;
 - b) Department of Public Works;
 - c) Fire Department;
 - d) Police Department;
 - e) Planning Board members;
 - f) Other Review Agencies, as required.
- 7) Where applicable, a statement of the nature and extent of the interest of any State or City employee or officer in the applicant;
- 8) An environmental assessment form, when applicable.

- b) names of all subdivisions and owners of record for lots immediately adjacent to the parcel being subdivided (location plan)
- c) zoning boundaries, municipal boundaries, flood hazard areas, wetlands, property boundaries, easements and right of ways as appropriate
- d) existing buildings, water courses, wells, water and sanitary sewer lines, storm water system, wooded areas and other significant features on the parcel, adjacent parcels and right of ways
- e) contour intervals of three feet or as deemed appropriate by the Planning Board
- f) width, location and names of existing and proposed streets and roads
- g) soils types and characteristics including soil profiles for the tract proposed for subdivision
- h) area map showing location of site

Proposed Conditions

- a) all lot lines of proposed lots including bearings, distances, corners and monuments (with descriptions)
- b) lot area of each proposed lot (excluding area inside public right of ways)
- c) all parcels to be dedicated to public use and conditions
- d) location of all proposed facilities to be included in subdivision
- e) proposed sanitary sewer lines indicating size, connections and direction of flow
- f) proposed storm drainage showing culverts, size, connections and direction of flow
- g) proposed water lines indicating size and connection
- h) details and cross sections of all streets and roads
- i) details and cross sections of all walkways or sidewalks.

location and type of all monuments and including elevation contours at USGS intervals shall be prepared and certified by a licensed land surveyor - the corners of the tract shall be referenced and shown on the plat

- 7) Proposed pattern of parcels and lots with boundaries, including parcel and lot widths, depths and areas within the subdivided area
- 8) Zoning information including front, side and rear yards, zoning district lines and names of all applicable zones, floodplains and wetlands
- 9) The plat should cover all land being subdivided including any residual land retained by the owner and shall meet the following:

Existing Conditions

- a) scale 1" = 20' (or as deemed appropriate) and north arrow
- b) names of all subdivisions and owners of record for lots immediately adjacent to the parcel being subdivided (location plan)
- c) zoning boundaries, municipal boundaries, flood hazard areas, wetlands, property boundaries, easements and right of ways as appropriate
- d) existing buildings, water courses, wells, water and sanitary sewer lines, storm water system, wooded areas and other significant features on the parcel and adjacent parcels
- e) contour intervals of three feet or as deemed appropriate by the Planning Board
- f) width, location and names of existing and proposed streets and roads
- g) soils types and characteristics including soil profiles for the tract proposed for subdivision

Proposed Conditions

- a) all lot lines of proposed lots including distances, corners and monuments (with descriptions)
- b) lot area of each proposed lot (excluding area inside public right of ways)

- c) all parcels to be dedicated to public use and conditions
- d) location of all proposed facilities to be included in subdivision
- e) location of proposed sanitary sewer lines
- f) location of proposed storm drainage
- g) location of proposed water lines, valves and hydrants
- h) profiles of all roads and streets indicating width, location, grades, curbs, utilities, location of manholes and other details and cross sections as deemed necessary
- i) profiles of all walkways and sidewalks indicating width, location, grades, details and cross sections - also include street lighting standards, street trees
- j) preliminary design of any bridges or culverts that may be required

Final Application Plat Requirements

In addition to the information submitted with the preliminary application, the following shall be submitted with the final plat application:

- 1) sufficient data from an actual field survey to determine readily the location, bearing and length of each street line, lot line, boundary line and to reproduce such lines on site
- 2) Proposed Conditions including:
 - a) profiles of all proposed sanitary sewer lines indicating size, types, location, connections and direction of flow
 - b) profiles of all proposed storm drainage showing culverts, size, types, location, connections and direction of flow - include a grading plan where natural contours are to be changed more than two (2) feet
 - c) profiles of all proposed water lines, valves and hydrants indicating size, types, location and connection points
 - d) profiles of all roads and streets indicating width, location, grades, curbs, utilities, depth of pavements and sub-base, location of manholes and other details and cross sections as deemed necessary

- 3) length and bearing of all straight lines, radii, length of curves and central angles of all curves and cord bearings for each street shall be indicated in feet and/or fractions of feet
- 4) all dimensions and angles of the lines of each lot shall be submitted and indicated in feet and/or fractions of feet
- 5) street lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use
- 6) public open spaces for which deeds are included and those areas reserved by the developer
- 7) lots and blocks shall be numbered and lettered in alphabetical order
- 8) permanent reference monuments shall be indicated
- 9) the plat to be filed with the County Clerk shall be printed upon mylar or an acceptable equal with India ink and shall comply with the requirements of Real Property Law Section 334
- 10) the plat shall be clearly titled "Final Plat"

A mylar copy of the approved subdivision will also be filed with the City of Dunkirk Department of Public Works.

The Planning Board may waive any of the application requirements listed in this Section where deemed the information is either not applicable or necessary for the specific review. The Planning Board may also require additional information deemed necessary to complete the review.

ARTICLE V
Variances and Waivers

§ 67-5010 Planning Board Authority

The Planning Board is authorized to modify certain provisions of the City of Dunkirk Zoning Law. The Planning Board may consider or require applications for subdivisions which include the following deviations from the Zoning Law as outlined below:

- 1) to eliminate side and rear yard requirements to allow for innovative attached housing types;
- 2) to reduce side and rear yard requirements for existing structures where, in unique and special circumstances, it will result in the more efficient use of land;
- 3) to reduce street frontages that will result in a more efficient use of land;
- 4) to allow for the transfer of the overall density of a subdivision by allowing some parcels of lots smaller than the minimum lot size requirements of the City of Dunkirk Zoning Law when all such reductions are compensated for by a corresponding increase in the lot size of one or more parcels or lots in the subdivision above the minimum lot size of the requirements of the Zoning Law.

§ 67-5020 Cluster Development

The standards and requirements of these regulations may be modified by the City Planning Board in the case of plans for Planned Unit Developments or Cluster Developments as may be permitted in the City of Dunkirk Zoning Law or other large scale developments that, in the judgment of the Planning Board, achieve substantially the objectives of the regulations contained in this Article and which are further protected by such covenants or other legal provisions as will assure conformity to and achievement of the plan.

§ 67-5030 Application for Variances

Applications for modifications and variances shall be submitted in writing by the subdivider at the time the preliminary plan or final plan is filed with the Planning Board. The application shall state fully the grounds and all facts relied upon by the applicant for the variance.

**Article VI
Penalties and Severability**

§ 67-6010 Violations

Subdividing Land in the City of Dunkirk - It shall be unlawful for any person to subdivide for the purpose of transferring, selling, conveying or assigning any tract or parcel of land which is located wholly or in part in the City of Dunkirk, except in compliance with this law.

It shall be unlawful for any person to sell or exchange or offer to sell or exchange any parcel of land which is part of a subdivision of a larger tract of land or record in the Office of the County Clerk any subdivision plat unless the subdivision has been approved by the City of Dunkirk Planning Board and meets the provisions of this ordinance.

It shall be unlawful for any person to receive a building permit until water and sewer utilities and adequate ingress and egress to the subdivision are installed. It shall be the responsibility of the subdivider to allow no occupancy until all necessary utilities are installed and basic improvements are adequate to render the subdivision habitable. It shall be unlawful for any subdivider to sell any portion of an approved subdivision until the prospective buyer or builder has been advised that occupancy permits will not be issued until the improvements are completed.

Whenever a violation of this local law occurs, any person may file a complaint, in writing. All such complaints must be filed with the Building Inspector who shall properly record such complaint and immediately investigate and report to the City Council. The City Council may institute any appropriate action or proceedings to prevent unlawful division of land, to restrain, correct or abate any violation of this law or to prevent the use or occupancy of said land.

§ 67-6020 Penalties

Any person, who violates any provision of this local law, or any regulation adopted, is guilty of an offense punishable by a fine not exceeding One Hundred Dollars (\$100) for each violation. Each daily continued violation shall constitute a separate violation and shall be punishable as such. The Building Inspector of the City of Dunkirk shall issue notices of violation.

§ 67-6030 Severability

If any portion of this Chapter is for any reason held to be unconstitutional or otherwise unenforceable, such determination shall not affect the validity of the remaining portions of this Chapter. The enacting body declares that it would have, and does

approve and enact each subsection, subdivision, paragraph, sentence, clause and phrase, irrespective of the fact that any one or more portions be held unconstitutional or otherwise unenforceable.

Article VII Definitions

§ 67-7010 General

Except where specifically defined, all words used in this Chapter shall carry their customary meanings. The following rules shall apply to the text of this Chapter:

- 1) words in the present tense include the future;
- 2) words in the singular include the plural and the plural the singular;
- 3) the word "shall" is intended to be mandatory;
- 4) the word "lot" shall include the word "plot" or "parcel";
- 5) the word "person" shall include an individual, firm or corporation;
- 6) the words "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied";
- 7) a building or structure includes any part;
- 8) the word "and" indicates that all connected items, conditions, provisions or events shall apply;
- 9) the word "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination;
- 10) the words "either...or" indicates that the connected items, conditions, provisions or events may apply singly but not in any combination.

For the purpose of the subdivision regulations in the City of Dunkirk, certain words and phrases used herein are defined as follows:

BLOCK - The property abutting on one side of a street and lying between the two nearest intersecting or intercepting streets, or nearest intersecting or intercepting streets and railroad right of way, park, river channel or un-subdivided acreage.

CLUSTER DEVELOPMENT - Development of subdivisions that permits a reduction in lot area requirements for some or all lots in a tract, provided there is no increase in the number of lots permitted under a conventional subdivision and where the resultant land is:

- a) designated as permanent open space; or

- b) permanently combined with the remainder of the lots where only some of the lots are reduced in area.

DEAD END STREET or CUL-DE-SAC - A short street having one end open to traffic and being terminated at the other end which may have a vehicular turn around.

EASEMENT - The right of a person, government agency or public utility company to use public or private land owned by another for a specific purpose.

IMPROVEMENTS - Street grading, street surfacing and paving, curb and gutter, sidewalks, landscaping, cross-walks, water mains and lines, sanitary sewers, storm sewers, drainage facilities, culverts, bridges, utilities, etc.

LOT - A designated parcel or tract of land established by plat, subdivision or as otherwise permitted by law, to be used, developed or built upon as a unit.

CORNER LOT - A parcel of land at the junction of and fronting on two or more intersecting streets.

INTERIOR LOT - A lot other than a corner lot.

THROUGH LOT - An interior lot having frontage on two parallel or approximately parallel streets.

LOT DEPTH - The mean horizontal distance between the front and rear lot lines.

LOT FRONTAGE - The length of the front lot line measured at the street line.

LOT FRONTAGE ON CIRCULAR STREETS - The length of the line measured by a line 15 feet back from and parallel to the chord of the lot frontage; the chord of the lot frontage is the straight line joining the two (2) points where the side lot lines intersect the front lot line.

LOT LINE - A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.

LOT OF RECORD - A lot for which a valid conveyance has been recorded in the Office of the County Clerk prior to the effective date of the City of Dunkirk Subdivision Law or is either part of a subdivision plat approved by the Planning Board and filed in the County Clerk's office, or was exempt from the City of Dunkirk Subdivision Regulations at the time of recording with the County Clerk.

LOT AREA - The total area within the lot lines of a lot, excluding any street rights of way.

PARCEL - Any area of land established by plat, subdivision or as otherwise permitted by law, regardless of whether it is defined as a "lot" or whether it is to be developed or built upon as a unit.

PLANTING STRIP - A strip of land between the roadway and the sidewalk or street right of way.

PLAT - A map of a subdivision.

PLOT PLAN - A surveyors plat constructed from deed descriptions and actual physical building or improvement measurements.

PUBLIC STREET - Any vehicular way including the land between the street lines which is:

- a) an existing state, county or City roadway;
- b) shown upon a plat approved pursuant to law as a public street;
- c) approved by other official action or;
- d) shown on a plat duly filed and recorded in the office of the County and City Assessor prior to the grant of plat approval authority to the planning board.

STREET PAVEMENT - The wearing or exposed surface of the roadway used by vehicular traffic.

SIDEWALK - The portion of a street or cross-walk intended for pedestrian use only.

STREET - A term used to describe a right of way serving as a means of vehicular and pedestrian travel also furnishing space for sewers, public utilities and landscaping. Streets include avenues, boulevards, streets, lands and other ways. The streets are classified by function as follows:

MAJOR STREET - Streets which serve or are designed to serve heavy flows of traffic and which are used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

COLLECTOR STREETS - Streets which carry traffic from minor streets to the major street system or arterial streets and highways including principal entrance streets of a residential development and streets for circulation

within such a development.

RESIDENTIAL and MINOR STREETS - Streets intended primarily for access to abutting properties.

MARGINAL ACCESS STREETS - Minor streets which are parallel with, and adjacent to, arterial streets and highways, which provide access to abutting properties and protection from through traffic.

SUBDIVIDER - Any person, firm, corporation, partnership or association, or their agent who shall cause a parcel of land to be divided.

SUBDIVISION - The division of a tract or parcel of land into two or more lots, sites or other divisions for the purpose, whether immediate or future, of sale or building development and includes re-subdivision and, when appropriate to the context, relates to the process of subdividing or to the land or area being subdivided and further includes the dedication of public use of a street or other specified area through or in a tract of land regardless of area.

SUBDIVISION, MAJOR - A subdivision not classified as a minor subdivision.

SUBDIVISION, MINOR - A subdivision containing three (3) lots or parcels and not involving:

- a) the creation of any new public street;
- b) the dedication of public lands;
- c) the extension of municipal facilities or other structural public improvements other than minor drainage facilities, or;
- d) the dedication of public open space through cluster development.

SUBSTANDARD LOT/PARCEL - Any lot or parcel of land which does not meet the lot size or frontage requirements of the zoning law.

CHAPTER 68

TAXATION

ARTICLE I

**Taxable Status Date for Real Property
[Adopted 6-12-1978 as L.L. #1-1978]**

§ 68-1. Taxable Status Date.....6801
 [Amended 2-15-1983 as L.L. #1-1983]

§ 68-2. When Effective6801

[HISTORY: Adopted by the Common Council of the City of Dunkirk; Article I, 6-12-1978 as L.L. #1-1978. Amendments noted where applicable.]

GENERAL REFERENCES

Senior citizen tax exemption -	See Ch. 69.
Tax on utility services -	See Ch. 70.

ARTICLE I

**Taxable Status Date for Real Property
[Adopted 6-12-1978 as L.L. #1-1978]**

§ 68-1. Taxable Status Date. [Amended 2-15-1983 as L.L. #1-1983]

All real property in the City of Dunkirk shall be assessed according to its condition and ownership as of the first day of May for each assessment year. The Department of Assessment shall make and complete the annual assessment roll based on this status date.

§ 68-2. When Effective.

This local law shall become effective forty-five (45) days after this adoption.

CHAPTER 69

TAXATION: TAX EXEMPTION FOR SENIOR CITIZENS

§ 69-1.	Purpose	6901
§ 69-2.	Exemption Granted; Conditions.....	6901
§ 69-3.	When Effective	6902

[HISTORY: Adopted by the Common Council of the City of Dunkirk 2-3-1970 as L.L. #1-1970. Amendments noted where applicable.]

GENERAL REFERENCES

Sale of real estate acquired by tax foreclosure -	See Ch. 60.
Tax on utility services -	See Ch. 70.

§ 69-1. Purpose.

The purpose of this local law is to grant a partial exemption from taxation to the extent of fifty per centum (50%) of the assessed valuation of real property which is owned by certain persons with limited income who are sixty-five (65) years of age or over, meeting the requirements set forth in § 467 of the Real Property Tax Law.

§ 69-2. Exemption Granted; Conditions.

Real property owned by persons, each of whom is sixty-five (65) years of age or over, shall be exempt from taxes levied by the City of Dunkirk, New York, to the extent of fifty per centum (50%) of the assessed valuation thereof, provided that all of the following conditions are met:

- A. The owner or all of the owners must file an application for exemption annually in the Assessor's office, City Hall, Dunkirk, between the first day of January and the first day of July of each calendar year; the taxable status date in the City of Dunkirk.
- B. The income of the owner or combined income of the owners must not exceed Sixteen Thousand Dollars (\$16,000.00) for the income tax year or calendar year, ending December 31, 2007; Seventeen Thousand Dollars (\$17,000.00) for the income tax year or calendar year January 1, 2008 through December 31, 2008; Eighteen Thousand Dollars (\$18,000.00) for the income tax year or calendar year January 1, 2009 through December 31, 2009; Nineteen Thousand Dollars (\$19,000.00) for the income tax year or calendar year January 1, 2010 through December 31, 2010;

Twenty Thousand Dollars (\$20,000.00) for the income tax or calendar year January 1, 2011 through December 31, 2011; as the case may be, immediately preceding the date of application. **[Amended 10-18-1979 by L.L. #2-1979; Amended 2-17-1981 by L.L. #1-1981; Amended 8-16-1983 as L.L. #2-1983; Amended 11-9-1989 by L.L. #5-1989; Amended 03-04-1993 by L.L. #2-1993; Amended 5-20-1997 as L.L. #4-1997; Amended 03-04-2008 as L.L. #2-2008]**

- C. Title to the property must be vested in the owner or, if more than one (1), in all of the owners for at least twenty-four (24) consecutive months preceding the first day of July of each year for which the application is filed. **[Amended 2-15-1973 by L.L. #2-1977]**
- D. The property must be used exclusively for residential purposes, be occupied in whole or in part by the owners and constitute the legal residence of the owners.

§ 69-3. When Effective. [Amended 3-20-1973 by L.L. #1-1973; amended 5-20-1977 by L.L. #4-1977]

This local law shall take effect upon filing in the office of the Secretary of State of the State of New York.

CHAPTER 69A

PARTIAL EXEMPTION FOR CERTAIN CAPITAL IMPROVEMENTS TO ONE AND TWO FAMILY RESIDENTIAL BUILDINGS [Adopted 6-17-1997 as L.L. #6-1997]

§ 69A-1. Residential Buildings.

Residential buildings reconstructed, altered or improved subsequent to the effective date of this Chapter shall be exempt from taxation and special ad valorem levies by the City of Dunkirk as provided by Real Property Tax Law Section 421-f and to the extent hereinafter provided.

§ 69A-2.

- (a) Such buildings shall be exempt for a period of one year to the extent of thirty-five percentum of the increase in assessed value thereof attributable to such reconstruction, alteration or improvement and for an additional period of seven years provided, however, that the extent of such exemption shall be decreased by five percent, of the "exemption base" for each year during such additional period of seven years. The "exemption base" shall be the increase in assessed value as determined in the initial year of the term of exemption, except as provided in subparagraph (b) of this paragraph.
- (b) In any year in which a change in level as assessment of fifteen percent or more is certified for a final assessment roll pursuant to the rules of the state board, the exemption base shall be multiplied by a fraction, the numerator of which shall be the total assessed value of the parcel on such a final assessment roll (after accounting for any physical or quantity changes to the parcel since the immediately preceding assessment roll), and the denominator of which shall be the total assessed value of the parcel on the immediately preceding final assessment roll. The result shall be the new exemption base. The exemption shall thereupon be recomputed to take into account the new exemption base, notwithstanding the fact that the assessor receives certification of the change in level of assessment after the completion, verification and filing of the final assessment roll. In the event the assessor does not have custody of the roll when such certification is received, the assessor shall certify the recomputed exemption to the local officers having custody and control of the roll, and such local officers are hereby directed and authorized to enter the recomputed exemption certified by the assessor on the roll. The assessor shall give written notice of such recomputed exemption to the property owner, who may, if he or she believes that the exemption was recomputed incorrectly, apply for a correction in the manner provided by

the New York Real Property Tax Law for the correction of clerical errors.

- (c) Such exemption shall be limited to Eighty Thousand Dollars (\$80,000.00) in increased market value of the property attributable to such reconstruction, alteration or improvement and any increase in market value greater than such amount shall not be eligible for the exemption granted herein. For the purposes of this section, the market value of the reconstruction, alteration or improvement shall be equal to the increased assessed value attributable to such reconstruction, alteration or improvement divided by the most recently established state equalization rate, except where the state equalization rate equals or exceeds ninety-five percent, in which case the increase in assessed value attributable to such reconstruction, alteration or improvement shall equal the market value of such reconstruction, alteration or improvement.
- (d) No such exemption shall be granted unless:
 - (1) such reconstruction, alteration or improvement was commenced subsequent to the effective date of this Article; and
 - (2) the value of such reconstruction, alteration or improvement exceeds Three Thousand Dollars (\$3,000.00); and
 - (3) the greater portion, as so determined by square footage of the building reconstructed, altered or improved is at least five years old, and
 - (4) such reconstruction, alteration or improvement requires the issuance of a building permit and is completed as may be evidenced by a certificate of occupancy or other appropriate documentation provided by the owner.
- (e) For purpose of this Article, the terms reconstruction, alteration and improvement shall not include ordinary maintenance and repairs.

§ 69A-3.

Such exemption shall be granted only upon application by the owner of such real property on a form prescribed by the state board, the original of which shall be filed with the Clerk of the Board of Assessors. Such original application shall be filed on or before the taxable status date and within one year from the date of completion of such reconstruction, alteration or improvement. A copy of such application shall also be filed with the state board.

§ 69A-4.

If the Board of Assessors is satisfied that the applicant is entitled to an exemption pursuant to this Article, the Board of Assessors shall approve the application and such real property shall thereafter be exempt from taxation and special ad valorem levies as herein provided commencing with the first assessment roll prepared after the taxable status date referred to in subdivision three of this Article. The assessed value of any exemption granted pursuant to this Article shall be entered by the Clerk of the Board of Assessors on the assessment roll with the taxable property, with the amount of the exemption shown in a separate column.

§ 69A-5.

The provisions of this Chapter shall only apply to one and two family dwellings used exclusively for residential purposes.

§ 69A-6.

In the event that real property granted an exemption pursuant to this Article is sold or transferred other than to the heirs or distributees of the owner, the exemption granted hereunder shall cease.

CHAPTER 69B

TAXATION: NEW CONSTRUCTION TAX ABATEMENT PROGRAM
[Adopted on 11-06-2006 as L.L. #7-2006]

§ 69B-1. Intent 6901B
§ 69B-2. Residential Investment Exemption 6901B
§ 69B-3. Effective Date 6901B

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 11-06-2006 as L.L. #7-2006. Amendments noted where applicable.]

§ 69B-1. Intent.

It is the intent of this local law to add to the Taxation portion of the City Code of the City of Dunkirk to enact partial exemption from city real property taxation on new one- and two-family residential housing construction within the City of Dunkirk based on the number of unused buildable lots within the City of Dunkirk, the declining community tax base and the numerous benefits associated with the development of additional single family homes.

§ 69B-2. Residential Investment Exemption.

New York State has enacted Senate and Assembly Bill Number S.7565-A entitled, "Authorizes granting of the residential investment exemption in certain cities and the school districts therein," to allow the City of Dunkirk to provide partial exemptions for new housing construction located in the City of Dunkirk, New York, whereby such real property shall be exempt for a period of one year to the extend of fifty (50%) per centum of the increase in assessed value, and for an additional period of nine (9) years the exemption shall be decreased by five (5%) per centum each year.

§ 69B-3. Effective Date.

This Tax Abatement Program shall apply to all new constructions in the City of Dunkirk for which construction was commenced on or after May 2, 2006.

CHAPTER 70

TAXATION: TAX ON UTILITY SERVICES

§ 70-1.	Tax on The Furnishings of Utility Services.....	7001
§ 70-2.	Definitions	7002
§ 70-3.	Records To Be Kept	7004
§ 70-4.	Quarterly or Annual Returns To Be Filed; Supplemental Returns	7004
§ 70-5.	Payment of Tax	7005
§ 70-6.	Insufficient Returns; Determination of Tax Due; Hearing and Review	7005
§ 70-7.	Service of Notice; Presumption of Delivery; Commencement Of Running Of Time.....	7006
§ 70-8.	Penalty For Failure To File Return or Pay Tax on Time; Remission of Penalty	7006
§ 70-9.	Refunds.....	7006
§ 70-10.	Tax To Be Paid by Utility	7007
§ 70-11.	Actions to Enforce Payment of Tax; Tax and Penalty as Lien	7007
§ 70-12.	Authority of City Treasurer in Administration of Tax.....	7007
§ 70-13.	Confidential Nature of Returns; Penalty For Disclosure; Exchange of Information With Other Fiscal Officers.....	7007
§ 70-14.	Disposition of Taxes and Penalties	7008
§ 70-15.	When Effective	7009

[HISTORY: Adopted by the Common Council of the City of Dunkirk as L.L. #2-1937, which became a law on 7-1-1937. Amendments noted where applicable.]

GENERAL REFERENCES

Sale of Real Estate Acquired by Tax Foreclosure - See Ch. 60.
Tax Exemption for Senior Citizens - See Ch. 69.

§ 70-1. Tax On The Furnishing of Utility Services. [Amended by L.L. #1-1950, which became a law 6-27-1950] [Editor's Note: This title of § 70-1 was amended by Local Law #2-1941, which became a law 6-24-1941]

Pursuant to the authority granted by Section 20-b of the General City Law of the State of New York, a tax equal to one percentum (1%) of its gross income for an indefinite period from July 1, 1937 is hereby imposed upon every utility doing business in the City of Dunkirk which is subject to the supervision of the State Department of Public Service, which has a gross income for the twelve (12) months ending May 31 of each year in excess of five hundred dollars (\$500.), except motor carriers or brokers subject to such

supervision under Article 3-b of the Public Service Law, and a tax equal to one percentum (1%) of its gross operating income is hereby imposed for the same period upon every other utility doing business in the City of Dunkirk which has a gross operating income for the twelve (12) months ending May 31 of each year in excess of five hundred dollars (\$500.), which taxes shall have application only within the territorial limits of the City of Dunkirk, and shall be in addition to any and all other taxes and fees imposed by any other provisions of law for the same period. Such taxes shall not be imposed on any transaction originating or consummated outside of the territorial limits of the City of Dunkirk, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

§ 70-2. Definitions. [Amended by L.L. #2-1941, which became a law 6-24-1941. Editor's Note: A declaration of legislative intent, which appeared as Section 1 of Local Law No. 2, 1941, stated in substance that it was the intent of Local Law No. 2, 1937, to impose a tax on utility services, whether rendered by utilities in the strict sense or not, and to include as subject to the tax persons and corporations directly in competition with ordinary utilities, such as landlords and submeterers; that these landlords and submeterers had considered themselves subject to the tax and had based their charges to their customers in consideration of the tax; and that the amendatory local law, making it clear that they were required to include in gross operating income receipts from sales of services similar to those rendered by ordinary utilities, was made retroactive to the original enactment of the tax.

Sections 3 and 4 of Local Law No. 2, 1941, stated in substance that the amendments to § 70-2 should be deemed to have the same force and effect as if enacted on June 28, 1937, but that if the amendments should be declared by a court of competent jurisdiction to be invalid to the extent that they were made retroactive, then the tax should be applicable to recent transactions since January 1, 1940.]

As used in this local law:

- A. The word "utility" includes every person subject to the supervision of either division of the State Department of Public Service, except persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, and also includes every person (whether or not such person is subject to such supervision) who sells gas, electricity, steam, water, refrigeration, telephony or telegraphy, delivered through mains, pipes or wires, or furnishes gas, electric, steam, water, refrigerator, telephone or telegraph service, by means of mains, pipes or wires; regardless of whether such activities are the main business of such person or are only incidental thereto, or of whether use is made of the public streets.

- B. The word “person” means persons, corporations, companies, associations, joint-stock associations, copartnerships, estates, assignee of rents, any person acting in a fiduciary capacity or any other entity, and persons, their assignees, lessees, trustees or receivers, appointed by any court whatsoever, or by any other means, except the state, municipalities, political and civil subdivisions of the state or municipality, and public districts.

- C. The words “gross income” means and including receipts received in or by reason of any sale, conditional or otherwise (except sales hereinafter referred to with respect to which it is provided that profits from the sale shall be included in gross income), made or service rendered for ultimate consumption or use by the purchaser in the City of Dunkirk, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever; also profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the period for which a return is made); also receipts from interest, dividends and royalties, derived from sources within the City of Dunkirk, other than such as are received from a corporation a majority of whose voting stock is owned by the taxpaying utility, without any deduction therefrom for any expenses whatsoever incurred in connection with the receipt thereof, and also profits from any transaction (except sales for resale and rentals) within the City of Dunkirk whatsoever.

- D. The words “gross operating income” mean and include receipts received in or by reason of any sale, conditional or otherwise, made for ultimate consumption or use by the purchaser of gas, electricity, steam, water, refrigeration, telephony or telegraphy, or in or by reason of the furnishing for such consumption or use of gas, electric, steam, water, refrigerator, telephone or telegraph service in the City of Dunkirk, including cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expenses whatsoever.

§ 70-3. Records To Be Kept.

Every utility subject to tax under this local law shall keep such records of its business and in such form as the City Treasurer may require, and such records shall be preserved for a period of three (3) years, except that the City Treasurer may consent to their destruction within that period or may require that they be kept longer.

**§ 70-4. Quarterly or Annual Returns To Be Filed; Supplemental Returns.
[Amended by L.L. #1-1950, which became a law 6-27-1950]**

Every utility subject to tax hereunder shall file, on or before September 25, December 25, March 25 and June 25 of each year, a return for the three (3) calendar months preceding each such return date, including any period for which the tax imposed hereby or by any amendment hereof is effective, each of which returns shall state the gross income or gross operating income for the period covered by each such return. Returns shall be filed with the City Treasurer on a form to be furnished by him for such purpose and shall contain such other data, information or matter as the City Treasurer may require to be included therein. Notwithstanding the foregoing provisions of this section, any utility whose average gross income or average gross operating income, as the case may be, for the aforesaid three (3) months' period, is less than one thousand five hundred dollars (\$1,500.), may file its returns for such periods on June 25, 1939, June 25, 1940, June 25, 1941, June 25, 1942, June 25, 1943, June 25, 1944, June 25, 1945, June 25, 1946, June 25, 1947, June 25, 1948, June 25, 1949, and June 25, 1950, respectively, and June 25 of each and every year hereafter. The City Treasurer, in order to insure payment of the tax imposed, may require at any time a further or supplemental return which shall contain any data that may be specified by the City Treasurer. Every return shall have annexed thereto an affidavit of the head of the utility making the same, or of the owner or of the copartner thereof or of a principal officer of the corporation, if such business be conducted by a corporation, to the effect that the statements contained therein are true.

§ 70-5. Payment of Tax.

At the time of filing a return as required by this local law, each utility shall pay to the City Treasurer the tax imposed by this local law, for the period covered by such return. Such tax shall be due and payable at the time of filing the return or, if a return is not filed when due, on the last day on which the return is required to be filed.

**§ 70-6. Insufficient Returns; Determination of Tax Due; Hearing and Review.
[Amended by L.L. #6-1939, which became a law 7-25-1939]**

In case any return filed pursuant to this local law shall be insufficient or unsatisfactory to the City Treasurer, and if a corrected or sufficient return is not filed within twenty (20) days after the same is required by notice from the City Treasurer, or if no return is made for any period, the City Treasurer shall determine the amount of tax due from such information as he is able to obtain, and, if necessary, may estimate the tax on the basis of external indices or otherwise. The City Treasurer shall give notice of such determination to the person liable for such tax. Such determination shall finally and irrevocably fix such tax, unless the person against whom it is assessed shall, within thirty (30) days after the giving of notice of such determination, apply to the City Treasurer for a hearing, or unless the City Treasurer, of his own motion, shall reduce the same. After such hearing, the City Treasurer shall give notice of his decision to the person liable for

the tax. The decision of the City Treasurer may be reviewed by a proceeding under Article 78 of the Civil Practice Act of the State of New York, if application therefor is made within thirty (30) days after the giving of notice of such decision. An order to review such decision shall not be granted unless the amount of any tax sought to be reviewed, with interest and penalties thereon, if any, shall be first deposited with the City Treasurer and an undertaking filed with him, in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the applicant will pay all costs and charges which may accrue in the prosecution of such proceeding, or at the option of the applicant, such undertaking may be in a sum sufficient to cover the tax, interest, penalties, costs and charges aforesaid, in which event the applicant shall not be required to pay such tax, interest and penalties as a condition precedent to the granting of such order.

§ 70-7. Service of Notice; Presumption of Delivery; Commencement of Running of Time.

Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended, in a postpaid envelope, addressed to such person at the address given by him in the last return filed by him under this local law, or, if no return has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time, which is determined according to the provisions of this local law by the giving of notice, shall commence to run from the date of mailing of such notice.

§ 70-8. Penalty For Failure to File Return or Pay Tax on Time; Remission of Penalty.

Any person failing to file a return or corrected return, or to pay any tax or any portion thereof, within the time required by this local law, shall be subject to a penalty of five percentum (5%) of the amount of tax due, plus one percentum (1%) of such tax for each month of delay or fraction thereof, excepting the first month, after such return was required to be filed or such tax became due; but the City Treasurer, if satisfied that the delay was excusable, may remit all or any portion of such penalty.

§ 70-9. Refunds. [Amended by L.L. #8-1939, which became a law 7-25-1939]

If, within one (1) year from the payment of any tax or penalty, the payer thereof shall make application for a refund thereof and the City Treasurer or the Court shall determine that such tax or penalty or any portion thereof was erroneously or illegally collected, the City Treasurer shall refund the amount so determined. For like cause and within the same period, a refund may be so made on the initiative of the City Treasurer. However, no refund shall be made of a tax or penalty paid pursuant to a determination of the City Treasurer as hereinbefore provided unless the City Treasurer, after a hearing as

hereinbefore provided, or of his own motion, shall have reduced the tax or penalty or it shall have been established in a proceeding under Article 78 of the Civil Practice Act of the State of New York that such determination was erroneous or illegal. All refunds shall be made out of moneys collected under this local law. An application for a refund, made as hereinbefore provided, shall be deemed an application for the revision of any tax or penalty complained of and the City Treasurer may receive additional evidence with respect thereto. After making this determination, the City Treasurer shall give notice thereof to the person interested, and he shall be entitled to an order to review such determination under said Article 78, subject to the provisions hereinbefore contained relating to the granting of such an order.

§ 70-10. Tax To Be Paid By Utility.

The tax imposed by this local law shall be charged against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others but shall constitute a part of the operating costs of such utility.

§ 70-11. Actions To Enforce Payment of Tax; Tax and Penalty as Lien.

Whenever any person shall fail to pay any tax or penalty imposed by this local law, the Corporation Counsel shall, upon the request of the City Treasurer, bring an action to enforce payment of the same. The proceeds of any judgment obtained in any such action shall be paid to the City Treasurer. Each such tax and penalty shall be a lien upon the property of the person liable to pay the same, in the same manner and to the same extent that the tax and penalty imposed by Section 186-a of the Tax Law is made a lien.

§ 70-12. Authority of City Treasurer in Administration of Tax.

In the administration of this local law the City Treasurer shall have power to make such reasonable rules and regulations, not inconsistent with law, as may be necessary for the exercise of his powers and the performance of his duties, and to prescribe the form of blanks, reports and other records relating to the administration and enforcement of the tax, to take testimony and proofs, under oath, with reference to any matter within the line of his official duty under this local law, and to subpoena and require the attendance of witnesses and the production of books, papers and documents.

§ 70-13. Confidential Nature of Returns; Penalty for Disclosure; Exchange of Information With Other Fiscal Officers.

- A. Except in accordance with the proper judicial order or as otherwise provided by law, it shall be unlawful for the City Treasurer, or any agent, clerk or employee of the City of Dunkirk to divulge or make known in any manner the amount of gross income or gross operating income, or any particulars set forth or disclosed in any return under this local law. The officer charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding

in any court, except on behalf of the City of Dunkirk in an action or proceeding under the provisions of this local law, or on behalf of the State Tax Commission in an action or proceeding under the provisions of the Tax Law of the State of New York, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return filed by him, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the publication of delinquent lists showing the names of persons who have failed to pay their taxes at the time and in the manner provided for by this local law together with any relevant information which in the opinion of the City Treasurer may assist in the collection of such delinquent taxes; or the inspection by the Corporation Counsel or other legal representatives of the City of Dunkirk of the return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action has been instituted in accordance with the provisions of this local law.

- B. Any offense against the foregoing secrecy provisions shall be punishable by a fine not exceeding one thousand dollars (\$1,000.) or by imprisonment not exceeding six (6) months, or both, and if the offender be an officer, agent, clerk or employee of the City of Dunkirk he shall be dismissed from office, and shall be incapable of holding any office or employment in the City of Dunkirk for a period of five (5) years thereafter.
- C. Notwithstanding any provisions of this local law the City Treasurer may exchange with the chief fiscal officer of any other city in the State of New York information contained in returns filed under this local law, provided such other city grants similar privileges to the City of Dunkirk, and provided such information is to be used for tax purposes only, and the City Treasurer shall, upon request, furnish the State Tax Commission with any information contained in such returns.

§ 70-14. Disposition of Taxes and Penalties. [Amended by L.L. #3-1944, which became a law 9-26-1944]

All taxes and penalties received by the City Treasurer for taxes heretofore or hereafter imposed under this local law shall be credited and deposited by him in the general fund of the City.

§ 70-15. When Effective.

This local law shall take effect immediately.

CHAPTER 71

TAXATION: VETERANS EXEMPTION

Added 1-15-1985 as L.L. #1-1985

§ 71-1.	Purpose	7101
§ 71-2.	Alternative Exemption	7101
§ 71-3.	Eligible Funds Exemption	7102

[HISTORY: Adopted 1-15-1985 as L.L. #1-1985. Added §71.3 by L.L. #6-1995 on 3-21-1995. Amended by L.L. #4 (Intro No. 3) 1998 on 9-15-1998. Amendments noted where applicable.]

GENERAL REFERENCES

Taxable status date for real property -	See Ch. 68, Art. 1.
Tax exemption for senior citizens -	See Ch. 69.
Tax on utility services -	See Ch. 70.

§ 71-1. Purpose [Amended 9-15-1998 by L.L. #4 (Intro No. 3) 1998]

The purpose of this Chapter is to provide availability of options for veterans exemptions, pursuant to RPTL.

§ 71-2. Alternative Exemption.

- A. Qualifying residential real property shall be exempt from taxation to the extent of fifteen percent (15%) of the assessed value of such property; provided, however, that such exemption shall not exceed the lesser of Six Thousand Dollars (\$6,000.00) or the product of Six Thousand Dollars (\$6,000.00) multiplied by the latest state equalization of the City of Dunkirk.

- B. In addition to the exemption provided by Subsection A of this section, where the veterans served in a combat theater or combat zone of operations, as documented by the award of a United States campaign ribbon or service medal, qualifying residential real property also shall be exempt from taxation to the extent of ten percent (10%) of the assessed value of such property; provided, however, that such exemption shall not exceed the lesser of Four Thousand Dollars (\$4,000.00) or the product of Four Thousand Dollars (\$4,000.00) multiplied by the latest state equalization rate of the City of Dunkirk.

- C. In addition to the exemptions provided by Subsections A and B of this section, where the veteran received a compensation rating from the United States Veterans' Administration because of a service-connected disability, qualifying residential real property shall be exempt from taxation to the extent of the product of the assessed value of such property multiplied by fifty percent (50%) of the veteran's disability rating; provided, however, that such exemption shall not exceed the lesser of Twenty Thousand Dollars (\$20,000.00) or the product of Twenty Thousand Dollars (\$20,000.00) multiplied by the latest state equalization rate of the City of Dunkirk.

§ 71-3. Eligible Funds Exemption. [Amended 9-15-1998 by L.L. #4 (Intro #3) 1998]

- (a) Pursuant to subdivision five of Section 458 of the Real Property Tax Law, notwithstanding the limitation on the amount of the eligible-funds exemption prescribed in subdivisions one and two of Section 458 of the Real Property Tax Law, if the total assessed value of the real property for which such exemption has been granted increases or decreases as a result of a revaluation or update of assessments, and a material change in level of assessment, as defined in title two of article twelve, of the Real Property Tax Law, is certified for the assessment roll pursuant to the rules of the New York State Board of Equalization and Assessment, the assessor shall increase or decrease the amount of such exemption by multiplying the amount of such exemption by such change in level of assessment. If the assessor receives the certification from New York State Board of Equalization and Assessment after the completion, verification and filing of the final assessment roll, the assessor shall certify the amount of such exemption, as recomputed pursuant to this paragraph, to the local officers having custody and control of the assessment roll, and such local officers are hereby directed and authorized to enter the recomputed exemption, as certified by the assessor, on the assessment roll. **[Added 3-21-1995 as L.L. #6-1995]**
- (b) Pursuant to Subdivision five (b) of Section 458 of the Real Property Tax Law ("RPTL"), notwithstanding the provisions of Paragraph (b) of subdivision six of RPTL 458, owners of property, who previously received an exemption pursuant to RPTL 458, but who opted instead to received exemption pursuant to RPTL 458-a, are authorized to again receive an exemption, pursuant to RPTL 458, upon application by the owner within one year of the adoption of this law. The assessor shall recompute all exemptions granted, pursuant to RPTL 458, by multiplying the amount of each such exemption by the cumulative change in level of assessment factor certified by the State Board, measured from the assessment roll immediately preceding the assessment roll on which exemption were first granted, pursuant to RPTL 458-a; provided, however, that if an exemption

pursuant to RPTL 458 was initially granted to a parcel on a later assessment roll, the cumulative change in level factor to be used in recomputing that exemption shall be measured from the assessment roll immediately preceding the assessment roll on which that exemption was initially granted. No refunds or retroactive entitlements shall be granted.
[Added 9-15-1998 by L.L. #4 (Intro #3) 1998]

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

CHAPTER 72

TAXICABS AND TAXICAB OPERATORS

Adopted on 12-2-1993

§ 72-1. Definitions7201

**ARTICLE I
Taxicabs**

§ 72-2. License Registration7202
§ 72-3. Fees7203
§ 72-4. Display of License Registration7204
§ 72-5. Revocation of License Registration7204
§ 72-6. Abandonment of License Registration7204
§ 72-7. Inspections; Corrections of Defects7204
§ 72-8. Penalties for Offenses7204

**ARTICLE II
Taxicab Operator’s License**

**§ 72-9. License required; Application; Issuance; Duration of
Current Licenses7205**
§ 72-10. Fee7206
§ 72-11. Revocation of License7206
§ 72-12. Taxicab Drivers License Renewal7206
§ 72-13. Penalties for Offenses7206

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 12-2-1993; Amended on 3-7-1995 as L.L. #7-1995; Amended on 6-18-1996 as L.L. #10 (Intro #11) 1996]

§ 72-1. Definitions. As used in this chapter, the following term shall have the meaning indicated:

TAXICAB - a motor vehicle having a seating capacity for passengers of not more than five (5) persons in addition to the driver and used in the business of transporting passengers for compensations, but not operating on a fixed route.

**ARTICLE I
Taxicabs**

§ 72-2. License Registration. [Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]

- A. It shall be unlawful to engage in the business of operating a taxicab in the City of Dunkirk without first having secured a license registration therefore.
- B. Applications for such license registration shall be made in writing to the City Clerk, upon a form provided by the Clerk. Applications shall list the vehicle identification number of each taxicab to be covered by the license registration and shall include a copy of the registration and insurance certificate for each taxicab to be covered by the license registration.
- C. The owner of the taxicab business is responsible for insuring that all of its operators obtain City driver's licenses, as described in Section 72-8, infra and for obtaining a separate license registration for each of its individual taxicabs, as described in Section 72-3.
- D. No such license registration shall be issued to or held by any person who is not a person of good character or who has been convicted of a felony; nor shall such license registration be issued to, or held by, any corporation if any officer thereof would be ineligible for a license under the foregoing standards. "Good character" is defined as the lack of convictions for misdemeanors related to crimes against persons, such as assaults, sex offenses, possession of weapons, larceny and drug charges and also the lack of such vehicle and traffic convictions as any alcohol related offense in the last three (3) years or two (2) such convictions in the last ten (10) years, three (3) speeding violations or more than three (3) moving violations in the last three (3) years. The Chief of Police may also determine that a license registration is not to be issued if, in his professional judgment, the applicant represents a danger to the safety of the public or has demonstrated a general disregard for the law and highway safety.
- E. License registrations obtained under this Article are non-transferable. License registration may not be transferred between taxicabs or between individuals.

§ 72-3. Fees. [Amended on 6-19-1996 by L.L. #10 (Intro No. 11) 1996]

- A. The annual fee, payable in advance, for a license registration covering one to three taxicabs, shall be Fifty Dollars (\$50.00), plus Twenty-five Dollars (\$25.00) for each additional taxicab in excess of three (3) taxicabs operated by any licensee.
- B. Whenever the number of cabs so operated shall be increased during the license year, the licensee shall notify the City Clerk of such change and shall pay the additional fee applicable and provide the vehicle

identification number of the vehicle(s). If the licensee shall “retire” a cab and replace it with another taxicab, the licensee must notify the City Clerk and obtain a new license registration for the substitute taxicab. There shall be no fee for up to two “substitutions” per year if the total number of taxicabs operated by the licensee remains the same during the relevant annual fee period. For the third and subsequent “substitutions”, there shall be a Ten Dollar (\$10.00) fee assessed.

- C. All taxicab license registrations in effect on the effective date of this Article shall remain in full force and effect, however, the licensee shall provide the necessary additional information and shall comply with the additional terms of this Article within sixty (60) days of this Article.
- D. All license registration issued hereunder shall expire on the first day of January subsequent to issuance.
- E. Upon payment of the necessary fee and completion of the application and further compliance with this Article, each licensee shall receive stickers for the indicated number of taxicabs. **Such stickers shall be permanently affixed to the taxicab in full view on the left corner of the front windshield** and shall not be transferred. If the vehicle is no longer used as a taxicab, the licensee shall notify the City and turn in the sticker or provide proof of the destruction of the vehicle and/or the sticker and shall turn in the license registration associated with that taxicab. **[Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]**

§ 72-4. Display of License Registration. [Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]

Each license registration issued hereunder shall be numbered and state the name of the person or corporation to whom granted, the expiration date thereof, and shall at all times be displayed on the driver’s side sun visor in a conspicuous place within the taxicab.

§ 72-5. Revocation of License Registration. [Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]

The City Clerk, upon recommendation of the Chief of Police, may at any time, for reasonable cause, revoke any license registration issued hereunder.

§ 72-6. Abandonment of License Registration. [Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]

Any licensee who shall fail to operate a taxicab service licensed hereunder for a period of thirty (30) consecutive days shall be deemed to have abandoned such license

registration and shall not thereafter operate a taxicab, unless a new application shall be made as herein provided.

§ 72-7. Inspections, Correction of Defects.

The Chief of Police may at any time compel a taxicab permit holder to submit any taxicab owned by such holder to an inspection of its mechanism and equipment by an official inspection station located within the City of Dunkirk. The Chief of Police shall compel such inspection at least two (2) times in each year of twelve (12) consecutive months. The owner shall pay the fee for such inspection.

No taxicab shall be operated and driven after each such inspection until all defects found in its mechanism or equipment by such inspection have been corrected and the operator of such inspection station certifies, in writing, to the Chief of Police that the taxicab was inspected at such station and that all defects in its mechanism and equipment have been corrected.

§ 72-8. Penalties for Offenses.

Any person violating any of the provisions of this Article shall be guilty of an offense and shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or by imprisonment for not more than ten (10) days, or both.

**ARTICLE II
Taxicab Operator's License**

§ 72-9. License Required; Application; Issuance; Duration of Current Licenses. [Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]

- A. No person shall operate any taxicab within the City of Dunkirk, without a City of Dunkirk taxicab operator's license issued upon the production of satisfactory proof of the fitness of the applicant therefore. The applicant shall present proof of the appropriate driver's license and picture identification. **[Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]**

- B. No City of Dunkirk taxicab operator's license shall be issued to, or held by, any person who is not a person of good character or who has been convicted of a felony. "Good character" is defined as the lack of convictions for misdemeanors related to crimes against persons, such as assaults, sex offenses, possession of weapons, larceny and drug charges and also the lack of such vehicle and traffic convictions as any alcohol related offense in the last three (3) years or two (2) such convictions in the last ten (10) years, three (3) speeding violations or more than three (3) moving violations in the last three (3) years. The Chief of Police may also determine that a license registration is not to be issued if, in his professional judgment, the applicant represents a danger to the safety of

the public or has demonstrated a general disregard for the law and highway safety.

- C. A City of Dunkirk taxicab operator's license shall be issued by the City Clerk and be personal to the licensee and shall expire on the first day of January subsequent to issuance.
- D. Applications for such City of Dunkirk taxicab operator's license shall be made in writing to the City Clerk upon a form provided by the City Clerk.
- E. All City of Dunkirk taxicab operator's licenses in effect on the effective date of this Article shall remain in force, but the licensee must provide any additional information and meet any additional requirements of this Article within sixty (60) days of the effective date of this Article.
- F. City of Dunkirk taxicabs operator's licenses obtained under this Article are non-transferable between individuals, but may be used by the licensee in driving for any licensed taxicab company.
- G. The City of Dunkirk taxicab operator's license issued under this Article shall include a photograph of the taxicab operator, and shall be prominently displayed in the taxi.
- H. The City of Dunkirk taxicab operator's license issued under this Article may be revoked if the operator operates as a taxicab a vehicle which is not licensed under this law or works for an owner who is not licensed under this law.

§ 72-10. Fee.

The annual fee, payable in advance, for a City of Dunkirk taxicab operators' license shall be Twenty-five Dollars (\$25.00).

§ 72-11. Revocation of License. [Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]

The City Clerk, upon recommendation of the Chief of Police, may at any time, for reasonable cause, revoke any City of Dunkirk taxicab operator's license issued hereunder.

§ 72-12. Taxicab Operators License Renewal. [Amended on 6-18-1996 by L.L. #10 (Intro No. 11) 1996]

City of Dunkirk taxicab operators must apply to renew their City of Dunkirk taxicab operators' license every year. At the time of renewal application, a new record check will be made by the police department and the application will be treated as a

new application, with all of the same standards applied.

§ 72-13. Penalties for Offenses.

Any person violating any of the provisions of this Article shall be guilty of an offense and shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or by imprisonment for not more than ten (10) days, or both.

CHAPTER 73

(RESERVED)

CHAPTER 74

(RESERVED)

CHAPTER 75

(RESERVED)

CHAPTER 76

VEHICLE AND TRAFFIC

ARTICLE I

Words and Phrases Defined

§ 76-10. Definition of Words and Phrases 7604

ARTICLE II

Traffic Control Devices

§ 76-20. Authority to Install Traffic Control Devices..... 7605

ARTICLE III

Delegation of Powers

§ 76-30. Authority to Expedite Traffic..... 7606

§ 76-31. Powers of Chief of Police Department 7606

§ 76-32. Fire Department Powers 7608

§ 76-33. Powers of Nullification by Common Council..... 7608
[Amended 11-15-1966]

ARTICLE IV

One-Way Roadways

§ 76-40. One-Way Roadways Designated..... 7609

ARTICLE V

Turning Movements

§ 76-50. Prohibition of Left Turns 7610
[Amended 3-21-1995 as L.L. #8-1995]

ARTICLE VI

Through Highways; Stop Intersections

§ 76-60. Through Highways 7611

§ 76-61. Stop Intersections 7612
[Amended on 3-21-1995 as L.L. #8-1995]

ARTICLE VI A

Weight Limitations

§ 76-62. **Certain Vehicles Restricted** 7613
[Amended 4-15-1997 as L.L. #3-1997]

§ 76-63. **Truck Route System** 7613
[Amended 8-7-1979; Amended 4-15-1997 as L.L. #3-1997]

**ARTICLE VII
Speed Regulations**

§ 76-70. **Maximum Speed Limits**..... 7615

**ARTICLE VIII
Parking, Standing and Stopping**

§ 76-80. **Parallel Parking**..... 7617

§ 76-81. **Angle Parking**..... 7617

§ 76-82. **Alternate Parking** 7619
[Amended 3-1-1977; 7-6-1982; 11-16-1982; Amended 4-15-1997 as L.L. #3-1997; Amended 2-22-2002 as L.L. #1-2002; Amended 11-2-2004 as L.L. #3-2004; Amended 10-3-2006 as L.L. #6-2006]

§ 76-83. **Parking Prohibited**..... 7620

§ 76-84. **Parking Time Limited** 7622

§ 76-85. **Overnight Parking Prohibited**..... 7622
[Amended 4-15-1997 as L.L. #3-1997; Amended 12-12-1997 as L.L. #16-1997]

§ 76-86. **Special Parking Regulations** 7624

§ 76-87. **Truck Parking**..... 7624
[Amended 4-15-1997 as L.L. #3-1997]

§ 76-88. **Enforcement and Penalty** 7624

§ 76-89. **Shopping Centers**..... 7625

§ 76-89.1. **City of Dunkirk Housing Authority Property** 7626
[Added 9-18-1979]

**ARTICLE IX
Parking Meters**

§ 76-90. **Parking Meter Zones** 7628

§ 76-91. **Installation and Operation of Meters** 7629

§ 76-92. **Parking Limit and Hours of Operation** 7629

§ 76-93. **Fees**..... 7630

§ 76-94. **Regulation and Maintenance**..... 7630

§ 76-95. **Compliance Required; Violations** 7630

§ 76-96. **Payment of Parking Violation Fees; Suspension of Payment**7631

§ 76-97. **Loading and Unloading Regulations** 7632

§ 76-98. **Presumptive Evidence of Violation**..... 7632

§ 76-99. **Penalties for Offenses**..... 7632

[Amended 9-19-2006 as L.L. #5-2006]

**ARTICLE X
Removal and Storage of Vehicles**

§ 76-100.	Authority to Remove Vehicles	7633
§ 76-101.	Storage and Storage Charges	7633
§ 76-102.	Notice of Removal	7633

**ARTICLE XI
Penalties**

§ 76-110.	Penalties for Traffic Infractions.....	7634
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**ARTICLE XII
Repeal of Prior Ordinances**

§ 76-120.	Ordinances Repealed, General	7635
§ 76-121.	Ordinances Repealed, Specific.....	7635

**ARTICLE XIII
Severability; When Effective**

§ 76-130.	Severability.....	7636
§ 76-131.	Time of taking effect.....	7636

[HISTORY: Adopted by the Common Council of the City of Dunkirk 2-2-1965 as Chapter VI of the Ordinances of the City of Dunkirk; Approved by State Traffic Commission 2-23-1965. Amended 3-21-1995 as L.L. #8-1995; Amended 6-6-1995 as L.L. #15-1995; Amended 8-1-1995 as L.L. #21-1995; Approved by the State Traffic Commission on 9-5-1995; Amended 2-20-1996 as L.L. #3-1996; Amended 6-18-1996 as L.L. #7-1996; Amended 4-15-1997 as L.L. #3-1997. Amendments noted where applicable.]

GENERAL REFERENCES

Railroads -	See Ch. 58.
Sidewalks and Streets -	See Ch. 65.
Taxicabs and Taxicab Operators -	See Ch. 72.

**ARTICLE I
Words and Phrases Defined**

§ 76-10. Definition of Words and Phrases.

- A. The words and phrases used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them by Article I of the

Vehicle and Traffic Law of the State of New York.

- B. The following words and phrases, which are not defined by Article I of the Vehicle and Traffic Law of the State of New York, shall have the meanings respectively ascribed to them in this section for purposes of the traffic ordinance of this City.

HOLIDAYS - New Year's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day shall be considered "holidays."

OFFICIAL TIME STANDARD - Whenever certain hours are named herein, they shall mean standard time or daylight saving time, as may be in current use in the City of Dunkirk.

POLICE DEPARTMENT - Shall mean any authorized police officer and school crossing guard with authority to direct traffic and to make arrests for violation of the traffic regulations.

PARKING METER - A mechanical device designed to receive coins of the United States and coins honored by the United States, which device shall show upon a dial the duration of legal parking time and after the expiration thereof shall indicate a violation or illegal or overtime parking.

ARTICLE II Traffic Control Devices

§ 76-20. Authority to Install Traffic Control Devices.

The Chief of the Police Department shall cause to be installed and maintained traffic control devices when and as required under the provisions of this chapter, to make effective the provisions of said chapter, and may cause to be installed and maintained such additional traffic control devices as he may deem necessary to regulate, warn or

guide traffic under the Vehicle and Traffic Law of the State of New York, subject to provisions of § 1682 and § 1684 of that law.

ARTICLE III
Delegation of Powers

§ 76-30. Authority to Expedite Traffic.

- A. Officers of the Police Department are hereby authorized to direct all traffic by voice, hand or signal, and may in the event of emergency expedite traffic as conditions may require, notwithstanding the provisions of this chapter and the traffic laws of the State of New York.
- B. Notice of any order, rule or regulation promulgated by the Chief of the Dunkirk Police Department, pursuant to the authority delegated by this Article, shall be given to the Common Council by filing such order, rule and regulation with the City Clerk prior to the date it shall become effective. No such order, rule or regulation affecting traffic standing or parking on state highways maintained by the state shall become effective until written approval is obtained from the State Traffic Commission as required by the Vehicle and Traffic Law.
- C. Said notice shall be in substantially the following form: "Pursuant to the authority delegated by Article III of the Traffic Ordinance of the City of Dunkirk, New York, I, _____ Chief of Police, do hereby enact the following order _____"

§ 76-31. Powers of Chief of Police Department.

The following powers are hereby conferred upon and delegated to the Chief of the Dunkirk Police Department, subject to the provisions of § 76-33 of this chapter:

- A. To designate zones of quiet.
- B. To designate any street, except a state or county highway, a "play street" for a period not exceeding forty-eight (48) consecutive hours.
- C. To prohibit and restrict parking on any street whenever conditions warrant such restriction notwithstanding any other provision of this chapter.
[Amended 8-1-1995 as L.L. #19-1995]
- D. To decree and enforce temporary traffic regulations to cover emergencies or special conditions in the interest of expediting traffic movement and public safety in the City.
- E. To cause to be marked upon the streets by the Department of Public Works all parking spaces, pedestrian crossings and other markings for the regulation of traffic.

- F. To designate stop and yield intersections upon the streets of the City.
- G. To suspend the operation of parking meters, or any of them, in the event of an emergency or good cause shown, for a reasonable period of time.
- H. To cause to have erected such regulatory signs and signals as are necessary, proper and in accordance with the standards of the State Traffic Commission to implement the provisions of this chapter.
- I. To determine the location of passenger zones and freight loading zones and place appropriate signs indicating same.
- J. To establish bus stops, taxicab stands and stands for other passenger common-carrier motor vehicles on such public streets and in such numbers as he shall determine to be of the greatest benefit and convenience to the public, and to direct that every such bus stop, taxicab stand or other stand shall be designated by appropriate signs.
- K. To designate streets upon which alternate parking shall be in force pursuant to § 76-82 of this chapter.
- L. To designate streets upon which the passing of vehicles moving in the same direction shall be prohibited. **[Added 4-21-1970]**
- M. To designate streets upon which markets for the sale of fowl, farm and garden products may be conducted, and to establish the hours of conduct of said markets. **[Added 11-17-1970; effective 12-1-1970]**
- N. To prohibit or regulate the operation and the stopping, standing or parking of vehicles in cemeteries and in public parks. **[Added 7-20-1971; Editor's Note: on 8-3-1971, the Chief of Police issued the following rule: "it shall be unlawful for any motor vehicle to park in any area other than those areas designated as parking areas in any park designated as such under § 49-1, entitled Parks, listed in the Code of the City of Dunkirk, New York. This rule shall take effect immediately."]**

§ 76-32. Fire Department Powers.

Members of the Dunkirk Fire Department, whether paid members or volunteer members, may direct traffic in any emergency when under the direct supervision of the Chief or an Assistant Chief of the said Fire Department.

§ 76-33. Powers of Nullification by Common Council. [Amended 11-15-1966]

The Common Council of the City of Dunkirk hereby reserves the power to nullify,

by majority vote, any regulation or order of the Chief of the Police Department made pursuant to authority vested in him under § 76-31 of this Article. Whenever the Common Council shall have nullified a regulation or order made by the Chief of Police, such regulation or order shall not thereafter be reenacted by said Chief of Police or his successors for a period of one (1) year without the approval of the Common Council.

ARTICLE IV
One-Way Roadways

§ 76-40. One-Way Roadways Designated.

The following streets are designated as one-way roadways, and a vehicle shall be driven only in the direction designated:

- A. Leopard Street, Fifth Street to Sixth Street, southbound. **[Amended 3-21-1995]**
- B. Columbus Avenue, Fifth Street to Third Street, northbound.
- C. Lynx Street, Third Street to Fourth Street, southbound.
- D. Lark Street, Fifth Street to Third Street, northbound.
- E. Park Drive, Point Drive West to Sycamore Street, northbound. **[Amended 4-21-1970; effective 5-1-1970]**

ARTICLE V
Turning Movements

§ 76-50. Prohibition of Left Turns. [Amended 3-21-1995]

(Reserved for future use)

ARTICLE VI
Through Highways; Stop Intersections

§ 76-60. Through Highways.

- A. Lake Shore Drive is hereby designated as a through highway and stop signs shall be erected on the following entrances thereto:
- (1) Otter Street from the north.
 - (2) Stegelske Avenue from the south.
 - (3) Ounce Street from the north.
 - (4) Fizell Avenue from the south.
 - (5) Wright Park Drive from the north.
 - (6) Warsaw Street from the north and south.
 - (7) Margay Street from the south.
 - (8) Ocelot Street from the north and south.
 - (9) Martin Street from the north and south.
 - (10) Pangolin Street from the north and south.
 - (11) Armadillo Street from the north.
 - (12) Leming Street from the north.
 - (13) Irving Place from the south.
 - (14) Ermine Street from the north.
 - (15) Beagle Street from the north.
 - (16) Roberts Road from the north and south.
 - (17) Antelope Street from the south.
 - (18) Gazelle Street from the north and south.
 - (19) Zebra Street from the south.
 - (20) Beaver Street from the north and south.

- (21) Leopard Street from the south.
- (22) Deer Street from the north and south.
- (23) Park Avenue from the north and south.
- (24) Washington Avenue from the south.
- (25) Eagle Street from the south.
- (26) Pelican Street from the south.
- (27) Swan Street from the south.
- (28) Dove Street from the south.
- (29) Plover Street from the south.
- (30) Robin Street from the south.
- (31) Pike Street from the south.
- (32) Woodrow Avenue from the north and south.
- (33) Mullet Street from the north and south.
- (34) Nichols Avenue from the south.
- (35) Frazier Street from the south.
- (36) West Point Avenue from the north and south.
- (37) Point Drive West from the west.
- (38) Crooked Brook Drive from the north.

§ 76-61. Stop intersections. [Amended 3-21-1995]

(Reserved for future use)

ARTICLE VI A
Weight Limitations
[Added 1-5-1971; Amended 4-15-1997 as L.L. #3-1997]

§ 76-62. Certain Vehicles Restricted. [Amended 4-15-1997 as L.L. #3-1997]

Trucks and other motor vehicles having a gross weight of more than twelve thousand (12,000) pounds are prohibited from traveling over any street in the City (except as provided in § 76-63, Truck Route System) except for the purpose of pickup and delivery of loads.

§ 76-63. Truck Route System. [Amended 8-7-1979; Amended 4-15-1997 as L.L. #3-1997]

A. The following streets are hereby designated as a truck route system for the City of Dunkirk.

- (1) Lake Shore Drive (NYS Route 5) between the east and west City lines.
- (2) South Roberts Road from Lake Shore Drive East (NYS Route 5) to the south City line.
- (3) NYS Route 60 (Main Street, Maple Avenue and Lamphere Street) from NYS Route 5 to the south City line.
- (4) Millard Fillmore Drive from Central Avenue easterly to the City line.
- (5) Central Avenue from NYS Route 5 southerly to the City line.
- (6) West Lucas Avenue from Central Avenue to Brigham Road.
- (7) Willowbrook Avenue from Central Avenue to Brigham Road.
- (8) West Howard Avenue from Central Avenue westerly to the terminus.
- (9) Brigham Road from Lake Shore Drive West (NYS Route 5) southerly to Willowbrook Avenue.
- (10) Middle Road from Lake Shore Drive East (NYS Route 5) to the City line.
- (11) Nichols Avenue from Route 5 to the terminus.
- (12) Stegelske Avenue from Route 5 to 900' South.

(13) West Point Avenue from Route 5 to southerly terminus.

- B. The Director of Public Works is hereby authorized and directed to purchase and place the necessary truck route signs at whatever intervals are legally mandated.
- C. Pursuant to New York State Vehicle and Traffic Law, § 1683, this section will take effect only when said truck route signs are appropriately placed.

ARTICLE VII
Speed Regulations

§ 76-70. Maximum Speed Limits. [Amended 8-4-1999 as L.L. #7 (Intro No. 6) 1999]

- A. Thirty (30) miles per hour is hereby established as the maximum speed at which vehicles may proceed upon drives, streets, highways and roadways within the corporate limits of the City, except as hereinafter specified:
- 1) Thirty-five (35) miles per hour is hereby established as the maximum speed limit at which vehicles may proceed upon:
 - a) Lake Shore Drive.
 - 2) Twenty-five (25) miles per hour is hereby established as the maximum speed limit at which vehicles may proceed upon:
 - (a) Park Drive.
 - (b) All drives, streets, highways and roadways within the confines of Wright Park and Point Gratiot
 - 3) Fifteen (15) miles per hour is hereby established as the maximum speed limit at which vehicles may proceed on streets upon which a school is located which includes the following streets:
 - (a) Dunkirk High School: Sixth Street (between Marauder Drive and Dove Street); Marauder Drive (between Sixth Street and Lucas Avenue).
 - (b) Middle School: Fifth Street and Sixth Street (between Swan Street and Eagle Street); Eagle Street and Swan Street (between Fifth Street and Sixth Street).
 - (c) School No. 3: Seventh Street (between Lamphere Street and Grant Avenue).
 - (d) School No. 4: Central Avenue and Washington Avenue (between Lucas Avenue and three hundred feet (300') north of the school).
 - (e) School No. 5: Brigham Road.
 - (f) School No. 7: Serval Street (between Lake Shore Drive East and Pine Street).

- (g) Northern Chautauqua Catholic School: Fourth Street (between Lynx Street and Park Avenue); Washington Avenue (between Third Street and three hundred feet (300') south of the school).
- (h) St. Hyacinth's Catholic School: Jerboa Street (between Lake Shore Drive East and Pine Street); and Pangolin Street (between Lake Shore Drive East and Pine Street). **[Added 10-5-1999 as L.L. #9 (Intro No. 8) 1999]**

Such fifteen (15) mile per hour restrictions shall be enforceable from 7:00 A.M. to 3:30 P.M. on days each particular school is open.

ARTICLE VIII
Parking, Standing and Stopping

§ 76-80. Parallel Parking.

Except as otherwise provided, every vehicle parked, standing or stopped upon a highway of the City of Dunkirk shall be so parked, standing or stopped parallel with the edge of the roadway, headed in the direction of lawful traffic and within twelve (12) inches of the adjacent curb, if any exists.

§ 76-81. Angle Parking.

A. Angle parking is hereby authorized at the following locations:

- (1) Third Street, north side. **[Added 3-21-1995 as L.L. #8-1995]**
- (2) Nevins Street,
easterly side, from the northerly line of Doughty Street to a point fifty-six (56) feet northerly thereof. **[Added 3-5-1968]**
- (3) Stegelske Avenue,
easterly side from the southerly line of Lake Shore Drive East to a point one hundred (100) feet southerly thereof. **[Added 3-5-1968]**
- (4) Serval Street,
westerly side, from the southerly line of Lake Shore Drive East to a point one hundred sixty-one (161) feet southerly thereof. **[Added 3-5-1968]**
- (5) Ocelot Street,
westerly side, from the southerly line of Lake Shore Drive East to a point one hundred six (106) feet southerly thereof. **[Added 3-5-1968]**
- (6) Pangolin Street,
easterly side, from the southerly line of Lake Shore Drive East to a point two hundred fifteen (215) feet southerly thereof. **[Added 3-5-1968]**
- (7) Armadillo Street,
westerly side, from the northerly line of Lake Shore Drive East to a point one hundred twenty (120) feet northerly thereof. **[Added 3-5-1968]**
- (8) Genet Street,
easterly side, from the northerly line of Lake Shore Drive East to a

point forty-nine (49) feet northerly thereof. **[Added 3-5-1968]**

- (9) Genet Street,
westerly side, from the northerly line of Lake Shore Drive East to a
point fifty-five (55) feet northerly thereof. **[Added 3-5-1968]**
- (10) Ermine Street,
easterly side, from the northerly line of Lake Shore Drive East to a
point one hundred twenty-two (122) feet northerly thereof. **[Added
3-5-1968]**
- (11) Ermine Street,
westerly side, from the northerly line of Lake Shore Drive East to a
point forty-eight (48) feet northerly thereof. **[Added 3-5-1968]**
- (12) Antelope Street,
easterly side, from the southerly line of Lake Shore Drive East to a
point one hundred forty-one (141) feet southerly thereof. **[Added 6-
6-1995 as L.L. #15-1995]**
- (13) Plover Street,
westerly side, from the southerly line of Lake Shore Drive West to a
point one hundred twenty (120) feet southerly thereof. **[Added 3-5-
1968]**
- (14) Moffatt Street,
westerly side, from the northerly line of East Front Street to a point
sixty-five (65) feet northerly thereof. **[Added 3-5-1968]**
- (15) Pine Street,
southerly side, from the westerly line of Pangolin Street to a point
one hundred twenty-one (121) feet westerly thereof. **[Added 3-5-
1968]**
- (16) Pangolin Street,
westerly side, from the southerly line of Pine Street to a point fifty-
three (53) feet southerly thereof. **[Added 3-5-1968]**
- (17) East Second Street,
northerly side, from easterly line of Webster Street to a point thirty
(30) feet easterly thereof. **[Added 3-5-1968]**
- (18) Second Street,
southerly side, from the easterly line of Washington Avenue to a
point sixty-three (63) feet easterly thereof. **[Added 3-5-1968]**

- (19) Washington Avenue, easterly side, from the southerly line of Washington Avenue to a point two hundred sixty-one (261) feet southerly thereof. **[Added 3-5-1968]**
- (20) Park Avenue, westerly side, from the southerly line of East Fourth Street to a point sixty-five (65) feet southerly thereof. **[Added 3-5-1968]**
- (21) Wilson Avenue, northerly side, from the westerly line of Central Avenue to a point one hundred twenty (120) feet westerly thereof. **[Added 3-5-1968]**
- (22) Franklin Avenue, easterly side, from the southerly line of Talcott Street to a point four hundred thirty-eight (438) feet southerly thereof. **[Added 3-5-1968]**
- (23) Courtney Street, southerly side, from the easterly line of Lincoln Avenue to a point two hundred thirty (230) feet easterly thereof. **[Added 3-5-1968]**

§ 76-82. Alternate Parking. [Amended 3-1-1977; Amended 7-6-1982; Amended 11-16-1982; Amended 4-15-1997 as L.L. #3-1997; Amended 3-5-2002 as L.L. #1-2002; Amended 2-04-2003 as L.L. #1-2003; Amended 2-04-2003 as L.L. #2-2003; Amended 6-15-2004 as L.L. #3-2004; Amended 11-06-2006 as L.L. #6-2006]

- A. Except as provided in §76-85 and except as provided in Subsection B below, for twenty-four hour periods commencing at 5:00 P.M., vehicles shall be parked only on the odd-numbered side of the street on odd-numbered days of the month and only on the even-numbered side of the street on even-numbered days of the month. The date of the day at 5:00 P.M., determines the side on which parking is allowed. **[Amended 4-15-1997 as L.L. #3-1997; Amended 6-15-2004 as L.L. #3-2004; Amended 11-06-2006 as L.L. #6-2006]**
- B. If other restrictive signs appear on any street, said signs shall prevail and control traffic thereon.
- C. For each calendar year during the period commencing the first Sunday in April and continuing through the Saturday that immediately precedes the first Sunday in November, for those streets which are presently covered by Subsections A and B of §76-82 of the Alternate Parking Ordinance as it presently exists, parking shall be allowed as follows: **[Amended 4-15-1997 as L.L. #3-1997; Amended 6-15-2004 as L.L. #3-2004; Amended 11-06-2006 as L.L. #6-2006]**

- (1) For one-week periods commencing at 5:00 P.M. on any odd-numbered Sunday falling within the above delineated calendar period, parking shall be allowed on the odd-numbered side of the streets affected: the date of the Sunday at 5:00 P.M. determines the side on which parking is allowed for the following week.
- (2) For one-week periods commencing at 5:00 P.M. on any even-numbered Sunday, parking shall be allowed on the even-numbered side of the streets affected: the date of the Sunday at 5:00 P.M. determines the side on which parking is allowed for the following week.
- (3) In the event that more than one (1) odd or even Sundays occur in a row, vehicles shall be allowed to park as if each sequential even or odd Sunday were an independent and single even or odd Sunday, and vehicles shall be allowed to continue to park on said even or odd side for any such two-week period.
- (4) On the first Sunday in November, alternate parking shall revert back to and be covered by the provisions of §76-82 A and B. **[Amended 4-15-1997 as L.L. #3-1997]**

Every person convicted of violating § 76-82 shall be punishable by a fine of Twenty Dollars (\$20.00) for the offense. **[Added 2-4-2003 as L.L. #2-2003]**

§ 76-83. Parking prohibited. [Amended 8-6-1991]

- A. It shall be unlawful to park a vehicle on any street where such parking is prohibited by any order, rule or regulation duly made by the Chief of the Dunkirk Police Department, pursuant to the authority vested in him by Article III of this chapter.
- B. It shall be unlawful to park any vehicle upon any street for a period of more than twenty-four (24) hours.
- C. No vehicle shall be parked between the sidewalk and curblineline of residential street site in the City of Dunkirk. Exemptions to this parking prohibition may be granted upon a majority vote of the City of Dunkirk Planning Board following a demonstration by the applicant of hardship under the following criteria:

- (1) No adequate off-street parking exists at the residence;
- (2) There is a demonstration of no traffic safety hazard; and
- (3) The applicant has demonstrated extreme hardship, such as by showing an ambulatory or other disability.
- D. Subsections A and B of this section shall be effective only upon posting notice of the regulations herein made upon the streets subject to this section.
- E. It shall be unlawful to park any vehicle except a bus in a bus zone. **[Added 6-18-1996 as L.L. #7-1996]**
- F. It shall be unlawful to park any vehicle on a sidewalk. **[Added 6-18-1996 as L.L. #7-1996]**
- G. It shall be unlawful to park any vehicle in a crosswalk. **[Added 6-18-1996 as L.L. #7-1996]**
- H. It shall be unlawful to park any vehicle within fifteen (15) feet of a fire hydrant. **[Added 6-18-1996 as L.L. #7-1996]**
- I. It shall be unlawful to park any vehicle in a fire lane. **[Added 6-18-1996 as L.L. #7-1996]**
- J. It shall be unlawful to park any vehicle at any place where the vehicle would block the use of a driveway. **[Added 6-18-1996 as L.L. #7-1996]**
- K. It shall be unlawful to park any vehicle by taking more than one parking space. **[Added 6-18-1996 as L.L. #7-1996]**
- L. It shall be unlawful to park any vehicle within thirty (30) feet of a corner and/or crosswalk. **[Added 6-18-1996 as L.L. #7-1996]**
- M. It shall be unlawful for any person to park or leave standing any vehicle in a stall or space designated for physically handicapped persons, if, immediately adjacent to and visible from such stall or space, there is posted a sign containing the international symbol of access, unless the driver of the car or a person being transported is handicapped and that driver or person being transported has been issued a special vehicle identification parking permit that is clearly displayed in the vehicle or a registration issued under Section Four Hundred Four-a of the New York State Vehicle and Traffic Law. **[Added 6-18-1996 as L.L. #7-1996]**

§ 76-84. Parking Time Limited. [Amended 5-4-1999 as L.L. #3 (Intro No. 2) 1999]

Except as otherwise posted, parking within the following locations shall be limited to two (2) hours.

Such two (2) hour parking shall be effective between the hours of 9:00 A.M. and 6:00 P.M. on Monday, Tuesday, Wednesday, Thursday and Friday, except legal holidays falling on such days. At all other hours and on Saturday and Sunday, parking time limitations shall be inoperative:

- A. Third Street, north side between Main Street and Eagle Street.
- B. Washington Avenue, west side, between Third Street and Fourth Street.
- C. Central Avenue, both sides between Lake Shore Drive and Second Street.

§ 76-85. Overnight parking prohibited. [Amended 12-2-1997 as L.L. #16-1997 (to change “Third Street from Main Street to Robin Street” to “Third Street from Main Street to Central Avenue”); Amended 12-2-1997 as L.L. #16-1997 to change “Eagle Street from Third Street to Roberts Road” to “Eagle Street, from Third Street to Fourth Street”; Amended 10-6-1998 as L.L. #5-1998 (to delete “Eagle Street from Third Street to Fourth Street”); Amended 05-04-99 as L.L. #3 (Intro No. 2) 1999]

- A. It shall be unlawful to park any vehicle on any of the following listed streets between the hours of 3:30 A.M. and 7:00 A.M. during the period commencing the first Sunday in November and ending the first Saturday in April. This provision shall not apply to any street subject to the alternate parking regulations of §76-82 of this article. **[Amended 10-18-11 as L.L. #7-2011]**

Overnight Parking is prohibited on the following streets:

Brigham Road from Lake Shore Drive, South to City Line
Brooks Avenue
Canary Street
Central Avenue from City Line to City Dock
Columbus Avenue
Doughty Street from Roberts Road to Bennett Road (Route 60)
Eagle Street from Fifth Street to Sixth Street
Eagle Street from Lake Shore Drive West to Second Street **[Added on 12-18-2007 as L.L. #5 (Intro #6) 2007 “Eagle Street from Lake Drive West to Second Street”]**
East Chestnut Street from Fizell Street, West to Warsaw Street
East Sixth Street from Main Street, East to Maple Avenue
Franklin Avenue from Main Street, South to Wright Street

Franklin Avenue from Talcott Street, South to City Line
 Irving Place
 Lake Shore Drive from City Line to City Line
 Lamphere Avenue from E. Seventh Street, South to City Line
 Lark Street
 Leopard Street
 Lynx Street
 Main Street Lake Boulevard, South to Sixth Street **[Amended 5-18-99 as L.L. #4 (Intro No. 3) 1999 to change “Main St. Lake Blvd, South to Fifth Street” to “Main Street Lake Boulevard, South to Sixth Street”]**
 Main Street Extension from Newton Street to City Line
 Maple Avenue from Main Street, South to Talcott Street
 Middle Road from Moffat Street, East to City Line
 Millard Fillmore Drive from Central Avenue, East to City Line
 Nichols Avenue
 North Beaver Street
 Pelican Street
 Plover Street
 Point Drive North
 Point Drive West
 Roosevelt Avenue
 Ruggles Street from Main Street, South to Wright Street
 Taft Place
 Talcott Street from Roberts Road, West to Franklin Avenue
 Temple Street from West Fourth, North to Tracks
 Third Street from Main Street to Central Avenue **[Amended 12-2-1997 as L.L. #16-1997 to change “Third Street from Main Street to Robin Street” to “Third Street from Main Street to Central Avenue”]**
 Washington Avenue from Third Street, South to Fourth Street
 West Second Street from Brigham Road, West to Brooks Avenue **[Added 10-6-1998 as L.L. #5-1998]**
 West Seventh Street from Woodrow Avenue, West to Brigham Road
 Woodrow Avenue from Lucas Avenue, North to West Sixth Street

All other streets are subject to the alternate parking regulations as provided in Section 76-82 of this Article, except for the existing parking area on Third Street from Central Avenue to Robin Street, along the railroad berm. However, Section 76-83(B) shall apply to each space in this parking area.

§ 76-86. Special Parking Regulations.

Parking without lights is hereby permitted on all City streets.

§ 76-87. Truck Parking. [Amended 8-1-1995 as L.L. 19-1995; Amended 4-15-1997 as L.L. #3-1997]

1. Trucks in excess of 12,000 pounds are prohibited from parking on any City street except for:
 - (a) Pick up and delivery of loads;
 - (b) Thirty (30) minute parking on Lake Shore Drive (NYS Route 5) between east and west City lines, and Central Avenue from NYS Route 5 southerly to the City line, and NYS Route 60 from NYS Route 5 southerly to the City line; thirty (30) minute truck parking twenty-four (24) hours per day on the north side of Talcott Street, while retaining the prohibition against truck parking at any time on the south side of Talcott Street (Roberts Road to Franklin Avenue).
[Amended 4-4-2000 as L.L. #1 (Intro #1) 2000]
- B. Trucks in excess of twelve thousand (12,000) pounds are prohibited from parking in any City owned parking lot.

§ 76-88. Enforcement and Penalty.

- A. The Police Department of the City of Dunkirk is hereby charged with the enforcement of the provisions of this Article and shall attach to any vehicle parked in violation hereof a notice to the owner thereof that such vehicle has been parked in violation of this Article. Each such owner of a vehicle parked in violation hereof shall, within ten (10) days of time when such notice was attached to such vehicle, pay to the City Clerk of the City of Dunkirk the indicated parking violation fee. Any owner who shall fail to make payment aforesaid to the City Clerk within the ten (10) day period shall be guilty of an infraction and shall be subject to the penalties set forth in Article XI of this chapter. **[Amended 8-15-1972; Amended 4-15-1986; Amended 6-18-1996 as L.L. #7 (Intro No. 8) 1996; Amended 8-5-1997 as L.L. #10-1997; Amended 2-4-2003 as L.L. #1-2003]**
- B. The provisions of this section shall not apply to vehicles parked on a state highway maintained by the State of New York.
- C. Any person receiving a notice of violation of this Article may fill out a form available at the City Court of the City of Dunkirk and therein state his grievance. The City Court Judge may, upon good cause shown, suspend payment of the parking violation. **[Added 12-5-1972; Editor's Note: This Resolution also provided that the amendments to § 76-96B adopted 10-3-1972, be repealed; Amended 4-15-1986; Amended 6-18-1996 as L.L. #7 (Intro No. 8) 1996; Amended 8-5-1997 as L.L. #10-1997; Amended 2-4-2003 as L.L. #1-2003]**
- D. In the event that any of the above sums are not paid within ten (10) days of the date of violation, an additional sum of Twenty Dollars (\$20.00) shall be

paid per violation, in addition to any other fine imposed for nonpayment, if applicable. **[Added 10-18-1988; Amended 6-18-1996 as L.L. #7 (Intro No. 8) 1996; Amended 8-5-1997 as L.L. #10-1997; Amended 2-04-2003 as L.L. #1-2003]**

§ 76-89. Shopping Centers. [Added 11-30-1972; Amended 9-18-1979; Amended 8-16-1983]

A. Parking prohibited.

(1) Parking shall be prohibited at the D & F Plaza, 1170 Central Avenue, Dunkirk, New York, in the following area: Beginning at the westerly edge of the Liberty Bank easterly along the front of all stores between said Liberty Bank and the easterly edge of the Brand Names store: thence northerly at right angles forty (40) feet; thence westerly at right angles to a line extended along the westerly wall of the Liberty Bank building; thence southerly along said line forty (40) feet to the point or place of beginning as requested by the D & F Plaza Association.

(2) Parking shall be prohibited at the Bells Plaza, 166-178 East Fourth Street, Dunkirk, New York, in the following area: All that area contained between the curblineline fronting the plaza stores and a line parallel with and ten (10) feet southerly from said curblineline beginning at the westerly building line of Ben Franklin and ending at the westerly right-of-way of Main Street.

(3) Parking shall be prohibited in designated fire lanes on Brooks Memorial Hospital property directly on the roadway in front of the hospital entrance, as requested by Brooks Memorial Hospital, subject to full City of Dunkirk Police Department enforcement, including but not limited to the removal and storage of vehicles as allowed by law. **[Added 7-18-1989]**

B. The Chief of Police shall remove and store vehicles parked or abandoned in the parking area of the D & F Plaza and the Bells Plaza area during snowstorms, floods, fires or other emergencies where they constitute an obstruction to traffic or where stopping, standing or parking is prohibited, and he shall collect a reasonable charge for such removal and storage from the owner or operator of any such vehicle.

C. The above parking regulations are subject to full Dunkirk Police enforcement, including but not limited to the removal and storage of vehicles as

allowed by law. The Dunkirk Police shall also enforce handicapped parking regulations on such premises.

§ 76-89.1. City of Dunkirk Housing Authority Property. [Added 9-18-1979]

- A. Parking shall be prohibited in the parking area at the Joseph Steger Apartments (hi-rise) except by resident parking permit, personnel parking permit or visitor's parking pass, said permit or pass to be visibly displayed on said vehicle. Permits and passes may be obtained from the City of Dunkirk Housing Authority.
- B. Parking shall be prohibited on that property of the Court Apartments where no-parking signs have been duly posted.
- C. The above parking regulations are subject to full Dunkirk Police Enforcement, including but not limited to the removal and storage of vehicles as allowed by law.

**ARTICLE IX
Parking Meters**

§ 76-90. Parking Meter Zones.

The following streets are hereby designated as parking meter zones, upon which streets parking meters may be provided and installed:

- A. On both sides of Central Avenue between Second Street and Sixth Street. **[Added 3-21-1995]**
- B. On both sides of Main Street between Third Street and Fifth Street.
- C. On both sides of Fourth Street between Lark Street and Main Street.
- D. On the southerly side of Fourth Street between Lark Street and Eagle Street.
- E. On the southerly side of Third Street between Eagle Street and Main Street.
- F. On the southwest side of Franklin Avenue from Union Square to Wright Street.
- G. On both sides of Washington Avenue between Fourth Street and Fifth Street.
- H. On the westerly side of Wright Street between Lincoln Avenue and Main Street.
- I. On the northerly side of Lincoln Avenue between Main Street and Wright Street.
- J. On the west side of Washington Avenue between Third Street and Fourth Street. **[Added 5-7-1991]**
- K. On the south side of Third Street between Washington Avenue and Lynx Street on the north side of Third Street between Eagle Street and Main Street. **[Added 5-7-1991]**
- L. On both sides of Central Avenue between Lake Shore Drive and Second Street. **[Added 5-7-1991]**
- M. On both sides of Central Avenue between Sixth Street and Lucas Street. **[Added 5-7-1991]**
- N. On both sides of Franklin Avenue between Main Street and Wright Street.

[Added 5-7-1991]

- O. Central Avenue and Third Street parking lot. **[Added 5-7-1991]**
- P. On the north side of Lake Shore Drive West between Central Avenue to Brigham Road. **[Added 5-7-1991]**
- Q. Washington Avenue and Lynx Street parking lot. **[Added 5-7-1991]**
- R. Fourth Street parking lot between Washington Avenue and Park Avenue. **[Added 5-7-1991]**
- S. On both sides of Sixth Street between Central Avenue to Swan Street. **[Added 5-7-1991]**
- T. Six (6) spaces within the parking lot located on the corner of Central Avenue and Third Street. **[Added 2-20-1996 as L.L. #3 (Intro No. 5) 1996]**

§ 76-91. Installation and Operation of Meters.

Parking meters installed in the parking meter zones shall be placed upon the curb immediately adjacent to the individual parking places hereinafter described. Each parking meter shall be placed or set in such manner as to show or display by a signal that the parking space adjacent to such meter is or is not legally in use. Each parking meter installed shall indicate the legal parking time established, the fee or fees required to operate said meter and the hours during the day during which the parking meters must be operated.

§ 76-92. Parking Limit and Hours of Operation. [Amended 1-20-1987; Amended 5-4-1999 as L.L. #3 (Intro No. 2) 1999]

Except as otherwise posted, parking within parking meter zones shall be limited to two (2) hours.

Such two (2) hour metered parking shall be effective between the hours of 9:00 A.M. and 6:00 P.M. on Monday, Tuesday, Wednesday, Thursday and Friday, except legal holidays falling on such days. At all other hours and on Saturday and Sunday, parking meter zone restrictions shall be inoperative.

§ 76-93. Fees. [Amended 1-20-1987]

The following fees are hereby established for the operation of parking meters:

- A. Thirty (30) minutes for one (1) dime.
- B. Sixty (60) minutes for one (1) quarter.

§ 76-94. Regulation and Maintenance. [Amended 3-2-1965]

- A. The Chief of Police of the City of Dunkirk is directed to provide for the installation, regulation, control, operation, repair and use of the parking meters.
- B. The City Treasurer shall be responsible for the collection of parking meter receipts and shall deposit said receipts into the general fund of the City of Dunkirk forthwith.
- C. The position of Parking Meter Custodian, heretofore established by the Common Council of the City of Dunkirk, is in all respects continued and shall be a competitive civil service position in accordance with the provisions of the Civil Service Law of the State of New York.
- D. For purposes of installation, regulation, control, operation and repair of the parking meters, the Parking Meter Custodian shall be under the direct supervision of the Chief of Police of the City of Dunkirk.
- E. For purposes of effecting collection of the receipts of the parking meters, the Parking Meter Custodian shall be under the direct supervision of the City Treasurer. He shall make collection of parking meter receipts, compute and wrap said receipts and perform such other duties relative to the collection of the parking meter receipts as may be designated by the City Treasurer.

§ 76-95. Compliance Required; Violations.

- A. The operator of any vehicle entering a parking space adjacent to which a parking meter is located shall deposit a coin or coins of the United States, or a coin or coins honored by the United States, in such parking meter as required by the provisions of the Article.
- B. It shall be a violation of this Article to occupy a parking space adjacent to which a parking meter is located whenever such meter indicates by its dial the legend "EXPIRED," "VIOLATION" or "OVERTIME" during the hours established by § 76-92 hereof.
- C. It shall be a violation of this Article to deposit in any parking meter any slug, device or substitute for a coin of the United States or a coin honored by the United States.
- D. It shall be a violation of this Article to deface, injure, tamper with, willfully break, destroy or impair the usefulness of any parking meter installed pursuant to the provisions of this Article.

§ 76-96. Payment of Parking Violation Fees; Suspension of Payment. [Amended 4-15-1986]

- A. The Police Department of the City of Dunkirk is hereby charged with enforcement of the provisions of this Article and, in instances of overtime parking, shall attach to any vehicle parked in violation hereof a notice to the owner thereof that such vehicle has been parked in violation of this Article.

Each such owner of a vehicle parked in violation hereof shall within twenty-four (24) hours, Saturdays, Sundays and holidays excluded, of the time when such notice was attached to such vehicle, pay to the City Clerk of the City of Dunkirk as a parking meter violation fee the sum of Six Dollars (\$6.00). Failure of such owner to make payment aforesaid to the City Clerk within the aforesaid twenty-four-hour period shall render such owner subject to the penalties hereinafter provided. **[Amended 6-18-1996 as L.L. #7 (Intro No. 8) 1996]**

- B. Any person receiving a notice of a violation of this Article may appear before the next term of the City Court of the City of Dunkirk and state his grievance. The City Court Judge may, upon good cause shown, suspend payment of the Six Dollar (\$6.00) traffic recording fee. **[Amended 6-18-1996 as L.L. #7 (Intro No. 8) 1996; Editor's Note: § 76-96B was amended in error 10-3-1972; which amendment was subsequently repealed 12-5-1972. See §76-88C]**

§ 76-97. Loading and Unloading Regulations.

For the sole purpose of loading and unloading, owners and operators of commercial or delivery vehicles are hereby authorized to use the spaces designated as parking meter spaces without payment by them for the use thereof.

§ 76-98. Presumptive Evidence of Violation.

In any prosecution hereunder, the establishment on behalf of the people of the name of the registered owner of the vehicle so illegally parked, as ascertained from the registration plate displayed on said vehicle, shall constitute a presumption that the owner of such vehicle was the person who parked such vehicle at the place where such violation occurred.

§ 76-99. Penalties for Offenses. [Amended 9-19-2006 as L.L. #5-2006]

- A. Every person who violates any provision of this Article, except §§ 76-95C and 76-95D, shall be guilty of an infraction and shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00) or by imprisonment for not more than fifteen (15) days, or both.

- B. Every person who violates § 76-95C of this Article shall be guilty of a misdemeanor and may be punishable by a fine not exceeding One Hundred Dollars (\$100.00) or imprisonment for not more than thirty (30) days, or both.

ARTICLE X
Removal and Storage of Vehicles

§ 76-100. Authority to Remove Vehicles.

- A. When any vehicle is parked or abandoned on any highway within this City during a snowstorm, flood, fire or other public emergency which affects that portion of the public highway upon which said vehicle is parked or abandoned, said vehicle may be removed by the Police Department.
- B. When any vehicle is found unattended on any highway within this City where said vehicle constitutes an obstruction to traffic, said vehicle may be removed by the Police Department.
- C. When any vehicle is parked or abandoned on any highway within this City where stopping, standing or parking is prohibited, said vehicle may be removed by the Police Department.
- D. Any abandoned vehicle properly seized according to law may be disposed of pursuant to § 1224 of the New York State Vehicle and Traffic Law, any other applicable law and any subsequent amendments thereto. **[Added 7-2-1979]**

§ 76-101. Storage and Storage Charges. [Amended 4-5-1977]

After removal of any vehicle as provided in this Article, the Police Department may store such vehicle in a suitable place at the expense of the owner. Such owner or person in charge of the vehicle may redeem the same upon payment to the City Clerk of the amount of all expenses actually and necessarily incurred in effecting such removal, such removal charge not to exceed Twenty-five Dollars (\$25.00), plus any charge for storage, such storage charge not to exceed Three Dollars (\$3.00) per day or fraction thereof.

§ 76-102. Notice of Removal.

The Police Department shall, upon removal of any vehicle pursuant to this Article, notify the owner of the vehicle without delay of such removal and disposition.

ARTICLE XI
Penalties

§ 76-110. Penalties for Traffic Infractions. [Amended 3-21-1995 as L.L. #8-1995]

Every person convicted of a traffic infraction for a violation of any provision of this chapter which is not a violation of any provision of the Vehicle and Traffic Law of the State of New York shall for a first conviction thereof be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment for not more than fifteen (15) days, or by both such fine and imprisonment; for a second such conviction within eighteen (18) months thereafter, such person shall be punished by a fine of not more than Two Hundred Dollars (\$200.00) or by imprisonment of not more than forty-five (45) days, or by both such fine and imprisonment; upon a third or subsequent conviction within eighteen (18) months after the first conviction, such person shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment.

Every person convicted of violating § 76-83M. shall be punished by a fine of Fifty Dollars (\$50.00) for the first offense and One Hundred Fifty Dollars (\$150.00) for the second offense occurring within a period of two years within the City. **[Added 6-18-1996 as L.L. #7-1996]**

ARTICLE XII
Repeal of Prior Ordinances

§ 76-120. Ordinances Repealed, General.

All ordinances or parts of ordinances of this City in conflict with or inconsistent with the provisions of this chapter are hereby repealed, except that this repeal shall not prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this chapter.

§ 76-121. Ordinances Repealed, Specific.

The following ordinance is hereby specifically repealed: Chapter VI of the Ordinances of the City of Dunkirk, New York, "Traffic Regulations," as amended.

ARTICLE XIII
Severability; When Effective

§ 76-130. Severability.

If any part or parts of this chapter are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter.

§ 76-131. Time of Taking Effect.

- A. This local law shall take effect immediately upon filing with the Secretary of State, except those parts which are subject to approval under § 1684 of the Vehicle and Traffic Law.
- B. Any part or parts of this chapter which are subject to approval under § 1684 of the Vehicle and Traffic Law of the State of New York shall take effect from and after the day on which approval in writing is received from the New York State Department of Transportation.

CHAPTER 77

WATERWORKS

§ 77-1.	Definitions	7702
§ 77-2.	Responsibilities of Property Owners	7702
§ 77-3.	Preliminary Requirements	7704
§ 77-4.	Water Services	7705
§ 77-5.	Applications	7705
§ 77-6.	As-built Drawings	7707
§ 77-7.	New Connections; Turning on Water.....	7707
§ 77-8.	Fire Services	7707
§ 77-9.	Installation and Maintenance of Meters.....	7708
§ 77-10.	Meter Vaults	7710
§ 77-11.	Meter Bypass	7711
§ 77-12.	Broken Seals	7711
§ 77-13.	Meter Tests.....	7711
§ 77-14.	Metered Consumption Charges.....	7712
§ 77-15.	Calculated Consumption Charges	7714
§ 77-16.	Ownership Transfer Charge	7715
§ 77-17.	Responsibility for Water Charges; Lien on Property.....	7715
§ 77-18.	Delinquent Water Charge	7715
§ 77-19.	Short-term Water Shutoff.....	7716
§ 77-20.	Temporary Discontinuance of Water	7716
§ 77-21.	Conditions Warranting Water Shutoff.....	7716
§ 77-22.	Water Shutoff Upon Nonpayment of Bills.....	7717
§ 77-23.	Resumption of Water Services	7719
§ 77-24.	Frozen Services	7719
§ 77-25.	Permanent Disconnection of Services	7719
§ 77-26.	Separately Owned Residential Units.....	7720
§ 77-27.	Cross-Connections.....	7721
§ 77-28.	Street Abandonments.....	7726
§ 77-29.	Fire Hydrant Use Permits; Charges	7726
§ 77-30.	Moving of Fire Hydrants.....	7727
§ 77-31.	Unauthorized Actions; Penalties for Offenses.....	7730
§ 77-32.	Water Pressure and Quality	7731
§ 77-33.	Water Main Maintenance	7731
§ 77-34.	Water Shortage	7732
§ 77-35.	Service of Water to Municipal Corporations and Special Improvement Districts as the Sole Water Supply	7732
§ 77-36.	Service of Water to Municipal Corporations and Special Improvement Districts as a Supplement Water Supply.....	7735
§ 77-37.	Fees	7735

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 9-17-1992 as

L.L. #12-1992. Amendments noted where applicable.]

§ 77-1. Definitions.

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

CITY - The City of Dunkirk.

DIRECTOR - The Director of Public Works, or the Director's designee.

MAIN, STREET MAIN or WATER MAIN - A water main in a public street, easement or right-of-way owned by the City of Dunkirk and supplying or capable of supplying water to one (1) or more parcels of property.

PLUMBER - A plumber who is properly licensed and registered in the City of Dunkirk.

SERVICE or SERVICE PIPE - A water service pipe supplying water from a street main to an individual property.

WATER DIVISION - City of Dunkirk Department of Public Works - Division of Water Treatment & Distribution.

§ 77-2. Responsibilities of Property Owners.

- A. The owner of a parcel of property is responsible for the installation, and any necessary replacement, of the entire water service pipe supplying water to that parcel from the connection with the street main, up to, and including, the meter.
- B. The owner is responsible for all necessary repairs of the water service pipe from the curb valve, up to, and including, the meter.
- C. The Water Division will provide necessary repairs to the service pipe between the connection with the street main and the curb valve, inclusive, with the cost of such repairs to be paid by the property owner.
- D. The Director may, by written notification, require a property owner to make necessary repairs to a leaky or defective service, if such repairs are the responsibility of the owner.
- E. A problem of inadequate flow or pressure in a service must be corrected by the property owner, as set forth in §77A-D, supra; the Water Division is not responsible for making any repairs to try to correct such a problem.

- F. For work which is the responsibility of the property owner, the owner shall arrange with a private plumber, properly licensed in the City of Dunkirk, for such work to be performed, or can perform the work individually; the work must be inspected and approved by the City Plumbing Inspector.
- G. The owner shall see that all necessary permits are obtained and all necessary fees paid.
- H. The owner shall bear the full cost of such work, including the cost of any necessary street or sidewalk restoration.
- I. The property owner is responsible for seeing that a meter is installed in every active water service to the parcel, that the meter is not removed, illegally bypassed or tampered with, and that any bypass valve is not opened, except by the Water Division.
- J. The property owner is responsible for safeguarding the meter and shall be charged for any damage, loss or theft of the meter.
- K. The property owner is responsible for seeing that all water delivered to the property is properly registered on a meter and is paid for.
- L. An owner of any parcel of property which is connected to the City's water distribution system shall be deemed knowingly to accept water service to the parcel on the terms and conditions specified in the City Charter, the City Code, state law and all duly promulgated rules and regulations.
- M. Even if the City fails to issue water bills for a period of time, the property owner is still liable for water consumed on the premises and shall be responsible for paying any back water bills which may subsequently be issued.
- N. The owners shall be responsible for maintaining the valve box and cover free from all dirt and other materials which would prevent operation of the curb valve. Costs involved with the City's maintenance of the valve box will be at the expense of the owner.
- O. The property owner, and the occupant, shall permit access to the premises for the purposes of these regulations including, but not limited to, meter reading and water service repairs.

§ 77-3. Preliminary Requirements.

- A. For any new installations, renewals, alterations, enlargements or repairs to water service pipes which require excavation of the street, sidewalk or other public right-of-way, the property owner or the owner's plumber shall first

obtain a street opening permit from the Director and shall pay the required permit fees.

- B. For new installations, enlargements or any other work which requires a new connection with the street main, the property owner shall first submit plans to the Director, if such plans are required by the Director, and pay the required connection fee pursuant to §77-37D; the connection fee is based on the actual size of the tap into the main; as-built plans shall be submitted pursuant to §77-6, as may be required by the Director.
- C. For new installations or enlargements or in any other case where a new meter is required, the property owner shall pay the required meter fee to the Water Division pursuant to §77-37B.
- D. The meter fee set forth in §77-37B, supra, shall be waived if the property owner purchases a meter from a source other than the City, provided that the meter size is greater than 2", and provided that the meter is approved by the Director.
- E. A deposit equal in amount to the estimated cost of making the tap, including, but not limited to, excavation, backfilling, materials, pavement restoration, furnishing and laying the supply pipe of an approved material and quality, shall be paid at the time of application.
- F. The estimated cost shall not be taken as the actual cost, and in no way relieves the owner from liability for full cost, should same be found in excess of the estimated cost.
- G. The final bill will be reconciled with the amount of the deposit; a refund or additional charge will be rendered, whichever is applicable.
- H. All service pipes shall have a minimum cover of four and one-half feet (4 1/2').
- I. All service pipes shall not be less than three-fourths inches (3/4") inside diameter and shall be of U.S. Government Specification Type K, soft tempered copper tubing, or for service four inches (4") in diameter or larger, ductile iron pipe of quality equal to American Water Work Association or Federal Specifications, and of weight suitable for service under a pressure of at least two hundred-fifty (250) pounds per square inch.
- J. The City reserves the right in all cases to stipulate the size and type of service.

§ 77-4. Water Services

- A. Except as provided in §77-26, every separately owned property shall have a separate water service, unless otherwise approved by the Director.
- B. Motor trailer parks may be permitted to have a single water service and shall be billed as set forth in §77-37F, infra.
- C. All water services shall meet the approval of the Director.

§ 77-5. Applications.

- A. All applications for the use of water or for other services and facilities shall be made in writing on forms furnished by the City, and the applicant shall furnish such maps, plans and surveys and further information with respect to the applicant's premises and the service requested as may be required by the City.
- B. The receipt of an application shall not obligate the City to render, perform or provide the service requested until the applicant shall have complied with the Rules and Regulations herein provided, and shall have paid the applicable charges herein prescribed for the service requested.
- C. On acceptance by the City, the application shall constitute a contract between the City, and the applicant, obligating the applicant to pay the City's established rates and charges and to comply with its Rules and Regulations.
- D. A separate application shall be made for each water service, whereat the service of water is to be metered and billed to a consumer.
- E. There will be a Twenty Dollar (\$20.00) account initiation fee for new accounts.
- F. No agreement will be entered into by the City with any applicant for water or other service and facilities until all amounts due from the applicant on any and all property which may be in arrears shall have been paid.
- G. Whenever a person, municipal corporation or special improvement district shall make application to the State of New York Department of Environmental Conservation, Office of Environmental Analysis, for its approval to take a water supply or an additional water supply from the City or from a municipal corporation or special improvement district which is then supplied by the City, the applicant shall file with the City, on or before making such application to the Department of Environmental Conservation, Office of Environmental Analysis, a true copy of its petition, maps, plans, engineering reports, exhibits and other papers filed in support of its application.

- H. Whenever the owner or operator of a motor trailer court applies for the service of water to the court, there shall be furnished to the City a map or plan thereof showing its location, the estimated number of trailers to be accommodated, and the arrangement of roads, driveways and lanes affording access to, and within the limits of, the trailer court.
- I. The use of water delivered to the applicant shall be confined to the service of water to the trailers and/or service buildings located within the court, and shall not be used to furnish water to any other structure or premises.

§ 77-6. As-built Drawings.

- A. Within ten (10) days after the completion of any water service work, pursuant to a street opening permit, the plumber shall submit a written return to the Director stating the nature of the work, the size of the service pipe, the material of which the pipe consists and the purpose for which the water will be used.
- B. The return shall also include a drawing of the service, showing the length and location of the service pipe and the location of the controlling valve.

§ 77-7. New Connections; Turning on Water.

- A. Where a new connection with the street main has been made, the water shall not be turned on, except by the specific authorization of the Water Division.
- B. Upon satisfactory completion of all required work by the property owner or property owner's plumber, and upon remission of as-built drawings, as may be required, the owner or owner's plumber shall install the meter, which meter is furnished by the Water Division, or approved by the Water Division.
- C. The Water Division shall be notified after installation of the meter for the purpose of reading and sealing the meter, within 48 hours after installation.

§ 77-8. Fire Services.

- A. Fire services shall be designed and installed in accordance with the waterworks specifications promulgated by the Director.
- B. All fire services shall be equipped with a detector check valve and bypass meter, and any backflow prevention devices as may be required.
- C. Fire services shall be used only for fire protection.

- D. If the Director determines that it is possible for water to be used for other than fire protection, the Director may require the property owner to install a mainline water meter in the service.
- E. Quarterly charges shall be made for each fire service.
- F. The charge for a domestic fire service with a mainline meter which records all water consumption shall consist of a fire service charge, pursuant to §77-37C, and a consumption charge, pursuant to §77-37A(1).
- G. The charge for a domestic fire service with a bypass meter shall consist of a fire service charge, pursuant to §77-37C, a base charge, pursuant to §77-37A(2), and a consumption charge pursuant to §77-37A(1).

§ 77-9. Installation and Maintenance of Meters.

- A. Customers shall make application for water meters, at the Water Division Office, City Hall, Dunkirk, N.Y.
- B. A water meter provided or approved by the Water Division shall be installed in every active water service.
- C. Water meters shall not be moved from one service to another.
- D. The property owner shall pay the required meter fee, pursuant to §77-37B, for any new meter installed on the premises.
- E. The customer shall give the Water Division at least twenty-four (24) hours notice for all service calls, which notice may be less, at the discretion of the Director.
- F. There shall be no refund of meter fee if the service is permanently disconnected or is enlarged.
- G. When the water supply through a service is discontinued, but the service is not permanently disconnected from the main, the meter will be stored by the Water Division until it is reinstalled in the service at the request of the owner.
- H. No refund of the meter fee shall be made when the meter is removed for storage, and no meter fee shall be charged when it is reinstalled.
- I. Water meters furnished by the City at all times remain the property of the City.

- J. Meters which become obsolete or are no longer serviceable shall be ordered by the Director to be replaced.
- K. Meters shall be maintained by the Water Division.
- L. Meters may be removed or replaced by the Water Division in order to perform necessary maintenance.
- M. The Director may choose, however, to leave a meter in place until its accuracy has been tested.
- N. The City reserves the right to stipulate the size, type and make of meter to be used to record the consumption of water by any customer.
- O. An individual meter shall be required for each premises and for each separate service connection to a premises.
- P. An individual meter shall be required for each premises or part thereof whereat the consumption of water is to be billed to an occupant thereof.
- Q. Whenever possible, the meter shall be set in the basement of the premises, or part thereof to be served, at a convenient point approved by the City, so as to protect the meter and to measure the entire supply of water through the connection.
- R. All water meters shall be placed inside the customers premises, as close to the entrance wall as possible, unless otherwise authorized by the Director.
- S. The space adjacent to the water meter shall be kept free of obstructions, and accessible for easy reading by the meter reader.
- T. Meters must be installed in a horizontal position not more than three (3) feet from where the service enters the building, with the meter dial facing upward for easy reading.
- U. The top of the meter shall not be more than five (5) feet above the floor.
- V. The City will maintain the meter or meters, but the customer shall install on the customer's premises the meter, necessary piping, fittings, valves and pipe couplings to receive the meter.
- W. The City may require the installation of suitable equipment, properly located and installed, to prevent backflow which may cause damage to the meter or other damage to the plumbing or the City's system.
- X. All meters will be maintained by, and at the expense of, the City, insofar as

ordinary wear and tear are concerned, but the customer will be held responsible for damages due to freezing, hot water or other external causes.

- Y. In case of damage, the City will repair the meter, if possible, and may, in the sole discretion of the City, replace it with another meter, and the cost will be paid by the customer.
- Z. Where more than one meter is required to record the total consumption of water by a customer, additional meters for such purposes will be furnished by the City, at the fee set forth in §77-37B, but shall be set on the customer's premises in such manner and at such location as the City may prescribe.
- AA. When the customer requests that a meter be set, or read at a time other than during the normal working hours of 8:00 a.m. to 3:00 p.m., Monday through Friday, excluding holidays, a service charge of Fifty Dollars (\$50.00) shall be made, in addition to any other applicable charges under §77-37F, *infra*.
- BB. If the customer makes arrangements to have a meter set, read or replaced during the normal working hours specified above and fails to keep the appointment, thus necessitating another installation trip, an additional service charge of Twenty Dollars (\$20.00) shall be made.
- CC. If it is necessary for the City to pump water out of a meter pit in order to read or maintain a meter, the customer will be required to pay a service charge of Fifty Dollars (\$50.00).

§ 77-10. Meter Vaults.

- A. Where a building is located more than one hundred feet (100') from the street, the Director may require the meter to be housed in a vault outside the building but inside the property line, instead of inside the building.
- B. Where the Director deems that a meter will not be safe and secure if it is located within the building, or that access by a meter reader will be difficult, the Director may require the meter to be installed in a meter vault, or other location as may be determined by the Director.
- C. Plans for meter vault construction shall be submitted to the Director for the Director's approval prior to construction.
- D. Vaults shall be constructed and maintained by, and at the expense of, the property owner.

§ 77-11. Meter Bypass.

- A. A bypass around the meter shall be installed by the property owner if required by the Director.
- B. The design of the bypass shall be submitted to the Director for the Director's approval, prior to installation.
- C. The Director may require a meter to be installed in the bypass by, and at the expense of, the property owner.
- D. Every unmetered bypass shall have a valve which shall be sealed closed, and opened only by the Water Division.
- E. No connections shall be made to the bypass.

§ 77-12. Broken Seals.

- A. If a seal on a valve, meter or other fitting is broken, it shall be presumptive evidence that the water consumption has not been properly registered on the meter.
- B. If a seal is broken, it shall be resealed by the Water Division.

§ 77-13. Meter Tests.

- A. Upon request of a property owner, or at the Water Division's initiative, meters may be tested by the Water Division.
- B. The property owner may, if desired, witness the test.
- C. The test results shall be presumptive evidence of whether the meter is, and has been, functioning properly.
- D. If the test results indicate accuracy within 4%, the owner shall be charged for the test, pursuant to §77-37F(1), if the test was done at the owner's request.
- E. If the test results do not meet the 4% accuracy limits, the meter shall be replaced, repaired or recalibrated, at no charge to the property owner; there shall be no charge for the test and the most current water bill shall be adjusted as necessary, either up or down, to compensate for the meter error.

§ 77-14. Metered Consumption Charges.

- A. All bills are payable in accordance with the applicable rate schedule.
- B. If a new service is installed at any time during the billing period, the minimum charge and the amount of water allowed thereunder will be prorated according to the number of days remaining to complete the billing period after the service has been made available.
- C. Meters will be read and customers will be billed quarterly or monthly, at the option of the City.
- D. The quantity recorded by the meter shall be considered the amount of water passing through the meter, which amount shall be conclusive on both the customer and the City, except as hereinafter provided.
- E. In cases where it is found that the meter has ceased to register or has registered inaccurately, the quantity may be determined by the average registration of the meter in a corresponding past period when in order, except where it appears that there has been a change of occupancy of the premises or in the use of water, in which case an equitable adjustment shall be made.
- F. In cases where it is found that a reading cannot be obtained, an estimated bill may be rendered to the consumer; the quantity may be determined by the average registration of the meter in a corresponding past period.
- G. In such cases, when a reading is obtained, the bill will be adjusted to reflect the actual consumption with full credit for minimum charges for the periods involved.
- H. In all cases where a meter is found to be defective, the City shall replace the same by a meter that has been tested and properly adjusted, or may repair the defective meter, at the City's option.
- I. Final meter readings shall be paid at the rate set forth in §77-37F, infra.
- J. If a customer requests that a final meter reading be made at a time other than the normal working hours of 8:00 a.m. to 3:00 p.m., Monday through Friday, an additional service charge of Twenty Dollars (\$20.00) will be made.
- K. If a customer makes arrangements to have a final reading made during the normal working hours specified above and fails to keep the appointment, thus necessitating an additional trip, an additional service charge of Twenty Dollars (\$20.00) will be made.
- L. A meter set after 3:00 p.m. will be done for an additional Twenty Dollar

(\$20.00) charge, which charge is in addition to the service resumption charge under §77-37F, infra.

- M. All bills are to be payable net cash when rendered.
- N. In case any water bill or charges provided for in and by these rules shall not be paid within thirty (30) days following the rendering of the bill, the Director or the Director's agent, may discontinue water service to the customer and service will not be re-established until such unpaid charges, together with the charge for restoration of service as elsewhere provided herein, are fully paid.
- O. Where the interior piping in any existing premises cannot be changed without undue or excessive cost to the consumer, or where more accurate registration would be obtained by two or more meters, the installation and use of more than one meter may be permitted by the City.
- P. The occupant has sole control of the water delivered beyond the City's meter, and the City is not responsible for maintenance and repair of the pipe and fixtures beyond the curb stop.
- Q. Any bill for water supplied or service rendered will be considered a proper charge unless protest is made to the City within fifteen (15) days after the mailing of a bill.
- R. In case of dispute as to payment of a bill, the customer will be required to present the receipted bill, canceled check or other evidence of payment.
- S. The City will, upon request of the customer, or for other reasons, make an inspection of the premises on account of apparently excessive bills.
- T. After the City has made a complete inspection, no further inspection will be made for a period of six (6) months, provided, however, the City may order an inspection at any time if conditions warrant. If the owner requests a further inspection within the six (6) month period, then there shall be a charge for each additional inspection within that six (6) month period at the rate set forth in §77-37F(12).

§ 77-15. Calculated Consumption Charges.

- A. Where any of the following conditions are discovered to exist in an active water service, water consumption charges may, at the discretion of the Director, be calculated in accordance with this section, instead of §77-14:

- (1) There is no meter.

- (2) The meter is stopped.
 - (3) The meter is illegally bypassed.
 - (4) A bypass valve is open.
 - (5) A bypass seal is broken.
 - (6) The meter is installed in reverse direction to flow.
 - (7) Any other condition which, in the judgment of the Director, indicates that the meter may not have been functioning properly or that the consumption may not have been accurately registered on the meter.
- B. The metered consumption on the premises for either a prior or subsequent period of time, at the discretion of the Director, shall be used as the basis on which to calculate consumption for the period of time for which the above-listed condition existed.
- C. A calculated bill shall be issued, covering the period of time for which the above-listed condition existed, or as permitted by state law, whichever is the shorter period of time.

§ 77-16. Ownership Transfer Charge.

When the ownership of any parcel of property changes, an ownership transfer charge, pursuant to §77-37F(6), shall be billed to cover the administrative costs of changing the account billing information.

§ 77-17. Responsibility for Water Charges; Lien on Property.

- A. All water charges imposed pursuant to this chapter of the City Code shall be a debt and personal obligation of the owner of the parcel of property to which the water was supplied, and also of the consumer of the water.
- B. Water charges shall be a lien upon the parcel of property to which water was supplied as of the due date of the charges.

§ 77-18. Delinquent Water Charges.

- A. Any water charge not paid by its due date shall be considered delinquent and shall be rebilled periodically until paid or added to taxes.
- B. A late-payment charge shall accrue each billing period against such delinquent charges and shall be added to, and thereafter considered part of, the delinquent balance.

- C. Each late-payment charge shall be a lien against the parcel of property against which it accrued as of the accrual date.
- D. The amount of the late-payment charge shall be equal to 1.5% per month of the unpaid principal balance.
- E. Any delinquent water charges remaining unpaid on January 31 may be added to the upcoming year's tax bill for the parcel of property against which they are a lien.
- F. The amount added to taxes shall include late-payment charges accrued through January 31.

§ 77-19. Short-term Water Shutoff.

Upon request of the property owner, the Water Division will shut off the supply of water to a property at the curb valve for a period not to exceed ten (10) days for the purpose of allowing short-term repairs or improvements to be made and pay the appropriate fee set forth in §77-37F(7); a service resumption charge will not be made.

§ 77-20. Temporary Discontinuance of Water.

- A. The owner of a parcel of property may request that water service be discontinued.
- B. Upon such request and with the cooperation and assistance of the owner, the Water Division shall turn off the water at the curb valve, shall remove and retain the meter or meters from the service and shall take such further steps as may be necessary to assure that no water is supplied to the premises; the appropriate fee shall be paid pursuant to §77-37F(8).
- C. During the period of discontinuance, no water bills will be issued.
- D. Upon request of the owner, the meter will be reinstalled and the water turned on by the Water Division; the fee to be paid is set forth in §77-37-F(3).

§ 77-21. Conditions Warranting Water Shutoff.

- A. **Conditions.** The water supply to a property may be shut off by the Director when any of the following conditions have not been corrected after notification by the Director:
 - (1) For use of water other than as represented in the customer's application or through branch connections on the street side of the

meter or the place reserved therefor.

- (2) Willful waste by use of water through improper and imperfect pipes, or by other means.
- (3) For molesting or tampering with any service pipes, seal, meter or other appliance.
- (4) For non-payment of bills for water or services rendered by the City in accordance with these Rules and Regulations.
- (5) For cross-connecting pipes carrying water supplied by the City with any other source of supply or with any apparatus which may endanger the quality of the City's water supply.
- (6) For refusal of reasonable access to the property for the purpose of reading, repairing, replacing, testing, or removing meters or backflow preventers or observing water pipes and other fixtures.
- (7) For the furnishing or receiving of a supply of water from another premises.
- (8) No safe access to the water meter.
- (9) Refusal to allow access to meter for reading at least once a year.
- (10) For violation of any of the Rules and Regulations of the City.

- B. **Immediate shutoff.** Where a leaky or defective service pipe is causing damage or a hazardous condition, the water may be shut off as soon as the leak is discovered.

§ 77-22. Water Shutoff Upon Nonpayment of Bills.

- A. If directed by the Director, water service may be shut off, as provided in this section, to any parcel for which water bills have remained delinquent and unpaid for a period of at least thirty (30) days.
- B. A notice shall be mailed to the owner of the premises, at the owner's last known address, and shall be mailed or delivered to each tenant of the premises.
- C. Such notice shall state that water service will be shut off unless all delinquent water bills are paid and shall state that a hearing may be had by the owner or any tenant to contest the validity of the water charges in question or to show an error in the statement of the delinquency.

- D. Such notice shall also give the name, job title, address and telephone number of a Water Division employee who may be contacted to arrange a hearing.
- E. The notice shall state a deadline, at least ten (10) days after the mailing of the notice, by which the hearing must be requested or shall be deemed waived.
- F. If no hearing is requested by the deadline date stated in the notice, then the Director may proceed to cause the water service to be terminated.
- G. If a hearing is requested on or before the deadline date by an owner or tenant of the premises then a hearing shall be scheduled before a hearing officer appointed by the Director.
- H. The applicant may be accompanied by any other persons and may present at the hearing any information, testimony and documentation by which to support the claim.
- I. Minutes shall be kept of the hearing.
- J. The hearing officer shall make a report to the Director, and the Director shall decide whether any error was made in the water billing and whether water service shall be discontinued.
- K. The decision of the Director and the report of the hearing officer shall be mailed to the applicant.
- L. If the final decision of the Director is to terminate water service, the Director's decision shall state when termination will occur, and such termination date shall not be less than ten (10) days after the mailing of the decision.
- M. If water service is terminated hereunder and the meter is not returned to the City, then the owner and occupant shall still be billed the minimum consumption charge set forth in §77-37A, *infra*.
- N. If and when all delinquent bills are paid, the water shall be turned back on by the Water Division.

§ 77-23. Resumption of Water Service.

When the supply of water to a parcel is turned back on by the Water Division after being turned off under §77-20, 77-21 or 77-22, a service resumption fee pursuant to §77-37F(3) shall be charged.

§ 77-24. Frozen Services.

- A. A frozen water service is the responsibility of the property owner. All associated costs shall be borne by the property owner.
- B. If there is a frozen water service due to the placement of a shallow service from the City main to the curb valve, then the City will compensate for encouraging the occupant of the premises to maintain a constant flow of water through the service to prevent refreezing. To compensate for the additional water consumed thereby, the metered consumption on the next succeeding water bill for the premises shall be reduced by a maximum of thirty thousand (30,000) gallons per quarter. In any event, the bill reduction shall not exceed the average consumption for a corresponding billing period.
- C. The City shall bear no liability for defects in the water service prior to, or resulting from, its freezing or thawing, unless the defects were caused directly by the actions of the City.
- D. The property owner shall notify the City prior to commencement of thawing and shall pay to the City the fees set forth in §77-37F.

§ 77-25. Permanent Disconnection of Services.

- A. When any person obtains a permit from the City Building Inspector for the demolition of a building, that person shall be required to pay, in addition to any other fee charged by the City Building Inspector's office, a water service disconnection fee, pursuant to §77-37F(5), covering the Water Division cost of permanently disconnecting the water service from the street main.
- B. A property owner may be required by the Director to pay a water service disconnection fee for any unused service to the property and to permit the Water Division to disconnect such service.

§ 77-26. Separately Owned or Separately Occupied Residential Units.

- A. A group of separately owned or separately occupied residential units may be served by a single water service pipe, provided that the Director determines that installation of separate services is not feasible and provided that the owners of all units serviced by such pipe, either individually or by an association representing them, agree to guarantee payment of all water charges which accrue against all units.
- B. If the service has a single meter, then a single water bill shall be issued. If a single service serves more than one residential metered unit, then multiple

water bills may be issued. Any delinquent charges shall be a lien on all units.

- C. If the service has multiple meters serving each of the separately owned or separately occupied units, then a separate bill shall be issued for each unit. Delinquent charges shall be a lien only on the unit to which they were billed.
- D. All unit owners, either individually or by an association representing them, shall be responsible for the obligation placed on property owners by this chapter.
- E. Whether owned by the City or by the unit owners, the service pipe shall be installed and maintained at the expense of the unit owners, except for maintenance between the connection with the main and the curb valve, inclusive, which shall be provided by the City at the City's cost to the owner.
- F. The water service and meters shall be installed in accordance with any special requirements imposed by the Director.
- G. The owner of a building containing separately occupied residential units is responsible for payment of all water and water service bills.
- H. Where two or more premises have been supplied with water prior to June, 1992, through one service pipe under the control of one curb stop, such service shall continue; however, if any of the parties so supplied shall violate any of the Rules and Regulations provided for herein, the City reserves the right to apply the foregoing shut-off regulations to the joint service line, excepting that such action shall not be taken until the innocent customer who is not in violation of the City's Rules and Regulations has been given reasonable opportunity to attach the service pipe leading to the innocent customer's premises to a separately controlled service connection at the main.

§ 77-27. Cross-connections.

A. Definitions.

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

- 1) **Cross Connections** - Any unprotected connection between any part of a water system used or intended to be used as a supply of water for drinking purposes in a source or systems containing water or substance that is not or cannot be approved as equally safe, wholesome and potable for human consumption.

- 2) **Approved Water Supply** - Any water supply approved by the New York State Department of Health.
- 3) **Auxiliary Supply** - Any water supply on or available to the premises other than the approved public water supply.
- 4) **Vacuum Breaker - Pressure type and non-pressure type** - A vacuum breaker which can only be used for internal plumbing control, and, therefore, not acceptable as a containment device.
- 5) **Approved Check Valve** - A check valve that seals readily and completely. It must be carefully machined to have free moving parts and assured water tightness. The face of the closure element and valve seal must be bronze, composition, or other non-corrodible material, which will seal tightly under all prevailing conditions of field use. Pins and bushings shall be of bronze and other non-corrodible, non-sticking material, machined for easy dependable operation. The closure element shall be internally weighted or otherwise internally equipped to promote rapid and positive closure in all sizes where this feature is obtainable.
- 6) **Approved Double Check Valve Assembly** - Two single independently acting check valves, including lightly closing shut-off valves located at each end of the assembly and suitable test connections. This device must be approved as a complete assembly.
- 7) **Approved Reduced Pressure Zone Device** - A minimum of two independently acting check valves together with automatically operated pressure differential relief valve located between the two check valves. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the checks at less than the supply pressure. The unit must include tightly closing shut-off valves located at each end of the device, and each device shall be fitted with properly located cocks. This device must also be approved as a complete assembly.
- 8) **Air Gap Separation** - A physical break between a supply pipe and a receiving vessel. The air gap shall be at least double the diameter of the supply pipe, measured vertically above the top rim of the vessel, in no case less than one inch.
- 9) **Water Supervisor** - The consumer or a person on the premises charged with the responsibility of complete knowledge and

understanding of the water supply piping within the premises and for maintaining the consumer's water system free from cross connections and other sanitary defects, as required by this section and all other required regulations and laws.

- 10) Certified Back Flow Prevention Device Tester** - An individual who has successfully completed a New York State Department of Health approved course in the testing of back flow prevention devices and has been issued a certificate by the New York State Department of Health.

B. (1) Where Protection is Required.

The water system shall be required to maintain a degree of protection commensurate with the degree of hazard regardless of whether the hazard is immediate or potential. To that extent, the Cross Connection Control Manual published by NYSDOH shall be used, as a guide, to determine where protection is required. It shall be the responsibility of the water user to provide and maintain such required protection devices and such devices shall be of a type acceptable to the New York State Department of Health.

(2) Type of Protection.

The protective device required shall depend on the degree of hazard as tabulated below:

- (i) At the service connection to any premises where there is an auxiliary water supply handled in a separate piping system with no known cross connection, the public water supply shall be protected by an approved reduced pressure zone device.
- (ii) At the service connection to any premises on which a substance that would be objectionable (but not necessarily hazardous to health if introduced into the public water supply) is handled so as to constitute a cross connection, the public water supply shall be protected by an approved double check valve assembly.
- (iii) At the service connection to any premises on which a substance of unusual toxic concentration or danger to health is or may be handled; but not under pressure, the public water supply shall be protected by an air gap separation or an approved reduced pressure zone back flow prevention device. If an air gap is installed, it shall be located as close as practical to the water meter, and all piping between the water meter and receiving tanks shall be entirely visible. A reduced

pressure zone device, when installed, shall be located as close as possible to the property line.

(iv) At the service connection to any premises on which any material dangerous to health, or toxic substance and toxic concentration, is or may be handled under pressure, the public water supply shall be protected by an air gap separation. The air gap shall be located as close as practical to the water meter, and any piping between the water meter and the receiving tanks shall be entirely visible. If these conditions cannot reasonably be met, the public water supply shall be protected with an approved reduced pressure zone back flow prevention device and it shall be located as close as possible to the property line.

(v) At the service connection to any sewage treatment plant or sewage pumping station, the public water supply shall be protected by an air gap separation. The air gap shall be located as close as practicable to the water meter and all piping between the water meter and receiving tanks shall be entirely visible. If these conditions cannot be reasonably met, the public water supply shall be protected by an approved reduced pressure zone back flow prevention device and it shall be located as close as possible to the property line.

(vi) All backflow preventing devices shall be installed on the downstream side of the meter.

(3) **Frequency of Inspection of Protective Devices.**

It shall be the duty of the water user on any premises on account of which back flow protective devices are installed, to have competent inspections made at least once a year, or more often in instances where successive inspections indicate repeated failure. Devices shall be repaired, overhauled or replaced at the expense of the water user whenever they are found to be defective. These tests shall be performed by a qualified back flow prevention device tester and all test results will be provided to the water user within 72 hours after the test is made. Records of such tests, repairs and overhaul shall also be kept and made available to the water user and the local health department upon request.

C. **Penalties and Recourse for Non-Compliance.**

(1) No water service connection to any premises shall be installed or maintained by the water user unless the water supply is protected as required by this section and such other applicable local, state and federal laws, rules and regulations.

- (2) If any facility served by a water system denies a Water Division person access to their premises for the purposes of determining if protection to the public water system is necessary, then the maximum protection condition shall be imposed with the requirement that the number of devices shall equal the number of service lines.
- (3) The following penalties shall be applicable for a violation of this section:
 - (i) Failure to install the appropriate back flow prevention device within a prescribed time frame after first notice:
\$250.00
 - (ii) Failure to install the appropriate back flow prevention device within prescribed time frame after second notice:
Termination of service
 - (iii) Failure to at least annually test the back flow prevention device:
\$300.00 and/or termination of water service
 - (iv) Failure to replace or repair a back flow prevention device as required:
\$1,000.00 and/or termination of water service.

D. New York State Sanitary Code, Part 5, Section 5-131 and the latest edition of the New York State Department of Health Cross Connection Control Manual are hereby incorporated by reference in this section.

§ 77-28. Street Abandonments.

- A. Whenever a street containing a water main is abandoned by the City, the owner of the former street bed must submit to the Director for the Director's approval, plans for either abandoning the main or converting it to a private water service.
- B. If the Director finds that such plans are adequate, the Director shall approve them.
- C. All necessary work shall be done by, and at the expense of, the property owner.

§ 77-29. Fire Hydrant Use Permits; Charges.

- A. An application may be made to the Director for a permit to take water through a fire hydrant of the City. No hydrant permit will be issued for the purpose of filling swimming pools or for any other use which the Director deems to be a potential hazard or nuisance.
- B. A hydrant use permit fee shall be charged for each hydrant permit, as set forth in §77-37E.
- C. In addition, the applicant shall pay either the minimum hydrant water consumption charge, pursuant to §77-37E(3), or an estimated water consumption charge at the metered consumption rates set forth in §77-37A, or a metered water consumption charge at the regular metered consumption rates set forth in §77-37A, in the discretion of the Director.
- D. If the Director requires the payment of metered consumption charges, a meter will be supplied to the applicant by the Water Division, and the applicant shall make a refundable deposit for the meter, at the rates set forth in §77-37B.
- E. The applicant will also be charged the cost of any repairs necessitated by such use of the hydrant or the meter.
- F. The applicant is responsible for any loss or damage to the meter, hydrant or backflow preventer, at either cost of repair or replacement, in the sole discretion of the Director.

§ 77-30. Temporary or Occasional Service of Water.

- A. The service of water to a premises prior to occupancy by a consumer, and prior to the time a meter is installed, will be provided to builders, contractors, developers and owners for water during construction or for the service of water in display houses prior to sale, upon the payment of the applicable charges as prescribed in §77-3, and upon payment of Fifty Dollars (\$50.00), in advance, and thereafter for each subsequent quarter, until such time as an owner or occupant of the premises is served therefrom.
- B. A backflow preventer may be required at the applicant's cost.
- C. Tank truck sales:
 - (1) Bulk water tankers will only be allowed to fill their tankers at the Water Treatment Plant, 110 Lake Shore Drive, West, Dunkirk, N.Y. 14048, between the hours of 8:00 A.M. and 10:00 P.M.

- (2) Each individual hauler will be required to deposit One Hundred Dollars (\$100.00) at the Water Division Business Office in City Hall between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday.
 - (3) A receipt will be issued to each individual hauler and this must be presented at the Water Treatment Plant in order for the tanker to be loaded.
 - (4) Each delivery will be covered by a sales slip.
 - (5) This slip will have the date and time of delivery, the gallons of water delivered, the name, address and the city/town of the hauler.
 - (6) The slip must also contain the signature of both the driver and the plant operator.
 - (7) A copy of this sales slip will be given to the driver.
 - (8) Each sales slip will contain the words, "Not for drinking or culinary purposes".
 - (9) The City does not guarantee the cleanliness of the tanker.
 - (10) Each water hauler will be billed monthly at the rate of Five Dollars (\$5.00) per thousand gallons.
 - (11) The hauler will have 15 days from date of receipt of monthly bill to pay or this service will be terminated and deposit retained.
 - (12) Service can be reinstated by payment of all past bills and the redepositing of Two Hundred Fifty Dollars (\$250.00).
 - (13) Deposit will be returned to hauler at the end of the year or upon written request from the hauler.
 - (14) This return of deposit is dependent upon all past bills having been paid.
 - (15) Any damage to City property or equipment, including, but not limited to, driveways, fences, hoses, couplings, valves, etc., caused by hauler will be charged to the hauler's account.
- D. (1) The temporary or occasional service of water will be provided for construction jobs, fairs, circuses, military installations, emergency

inter-system connections and the temporary service of water to a premises or property on which no permanent structure is or has been erected, upon payment by the applicant, in advance, of the estimated cost of the labor and materials for the installation of the water service connection with a meter and backflow protection, if one is required.

- (2) In the event that the estimated cost thereof shall exceed the actual cost, upon the determination of the actual cost, the difference between the estimated cost for such installation, if any, shall be refunded to the applicant without any interest.
- (3) In the event that the actual cost of the installation shall exceed the estimated cost of the installation, then the applicant will be required to pay the difference between the sums before the service of water is commenced or continued.
- (4) The applicant shall also make a deposit as provided in Paragraph 5, infra.
- (5) (i) A payment, as security for the return of meter and backflow preventer, in the amount hereinafter set forth, will be collected for the temporary service of water and the setting of a meter therefore, such as, but not limited to, construction jobs, fairs, circuses, military installations, emergency inter-system connections, and for the service of water to the premises or property upon which no permanent structure is, or has been, erected:

<u>SIZE</u>	<u>DEPOSIT REQUIRED</u>
5/8 inch	\$ 364.00
3/4 inch	\$ 364.00
1 inch	\$ 500.00
1/2 inch	\$ 875.00
2 Inch	\$1,077.00
over 2 inches	Cost of meter and backflow preventer

- (ii) The amount of the deposit hereinabove provided for will be refunded by the City without interest when the meter and backflow preventer is returned, and provided that the same is found to be in proper condition for re-use after inspection and test.
- (iii) Any cost of repairs found to be necessary will be deducted from the deposit made at the time the meter and backflow

preventer was originally issued or set.

- E. Temporary services not intended to become permanent shall be disconnected from the City main by the City; all necessary disconnection costs shall be paid for by the applicant as set forth in §77-37(5).
- F. Whenever application is made for any service or facility of the City not herein specifically provided for, the same may be provided in the discretion of the City but subject to such terms and conditions as the City may, in each circumstance, prescribe by resolution.

§ 77-31. Unauthorized Actions; Penalties for Offenses.

A. Taking water:

- (1) No person shall take water or permit water to be taken from the City's water distribution system other than through a metered service or by permit through a hydrant.
 - (2) No person shall open a hydrant or valve or use an unsealed meter to obtain water in an unauthorized manner.
 - (3) No person shall remove or tamper with the meter in a service or open the bypass valve in a service or otherwise cause water to be delivered to any premises which does not properly register on a meter.
 - (4) No person shall accept water knowing that the water consumption has not been properly registered on a meter.
 - (5) No person shall take or accept water without paying for it.
 - (6) No person shall injure any equipment or building belonging to the City's water system; divert water from mains; use water without permission, or cut or tap into any water pipe or main.
- B. If a bypass valve has been opened or if the meter has been removed or tampered with, or if some other condition is found to exist in a water service which would permit the delivery of water to the premises without the proper registry thereof on a meter, then it shall be presumptive evidence that the person or persons who accepted or received the use or benefit of the water did so with knowledge of the illegal condition.
- C. No person shall cause damage to any portion of the water distribution system, including, but not limited to, hydrants or meters.

- D. No person shall remove a meter from a service where it is installed without authorization.
- E. No person shall retain possession of a meter belonging to the City.
- F. Violation of any of the provisions of this section shall be a misdemeanor, punishable by a fine not exceeding One Hundred Fifty Dollars (\$150.00) or imprisonment not exceeding fifteen (15) days, or by both fine and imprisonment, or by a penalty not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) to be recovered by the City in a civil action. Penalties imposed by this section shall be in addition to any other penalties imposed by law.

§ 77-32. Water Pressure and Quality.

- A. The City makes no guaranty as to water pressure and may change pressures as necessary.
- B. In the event that the pressure in any individual service is inadequate and the installation of a pump is necessary, the pump shall be installed, operated and maintained by, and at the expense of, the property owner.
- C. Such pumps must be approved by the Director prior to installation.
- D. The City makes no guaranty that its water will be free at all times of rust or other nontoxic impurities.
- E. Any property owner or occupant, either residential, commercial or industrial, who requires water of high purity, is responsible for the installation and expense of any necessary filters or treatment equipment.

§ 77-33. Water Main Maintenance.

- A. The City may shut off the water supply through the water mains of the City in cases of water main breaks, operational requirements or emergencies.
- B. When practicable, notice of a shutoff will be given in advance.
- C. However, even when notice is not given, neither the City nor its employees shall be liable for any damage that may occur as a result of such shutoff.

§ 77-34. Water Shortages.

- A. In the case of a drought or other water shortage, the Director shall have the

authority to promulgate rules restricting the use of water by consumers in the City.

- B. Such rules may include provisions imposing penalties for violation of the rules, up to Five Hundred Dollars (\$500.00) per violation.

§ 77-35. Service of Water to Municipal Corporations and Special Improvement Districts as the Sole Water Supply.

- A. The City will furnish a supply of water to Municipal Corporations and Special Improvement Districts which do not own or are not connected to an independent source of water supply for the following purposes and subject to the terms and conditions hereinafter prescribed upon receipt of a proper application therefor:

- (1) For a supply of water to be distributed and sold by such Municipal Corporations or Special Improvement District and extensions thereof, through its own facilities to residents and inhabitants thereof.
- (2) For a supply of water to be delivered through its own facilities and sold by such Municipal Corporations or Special Improvement Districts to another person, public corporation or Special Improvement District.

- B. Where a supply of water is to be provided by the City for the purposes specified in Paragraph 77-35A, supra, the proper public officials of the applicant shall certify in writing to the City that the facilities of the applicant, installed or proposed to be installed, will be operated and maintained by the applicant; that the service of water to their residents and inhabitants within applicant's corporate limits will be performed by the applicant, and that such facilities will remain the property of the applicant.

- C. For the purposes specified in the Paragraph 77-35A, supra, the applicant shall warrant to the City that its mains, storage tanks, pumping stations, cross-connection control program, and other facilities for the distribution of water within its corporate limits are and will continue to be able to provide for an adequate and safe supply of water at proper pressures for domestic, commercial and industrial use as well as for public and private fire protection; and that additional sales of water to the applicant for resale to persons, Municipal Corporations and Special Improvement Districts outside of its corporate limits will not impair the supply or pressure of water when being served by the applicant to its residents and inhabitants.

- D. Acceptance of an application made by a Municipal Corporation or Special Improvement District shall depend upon:

- (1) The consent of the State of New York Department of Environmental Conservation, Office of Environmental Analysis, where required; and
 - (2) A determination in the sole discretion of the City that the conditions of the service requested are economically feasible and within the capacity of the City to render without prejudice to the demands imposed upon its system by its other customers.
- E. On and after the effective date hereof, the furnishing and delivering of water to a Municipal Corporation or Special Improvement District now or hereafter taking a supply of water from the City shall be made pursuant to the terms of a contract between the City and the governing board thereof.
- F. The contract shall contain, but without limitations, the following provisions:
- (1) That the City will furnish a supply of water at designated metered connections but shall not be responsible for the water beyond such delivery point or points.
 - (2) That the purchaser will furnish and install at its own cost and expense a suitable meter, meter couplings, meter pit and necessary piping, fittings, valves and pipe couplings at each point or location whereat water is delivered by the City to the purchaser and at each location whereat water is sold by the purchaser to persons, Public Corporations or Special Improvement Districts. The City will, at its own cost and expense, maintain the meter or meters to record the quantity of water through each such metered connection, while the purchaser is responsible for maintaining all other items furnished or installed by the purchaser.
 - (3) All water delivered and sold shall be at the rates and charges as set by the City's Common Council.
 - (4) The bill for water sold and delivered to the purchaser shall be computed as follows:
 - (i) The quantity of water registered on each meter recording the delivery of water outside of the corporate limits of the purchaser will be separately billed at the aforesaid rates and charges.
 - (5) In the event the City, in periods of drought or emergencies, restricts, curtails, or prohibits the use of water for secondary purposes, i.e., sprinkling, car washing, filling swimming pools, etc., the Municipal Corporation or Special Improvement District will use its best efforts to secure the cooperation of its customers to comply with the City's

regulations with respect to the use of water.

- (6) Every Municipal Corporation and Special Improvement District applying for a supply of water from the City shall agree that it will not sell or supply water to any property located within its territorial limits which abuts, faces, or is numbered on a street in which there is an existing City-owned main through which the service of water to such premises can be provided by direct connection thereto, or by means of a main extension therefrom.

- G. Every Municipal Corporation and Special Improvement District which is supplied by the City shall enact, enforce and maintain a cross-connection control program and warrant to the City that such program complies with the requirements of the County of Chautauqua, the State Health Department and the requirements of the Environmental Protection Agency. A cross-connection control program shall be acceptable to the City. A copy of the cross-connection control program and a list of installed backflow prevention devices shall be provided to the City.

§ 77-36. Service of Water to Public Corporations and Special Improvement Districts as a Supplemental Water Supply

- A. The City will furnish a supply of water to Municipal Corporations and Special Improvement Districts which own or are connected to an independent source of water supply. The water supply furnished by the City may be used to supplement the applicant's independent sources.

- B. The applicant for a supplemental source of water from the City must satisfy all requirements listed in §77-35, plus those listed in Paragraph 77-36C, infra.

- C. The applicant's independent water supply system which is connected to the City's system must satisfy all requirements of the County of Chautauqua, New York State Health Department, the New York State Department of Environmental Conservation and the U. S. Environmental Protection Agency.

§ 77-37. Fees.

A. Consumption Rates. (§ 77-14)

- (1) The consumption charges shall be at the rates established by the City Common Council.

- (2) Any base charge shall be at the rates established by the City Common Council.

B. Water Meter Fees. (§ 77-9).

- (1) The fee for water meters shall be based on the City's cost, plus 17%.
- (2) The fees for remote reading equipment will be based on the City's cost plus 17%.

C. Fire Service Charges. (§ 77-8)

<u>Size of Fire Service Connection</u> (inches)	<u>Charge Per Quarter</u>
2	\$50.00
4	\$60.00
6	\$80.00
8	\$160.00
10	\$236.00
12	\$340.00

D. Service Connection Fees. (§ 77-3)

<u>Size of Service</u> (inches)	<u>Fee</u>
3/4	\$40.00
1	\$60.00
1 1/2	\$90.00
2	\$125.00

3	\$175.00
4	\$250.00
over 4	\$400.00

E. Hydrants. (§ 77-29)

(1) Hydrant use permit, one week or less:	\$50.00
(2) Hydrant use permit, each additional week:	\$50.00
(3) Minimum consumption charge:	\$10.00
(4) Hydrant-moving charge:	actual cost

F. Miscellaneous.

(1) Replacement of broken seal (§ 77-12):	\$10.00
(2) Thawing frozen services (§ 77-24)	
(a) Per attempt:	\$40.00
(3) Service resumption charge (§ 77-27):	\$20.00
(4) Meter test charges (§ 77-13):	
(a) Five-eighths inch through one inch:	\$25.00
(b) One and one-half inch through two inch:	\$35.00
(c) Three inch:	\$150.00
(d) Four inch and over:	actual cost
(5) Service disconnection charge (§ 77-25):	actual cost
(6) Ownership transfer charge (§ 77-16):	\$10.00
(7) Short-term water shutoff (§ 77-19):	\$20.00
(8) Temporary discontinuance of water (§ 77-20):	\$20.00
(9) Motor trailer park (§ 77-4):	minimum charge per trailer,

plus consumption charge

- (10) Service pipe repair (§ 77-2): actual cost
- (11) Final meter readings (§ 77-14): \$20.00
- (12) Inspections (§ 77-14): \$20.00

- (13) Ready to serve charge, based on meter size: applicable rate schedule

CHAPTER 78

(R E S E R V E D)

CHAPTER 79

ZONING

Part I Scope and Application

ARTICLE I Title and Purpose

§ 79-1010	Intent	7910
§ 79-1020	Title.....	7911
§ 79-1030	Effective Date	7911
§ 79-1040	Interpretation.....	7911
§ 79-1050	Repeal Existing Chapter	7912
§ 79-1060	Severability	7912

Part II

Zoning Districts and Requirements

ARTICLE II

Districts and Maps

§ 79-2010	Establishment of Districts	7913
§ 79-2020	Zoning Map.....	7913
§ 79-2030	Interpretation of Boundaries	7913
§ 79-2040	Contiguous Parcels	7914

ARTICLE III

R-1 Single Family District

§ 79-3010	Intent	7923
§ 79-3020	Permitted Uses and Structures	7923
§ 79-3030	Accessory Uses	7923

§ 79-3040	Site Plan Review	7924
§ 79-3050	Special Permitted Uses	7924
§ 79-3060	Lot, Area and Yard Requirements.....	7925
§ 79-3070	Buildings.....	7926
§ 79-3080	Supplemental Regulations and Exceptions	7926

ARTICLE IV

R-2 General Residential District

§ 79-4010	Intent	7928
§ 79-4020	Permitted Uses and Structures	7928
§ 79-4030	Accessory Uses	7928
§ 79-4040	Site Plan Review	7928
§ 79-4050	Special Permitted Uses	7929
§ 79-4060	Lot, Area and Yard Requirements.....	7929
§ 79-4070	Buildings.....	7930
§ 79-4080	Supplemental Regulations and Exceptions	7930

ARTICLE V

R-3 Multi Family District

§ 79-5010	Intent	7932
§ 79-5020	Permitted Uses and Structures	7932
§ 79-5030	Accessory Uses	7932
§ 79-5040	Site Plan Review	7932
§ 79-5050	Special Permitted Uses	7933
§ 79-5060	Lot, Area and Yard Requirements.....	7933
§ 79-5070	Building.....	7934
§ 79-5080	Supplemental Regulations and Exceptions	7935

ARTICLE VI

C-1 Tourism Commercial District

§ 79-6010	Intent	7937
§ 79-6020	Permitted Uses and Structures	7937
§ 79-6030	Accessory Uses	7937
§ 79-6040	Site Plan Review	7937
§ 79-6050	Special Permitted Uses	7938
§ 79-6060	Lot, Area and Yard Requirements.....	7939

§ 79-6070	Buildings	7940
§ 79-6080	Supplemental Regulations and Exceptions	7940

ARTICLE VII

C-2 Community Business District

§ 79-7010	Intent	7942
§ 79-7020	Permitted Uses and Structures	7942
§ 79-7030	Accessory Uses	7942
§ 79-7040	Site Plan Review	7942
§ 79-7050	Special Permitted Uses	7944
§ 79-7060	Lot, Area and Yard Requirements.....	7944
§ 79-7070	Buildings.....	7945
§ 79-7080	Supplemental Regulations and Exceptions	7946

ARTICLE VIII

CBD - Central Business District

§ 79-8010	Intent	7948
§ 79-8020	Permitted Uses and Structures	7948
§ 79-8030	Accessory Uses	7948
§ 79-8040	Site Plan Review	7948
§ 79-8050	Special Permitted Uses	7949
§ 79-8060	Lot, Area and Yard Requirements.....	7949
§ 79-8070	Building.....	7950
§ 79-8080	Supplemental Regulations and Exceptions	7951
§ 79-8090	Incentive	7951

ARTICLE IX

M-1 Light Industrial District

§ 79-9010	Intent	7953
§ 79-9020	Permitted Uses and Structures	7953
§ 79-9030	Accessory Uses	7953
§ 79-9040	Site Plan Review	7953
§ 79-9050	Special Permitted Uses	7955
§ 79-9060	Lot, Area and Yard Requirements.....	7955

§ 79-9070	Buildings	7956
§ 79-9080	Supplemental Regulations and Exceptions	7956

**ARTICLE X
M-2 General Industrial District**

§ 79-10010	Intent	7958
§ 79-10020	Permitted Uses and Structures	7958
§ 79-10030	Accessory Uses	7958
§ 79-10040	Site Plan Review	7958
§ 79-10050	Special Permitted Uses	7959
§ 79-10060	Lot, Area and Yard Requirements.....	7959
§ 79-10070	Buildings.....	7960
§ 79-10080	Supplemental Regulations and Exceptions	7960

**ARTICLE XI
O-S Open Space District**

§ 79-11010	Intent	7962
§ 79-11020	Permitted Uses and Structures	7962
§ 79-11030	Accessory Uses	7962
§ 79-11040	Site Plan Review	7962
§ 79-11050	Special Permitted Uses	7963
§ 79-11060	Lot, Area and Yard Requirements.....	7963
§ 79-11070	Buildings	7964
§ 79-11080	Supplemental Regulations and Exceptions	7964

**ARTICLE XII
H-1 Central Harborfront Overlay District**

§ 79-12010	Intent	7966
§ 79-12020	Designation	7966
§ 79-12030	Definitions	7966
§ 79-12040	Harborfront Review	7966
§ 79-12050	Site Plan Review	7967
§ 79-12060	Buildings.....	7967

**ARTICLE XIII
H-2 Harborfront Overlay District**

§ 79-13010	Intent	7968
§ 79-13020	Designation	7968
§ 79-13030	Definitions	7968

§ 79-13040	Harborfront Review	7968
§ 79-13050	Site Plan Review	7969
§ 79-13060	Buildings.....	7969

**ARTICLE XIV
H-D - Historic Overlay District**

§ 79-14010	Intent	7970
§ 79-14020	Designation	7970
§ 79-14030	Permits.....	7970
§ 79-14040	Findings.....	7971
§ 79-14050	Architectural Review	7971
§ 79-14060	Permitted Uses.....	7973
§ 79-14070	Repairs and Maintenance	7973

**ARTICLE XV
Urban Renewal District**

§ 79-15010	Intent.....	7974
------------	-------------	------

**Part III
Regulations Applying to all Districts**

**ARTICLE XVI
Non-Conforming Uses**

§ 79-16010	Intent	7975
§ 79-16020	Continuation of Existing Uses	7975
§ 79-16030	Change of Use.....	7975
§ 79-16040	Repairs and Alterations	7976
§ 79-16050	Restoration.....	7976
§ 79-16060	Enlargements and Extensions	7977
§ 79-16070	Discontinuance	7977
§ 79-16080	Prior Approved Construction	7977
§ 79-16090	Non-Conformance Due to Reclassification of Zoning District.....	7978

**ARTICLE XVII
Site Plan Review**

§ 79-17010	Intent	7979
§ 79-17020	Required Site Plan Review	7979
§ 79-17030	Procedure for Review and Approval.....	7979
§ 79-17040	Submission of Site Plan and Additional Information.....	7980
§ 79-17050	Additional Information Requirements	7982

§ 79-17060	Criteria For Review and Recommendations	7982
§ 79-17070	Site Plan Review	7983
§ 79-17080	Performance Bond as Condition of Approval	7984
§ 79-17090	Site Plan Revisions.....	7984
§ 79-17100	Planning Board Procedure	7984

**ARTICLE XVIII
Special Permits**

§ 79-18010	Intent	7985
§ 79-18020	Application Procedure	7985
§ 79-18030	Findings	7986
§ 79-18040	Additional Requirements	7986
§ 79-18050	Expiration	7988

**ARTICLE XIX
Planned Unit Developments**

§ 79-19010	Intent	7989
§ 79-19020	Uses	7989
§ 79-19030	Location	7989
§ 79-19040	Minimum Area	7990
§ 79-19050	Open Space	7990
§ 79-19060	Common Areas	7990
§ 79-19070	Site and Structure Requirements	7990
§ 79-19080	Application Procedure	7991
§ 79-19090	Planning Board Action	7992
§ 79-19100	Rezoning.....	7993
§ 79-19110	Final Site Plan	7993

**ARTICLE XX
Clustering Provisions**

§ 79-20010	Intent	7994
§ 79-20020	Authority	7994
§ 79-20030	Clustering Requirements	7994
§ 79-20040	Density Transfer	7994
§ 79-20050	Review Criteria.....	7995
§ 79-20060	Open Space Requirements.....	7996
§ 79-20070	Lot, Area and Yard Requirements and Building Requirements.....	7997

**ARTICLE XXI
Sign Restrictions**

§ 79-21010	Intent	8000
§ 79-21020	Exceptions.....	8000

§ 79-21030	General Provisions	8001
§ 79-21040	Zoning District Sign Restrictions.....	8002
§ 79-21050	Temporary or Portable Signs	8008
§ 79-21060	Window Signs	8009
§ 79-21070	Political Signs	8009

**ARTICLE XXII
Adult Entertainment Facilities**

§ 79-22010	Intent	8010
§ 79-22020	Location of Adult Entertainment Facilities	8010
§ 79-22030	Additional Sign Requirements	8010
§ 79-22040	Public Display of Certain Matter Prohibited.....	8011
§ 79-22050	Restrictions Cumulative.....	8011

**ARTICLE XXIII
Flood Damage Prevention Regulations**

§ 79-23010	Intent	8012
§ 79-23020	General Provisions	8013
§ 79-23030	Floodplain Administration	8013
§ 79-23040	Permit Review Required	8014
§ 79-23050	Application to Historic Structures	8016
§ 79-23060	General Development Standards and Requirements	8016

**ARTICLE XXIV
Parking, Stacking and Loading Requirements**

§ 79-24010	Intent	8019
§ 79-24020	General Provisions	8019
§ 79-24030	Residential Districts	8020
§ 79-24040	Commercial and Industrial Districts	8020
§ 79-24050	Special Parking Restrictions	8021
§ 79-24060	Payment in Lieu of Providing Off Street Parking	8021
§ 79-24070	Exceptions.....	8022
§ 79-24080	Off Street Parking Requirements	8023
§ 79-24090	Stacking Requirements.....	8025
§ 79-24100	Loading Requirements.....	8025
§ 79-24110	Design Guidelines	8026

**ARTICLE XXV
Landscaping Requirements**

§ 79-25010	Intent	8032
§ 79-25020	Applicability.....	8032
§ 79-25030	Maintenance	8033

§ 79-25040	Guidelines	8033
§ 79-25050	Landscaping Plans and Additional Information.....	8033
§ 79-25060	Landscaping Plan Standards – General	8036
§ 79-25070	Landscaping Plan Standards – Residential.....	8036
§ 79-25080	Landscaping Plan Standards - Parking Lots and Parking Areas.....	8036

**ARTICLE XXVI
Supplemental Regulations**

§ 79-26010	Intent	8040
§ 79-26020	Accessory Buildings	8040
§ 79-26030	Storage.....	8040
§ 79-26040	Corner Visibility	8040
§ 79-26050	Fencing and Walls	8041
§ 79-26060	Automotive Use Areas.....	8041
§ 79-26070	Cesspools and Septic Tanks.....	8042
§ 79-26080	Dwelling Units	8042
§ 79-26090	Mobile Homes	8043
§ 79-26100	Mobile Home Parks	8043
§ 79-26110	Quarries, Gravel Pits, Topsoil Removal, Major Excavations, Grading and Filling.....	8045
§ 79-26120	Shopping Centers.....	8046
§ 79-26130	Satellite Television Receiving Antennas.....	8046
§ 79-26140	Solar Efficiency.....	8047
§ 79-26150	Swimming Pools.....	8048
§ 79-26160	Regulation of Telecommunication Facilities	8049

[Added 7-7-1998 as L.L. #1-1998]

**Part IV
Administration and Enforcement**

**ARTICLE XXVII
Exceptions and Modifications**

§ 79-27010	Intent	8061
§ 79-27020	Exceptions to Yard Requirements	8061
§ 79-27030	Exceptions to Area Requirements	8061
§ 79-27040	Exceptions to Height Limitations.....	8062

**ARTICLE XXVIII
Administration**

§ 79-28010	Intent	8063
§ 79-28020	Administrative Procedure.....	8063
§ 79-28030	Planning Board	8079
§ 79-28040	Zoning Board of Appeals	8084

§ 79-28050 Penalties for Violation 8088

ARTICLE XXIX
Amendments

§ 79-29010 Intent 8089
§ 79-29020 Authorization 8089
§ 79-29030 Submissions 8089
§ 79-29040 Procedure 8089

ARTICLE XXX
Definitions

§ 79-30010 Usage 8092
§ 79-30020 Definitions 8092

Appendix A - Urban Renewal Plan

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 1-25-1995 as L.L. #2 (Intro No. 1) 1995; Added § 79-26160, Regulation of Telecommunication Facilities 7-7-1998 as L.L. #1, 1998

Part I
Scope and Application

ARTICLE I
Title and Purpose

§ 79-1010 Intent.

The purpose of this zoning law is to provide for the orderly growth in the City of Dunkirk in accordance with the City's comprehensive plan. The zoning law offers guidance on the use, height and bulk of uses that are proposed in the City. Areas have been designated for residential, commercial and industrial growth to ensure the development of cohesive neighborhoods, conflicts are minimized and the overall character of the City is protected. The zoning law is developed to:

- 1) secure safety from fire, flood and other dangers;
- 2) provide adequate light, air and outdoor uses to include public, common and private open space areas;
- 3) prevent overcrowding of land and ensure structure and land use arrangements are aesthetically harmonious to surrounding areas and structures;
- 4) avoid undue concentration of population or sparse, uncoordinated development;
- 5) facilitate the adequate provision of transportation, water, sewer, school, parks and other public services;
- 6) protect the character and values of residential, institutional, public, business, commercial and industrial uses and to ensure their orderly and beneficial development;
- 7) regulate the location of buildings and intensity of uses in relation to streets to ensure minimal interference with and by traffic movements, reduce congestion on City streets and improve public safety;

- 8) preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only;
- 9) accommodate solar energy systems and equipment and access to necessary sunlight;
- 10) promote the health, safety and general welfare of the general public.

§ 79-1020 Title.

This law shall be known as "The City of Dunkirk Zoning Law" for the City of Dunkirk in the County of Chautauqua, State of New York.

This zoning law has been made with consideration, among other things, for the character of each district and its suitability for specific uses, conserving the property values and the direction of building development, enhancing the value of land and encouraging the most appropriate use of land throughout the City of Dunkirk.

§ 79-1030 Effective Date.

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

This local law shall apply on its effective date to all uses which have not commenced and structures which have not been constructed regardless of the status of permits or certificates of occupancy issued pursuant to the New York State Uniform Fire Prevention and Building Code.

§ 79-1040 Interpretation.

No building, structure or land shall be used and no building, structure or any of their parts shall be erected, moved or altered, unless for a use expressly permitted by, and in conformance with, the zoning regulations specified for the district in which it is located.

The provisions of this Chapter shall not annul, or in any way interfere with, existing deed or plat restrictions, easements or other agreements between persons, codes, laws, rules, regulations or permits previously adopted or issued, except those ordinances or sections which are contrary to, or in conflict with, this Chapter.

Wherever this Chapter imposes greater restrictions upon the use of structures or land, the height or bulk of buildings or requires larger land or building areas, yards or other open spaces than are otherwise required or imposed by deed or plat restrictions or laws, this Chapter shall control; other regulations shall control where they impose greater restrictions than this Chapter and for that purpose, it shall not annul, modify or impair the

provisions of any existing deed or plat restrictions, easements or other agreements.

In interpreting and applying the provisions of this Chapter, its provisions shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, prosperity and general welfare. Except as specifically provided, it is not intended by the adoption of this Chapter to repeal, abrogate or annul any existing provisions of any law previously adopted relating to the use of structures and land and the design, erection, alteration or maintenance of structures.

Titles and headings have been inserted for convenience of reference and are not intended to define or limit the scope of or otherwise affect any provision in this Chapter.

§ 79-1050 Repeal Existing Chapter.

Unless otherwise provided in this Chapter, Chapter 79 of the City of Dunkirk City Code and the zoning map of 1981, together with all subsequent amendments, are repealed on the effective date of this Chapter.

§ 79-1060 Severability.

If any portion of this Chapter is for any reason held to be unconstitutional or otherwise unenforceable, such determination shall not affect the validity of the remaining portions of this Chapter. The enacting body declares that it would have, and does approve and enact each subsection, subdivision, paragraph, sentence, clause and phrase, irrespective of the fact that any one or more portions be held unconstitutional or otherwise unenforceable.

**Part II
Zoning Districts and Requirements**

**ARTICLE II
Districts and Maps**

§ 79-2010 Establishment of Districts.

For the purpose of this law, the City of Dunkirk is divided into the following districts:

- R-1 SINGLE FAMILY RESIDENTIAL DISTRICT**
- R-2 GENERAL RESIDENTIAL DISTRICT**
- R-3 MULTI-FAMILY DISTRICT**
- C-1 TOURISM COMMERCIAL**
- C-2 COMMUNITY BUSINESS DISTRICT**
- CBD CENTRAL BUSINESS DISTRICT**
- M-1 LIGHT INDUSTRIAL DISTRICT**
- M-2 GENERAL INDUSTRIAL DISTRICT**
- O-S OPEN SPACE DISTRICT**
- H-1 HARBORFRONT - 1 DISTRICT OVERLAY**
- H-2 HARBORFRONT - 2 DISTRICT OVERLAY**
- H-D HISTORIC DISTRICT OVERLAY**

§ 79-2020 Zoning Map.

Such districts are shown, defined and bounded on the map entitled "Zoning Map" dated 1994 that accompanies this Chapter and is filed in the office of the City Clerk. The zoning map and all explanatory matter is incorporated by this reference into this Chapter.

§ 79-2030 Interpretation of Boundaries.

Where uncertainty exists with respect to the boundaries of the various districts, as shown on the zoning map, the following rules shall apply:

- 1) where the designation on the zoning map indicates a boundary approximately upon a road, the center line of the road shall be construed to be the boundary;
- 2) where the designation on the zoning map indicates a boundary approximately upon a lot line, such lot line shall be construed to be the boundary;
- 3) distances shown on the zoning map are perpendicular distances from road center lines measured to the district boundary, which boundaries in all cases where distances are given are parallel to the road center line;
- 4) in other cases, the district boundary shall be determined by the use of the scale of the zoning map.

Where a district boundary divides a lot of record at the time such boundary is adopted, the district requirements of the greater portion of the lot will become the requirements of the entire lot.

§ 79-2040 Contiguous Parcels.

When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one lot for such use.

Article III
R-1 Single Family District

§ 79-3010 Intent.

The R-1 District is designed to provide for the development of neighborhoods that are dominated by single family residences. The areas designated R-1 will result in neighborhoods that provide the opportunity for larger yards and larger houses. The zoning law recognizes the importance of offering diversity in housing types for all types of users and potential property owners. The following regulations shall apply in all R-1 Single Family Districts.

§ 79-3020 Permitted Uses and Structures.

The following are permitted uses:

- 1) single family dwelling.

§ 79-3030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the R-1 District provided that such accessory uses and buildings shall not be constructed until the main building has been constructed:

- 1) private garages, carports, workshops, pool houses, gazebos, patio covers;
- 2) off street parking for residents and guests of the principle use;
- 3) not more than one (1) commercial vehicle, not including trucks over one (1) ton capacity, driven by the residents which may be stored on the premises;
- 4) private family swimming pools as regulated in Article XXVI- Supplemental

Regulations;

- 5) not more than one (1) each of the following: storage of camp trailers, but not mobile homes as defined in Article XXX - Definitions of this law, utility trailers or boats owned by the occupant of the premises for personal use, but only in driveways, side or rear yards of the lot;
- 6) signs subject to the provisions of Article XXI - Sign Restrictions;
- 7) satellite television receiving antennas subject to the provisions of Article XXVI - Supplemental Regulations;
- 8) fences, walls and hedges subject to the provisions of Article XXVI - Supplemental Regulations;
- 9) other uses and structures that are customarily incidental and clearly subordinate to permitted uses or uses that require site plan review or special permits.

§ 79-3040 Site Plan Review.

The following uses are allowed subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) churches and other religious institutions;
- 2) public and semi public facilities including parks, playgrounds and recreational areas, cemeteries, schools, public libraries, fire, ambulance and public safety buildings, public meeting halls, community centers and post offices;
- 3) home occupations engaged in by the occupants of a dwelling, including the office of a resident member of a learned profession, real estate, insurance sales, musicians, dressmakers, hair dressers and tailors.

§ 79-3050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVII - Special Permits:

- 1) essential facilities;
- 2) bed and breakfast.

§ 79-3060 Lot, Area and Yard Requirements.

The following lot requirements apply to the R-1 District:

Lot Requirements

Single Family and Two Family

Minimum Lot Frontage 25 feet

Minimum Lot Frontage at Building Line 10 feet

Other Uses

Minimum Lot Frontage 70 feet

Minimum Lot Area 8,400 sq. feet

Maximum Building Coverage 35%

Maximum Lot Coverage 50%

Yard Requirements

Minimum Front Yard Depth 30 feet

Minimum Side Yard - Principal Use 10 feet

Minimum Side Yard - Ancillary Use 5 feet

Minimum Rear Yard - Principal Use 35 feet

Minimum Rear Yard - Ancillary Use 25 feet

Article IV
R-2 General Residential District

§ 79-4010 Intent.

The R-2 District is designed to provide for the development of neighborhoods that include a mixture of single and two family housing and complementary services. Lot sizes are generally smaller than the R-1 zone to accommodate the smaller housing types that are allowed in the R-2 District. Limited types of commercial uses are allowed in the zone to ensure the residential character is protected and enhanced. The following regulations shall apply in all R-2 General Residential Districts.

§ 79-4020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-1 District, subject to all the restrictions specified for the R-1 District;
- 2) two family dwellings;
- 3) accessory apartments.

§ 79-4030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the R-2 District:

- 1) all accessory uses permitted in the R-1 District, subject to all the restrictions specified for the R-1 District.

§ 79-4040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-1 District, subject to all the restrictions specified for the R-1 District;
- 2) accessory office;

- 3) day care centers.

§ 79-4050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the R-1 District, subject to all the restrictions specified for the R-1 District;
- 2) tourist home.

§ 79-4060 Lot, Area and Yard Requirements.

The following lot requirements apply to the R-2 District:

Lot Requirements

Single Family and Two Family

Minimum Lot Frontage	25 feet
Minimum Lot Frontage at Building Line	60 feet

Other Uses

Minimum Lot Frontage	60 feet
Minimum Lot Area	6,000 sq. feet
Maximum Building Coverage	35%
Maximum Lot Coverage	50%

Yard Requirements

Minimum Front Yard Depth	25 feet
Minimum Side Yard - Principal Use	10 feet
Minimum Side Yard - Ancillary Use	5 feet
Minimum Rear Yard	25 feet

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be seventy five (75) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 79-4070 Buildings.

The following requirements apply to buildings constructed in the R-2 District

Height

Maximum Building Height - Single Family	2 1/2 stories not to exceed 30 feet
Maximum Building Height - Two Family Dwelling	3 stories not to exceed 35 feet

Floor Area

Minimum Floor Area One Story Dwelling	800 sq. feet
Minimum Floor Area One-and-one-half or two story Dwelling	720 sq. feet
Minimum Floor Area Two Family Dwelling	500 sq. feet per unit

§ 79-4080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the R-2 District.

ARTICLE V
R-3 Multi Family District

§ 79-5010 Intent.

The R-3 District is designed to provide for the development of neighborhoods that include a mixture of all housing types, neighborhood commercial and complementary uses. While the residential character of the R-3 District is protected by the standards in this Article, commercial uses and activities are located in or near the District to service the higher concentration of population. In the R-3 District, lots are generally smaller and housing types are more varied. Commercial uses that do not diminish the quality of the neighborhood are also allowed in the R-3 District. The following regulations shall apply in all R-3 Multi Family Districts.

§ 79-5020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-2 District, subject to all the restrictions specified for the R-2 District.

§ 79-5030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the R-3 District:

- 1) all accessory uses permitted in the R-2 District, subject to all the restrictions specified for the R-2 District.

§ 79-5040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-2 District, subject to all the restrictions specified for the R-2 District;
- 2) multiple family dwelling;
- 3) attached single family;
- 4) public garage;
- 5) private clubs and clubhouses;
- 6) nursing or convalescent homes;
- 7) mobile Home Park;

- 8) convenience stores with no gas service.

§ 79-5050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the R-2 District, subject to all the restrictions specified for the R-2 District;
- 2) boarding or rooming house;
- 3) lodging house;
- 4) fraternity or sorority house.

§ 79-5060 Lot, Area and Yard Requirements.

The following lot requirements apply to the R-3 District:

Lot Requirements

Residential

Minimum Lot Frontage - Single Family	50 feet
Minimum Lot Frontage - Other Dwellings	60 feet
Minimum Lot Area - Single Family	5,000 sq. feet
Minimum Lot Area - Two Family	3,000 sq. feet per dwelling unit
Minimum Lot Area - Three to Four Units	2,500 sq. feet per dwelling unit
Minimum Lot Area - Five Plus Units	1,500 sq. feet per dwelling unit
Maximum Building Coverage	35%
Maximum Lot Coverage	50%

Other Uses

Minimum Lot Frontage	60 feet
Minimum Lot Area	6,000 sq. feet
Maximum Building Coverage	35%
Maximum Lot Coverage	50%

Yard Requirements

Minimum Front Yard Depth	20 feet
Minimum Side Yard - Principal Use	5 feet
Minimum Side Yard - Ancillary Use	5 feet
Minimum Rear Yard	20 feet

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be seventy five (75) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 79-5070 Buildings.

The following requirements apply to buildings constructed in the R-3 District:

Height

Residential

Maximum Building Height - Single Family	2 1/2 stories not to exceed 30 feet
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Maximum Building Height - Two Family Dwelling	3 stories not to exceed 35 feet
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Maximum Building Height - Multi Family Dwelling	5 stories or 55 feet, whichever is greater
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Other Uses

Maximum Building Height	35 feet
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Floor Area

Minimum Floor Area One Story Dwelling	800 sq. feet
Minimum Floor Area One-and-one-half or two story Dwelling	720 sq. feet
Minimum Floor Area Two Family Dwelling	500 sq. feet per unit
Minimum Floor Area Other Dwellings	500 sq. feet per unit

§ 79-5080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the R-3 District.

ARTICLE VI
C-1 Tourism Commercial District

§ 79-6010 Intent.

The C-1 District is designed to provide for the development of commercial areas to attract tourists and tourist related activities to the City of Dunkirk. The commercial activity allowed in the C-1 District will act as an attraction and will complement the overall development of the City. The following regulations shall apply in all C-1 Tourism Commercial Districts.

§ 79-6020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-6030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the C-1 District:

- 1) all accessory uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-6040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) general business offices;
- 3) personal service establishments (i.e. barbershops, beauty parlors, shoe repair);
- 4) florists, greenhouses and nurseries;
- 5) boat or marine sales and service;
- 6) marina;
- 7) hotel, motel or motor court;
- 8) dance, art, music or photo studio;
- 9) book, video cassette rental, stationary and art supply stores;
- 10) tobacco, magazine, photo processing and camera shops;
- 11) gift, boutique, jewelry, novelty, greeting card and poster shops;
- 12) hobby and handicraft shops;
- 13) antique and second-hand shops;
- 14) nursery school;

- 15) restaurants, excluding drive-in restaurants, but including restaurants with outdoor patios;
- 16) custom shops for woodworking;
- 17) hardware store, implement and tool rental, sales, storage and service;
- 18) ice cream parlor;
- 19) taverns/bars/nightclubs;
- 20) bakery shops;
- 21) candy kitchen;
- 22) clothing, shoes or other retail sales operations;
- 23) commercial swimming pools or health clubs;
- 24) indoor recreation uses such as bowling alleys or tennis courts

§ 79-6050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) amusement enterprises not conducted within a completely enclosed building.

§ 79-6060 Lot, Area and Yard Requirements.

The following lot requirements apply to the C-1 District:

Lot Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the lot requirements of the Residential - 3 District (R-3).

Other Uses

All buildings intended for residential use, in whole or in part, shall comply with the floor area requirements of the Residential - 3 District (R-3).

Other Uses

Maximum Floor Area Ratio

3

§ 79-6080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the C-1 District.

ARTICLE VII
C-2 Community Business District

§ 79-7010 Intent.

The C-2 District is designed to provide for the development of commercial areas to service general needs of residents in the City of Dunkirk. Community services allowed in the C-2 District include those uses that are essential for all residents: automotive services, retail stores, supermarkets, etc.. The C-2 District often surrounds or is adjacent to the residential districts to ensure the population in the City is serviced. These uses shall be established only in areas served by public water supply and sewer. The following regulations shall apply in all C-2 Community Business District.

§ 79-7020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-7030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the C-2 District:

- 1) all accessory uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-7040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) drive-in business including restaurants and banks;
- 3) newspaper plants and printing establishments;
- 4) automatic coin laundry and/or dry cleaning;
- 5) sporting goods, bicycle and toy stores;
- 6) trophy, stamp and coin, jewelry and watch shops;
- 7) gunsmith, locksmith, engraving and taxidermy shops;
- 8) drug stores, pharmacies and optical shops;
- 9) electronic equipment stores;
- 10) medical offices;
- 11) supermarkets;
- 12) department stores;
- 13) furniture stores;
- 14) appliance stores;
- 15) hospital;
- 16) hospital, animal or veterinary clinic;
- 17) dental and medical clinics;
- 18) trade or industrial school;
- 19) theaters;
- 20) new or used car or trailer sales and accessory repair departments;
- 21) automobile wash;

- 22) self service gas stations;
- 23) motor vehicle service stations;
- 24) mortuaries or funeral homes;
- 25) liquor stores.

§ 79-7050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII- Special Permits:

- 1) all uses permitted subject to special permits in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) sanatorium;
- 3) kennel.

§ 79-7060 Lot, Area and Yard Requirements.

The following lot requirements apply to the C-2 District:

Lot Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the lot requirements of the Residential - 3 District (R-3).

Other Uses

Minimum Lot Frontage	50 feet
Minimum Lot Area	5,000 square feet
Maximum Building Coverage	50%
Maximum Lot Coverage	80%

Yard Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the yard requirements of the Residential - 3 District (R-3).

Other Uses

Minimum Front Yard Average of the existing buildings within 200 feet or 20 feet, whichever is less

Minimum Side Yard - abutting non-residential district 5 feet

Minimum Rear Yard - abutting non-residential district 10 feet

Minimum Side Yard and Rear Yard - abutting residential district As required in the abutting residential district

§ 79-7070 Buildings.

The following requirements apply to buildings constructed in the C-2 District:

Height

Residential

All buildings intended for residential use, in whole or in part, shall comply with the height requirements of the Residential - 3 District (R-3).

Other Uses

Maximum Building Height - Other Structures 35 feet

Floor Area

Residential

All buildings intended for residential use, in whole or in part, shall comply with the floor area requirements of the Residential - 3 District (R-3).

Other Uses

§ 79-7080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the C-2 District.

ARTICLE VIII
CBD - Central Business District

§ 79-8010 Intent.

The CBD is designed to provide for the concentration of public services (e.g. general retail, service, finance, insurance and real estate) and related uses in the City of Dunkirk. In addition to providing general services to the City of Dunkirk residents, the CBD should complement the C-1 district and include uses that attract tourists. The CBD will act as the retail, financial and administrative center of the City of Dunkirk and surrounding area. The following regulations shall apply in the Central Business District.

§ 79-8020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the C-1 District, subject to all the restrictions specified for the C-1 District.

§ 79-8030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the CBD District:

- 1) all accessory uses permitted in the C-1 District, subject to all the restrictions specified for the C-1 District.

§ 79-8040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the C-1 District, subject to all the restrictions specified for the C-1 District;
- 2) drive-in business including restaurants and banks;
- 3) automatic coin laundry and/or dry cleaning;
- 4) sporting goods, bicycle and toy stores;
- 5) trophy, stamp and coin, jewelry and watch shops;
- 6) gunsmith, locksmith, engraving and taxidermy shops;
- 7) drug stores, pharmacies and optical shops;

- 8) professional offices (e.g. attorneys, engineers, researchers, business management consultants, data processing consultants, decorators, counsellors, psychologists, etc.);
- 9) administrative and executive office buildings, facilities and uses;
- 10) electronic equipment stores;
- 11) medical offices;
- 12) department stores;
- 13) furniture stores;
- 14) appliance stores.

§ 79-8050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the C-1 District, subject to all the restrictions specified for the C-1 District.

§ 79-8060 Lot, Area and Yard Requirements.

The following lot requirements apply to the CBD:

Lot Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the lot requirements of the Residential - 3 District (R-3).

Other Uses

Minimum Lot Frontage	40 feet
Minimum Lot Area	4,000 sq. feet
Maximum Building Coverage	50%
Maximum Lot Coverage	80%

Yard Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the yard requirements of the Residential - 3 District (R-3).

Other Uses

Minimum Front Yard Average of the existing buildings within 200 feet or 10 feet, whichever is less

Minimum Side Yard - abutting non-residential district 0 feet

Minimum Rear Yard - abutting non-residential district 10 feet

Minimum Side Yard and Rear Yard - As required in the abutting residential district
abutting residential district

§ 79-8070 Buildings.

The following requirements apply to buildings constructed in the CBD District:

Height

Residential

All buildings intended for residential use, in whole or in part, shall comply with the height requirements of the Residential - 3 District (R-3).

Other Uses

All buildings proposed shall comply with the height requirements of the C-1 District.

Floor Area

Residential

All buildings intended for residential use, in whole or in part, shall comply with the height requirements of the Residential - 3 District (R-3).

Other Uses

All buildings proposed shall comply with the floor area ratio requirements of the C-

1 District.

§ 79-8080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the CBD District.

§ 79-8090 Incentive.

The Planning Board in the City of Dunkirk is authorized to provide incentives or bonuses to applicants for specified community benefits or amenities provided in the CBD. The exact incentives will be determined in conjunction with the applicant and the City Council.

- 1) incentives shall include, but not be limited to, adjustments to the permissible density, area, height, open space or lot or building coverage.
- 2) community benefits shall include the provision of open space corridors and linkages or the development of retail space on the ground level of the new development.
- 3) The procedures outlined in this zoning law for site plan approval shall be followed in granting the incentives.

ARTICLE IX
M-1 Light Industrial District

§ 79-9010 Intent.

The M-1 Light Industrial District provides for a limited range of light industrial uses and associated administrative offices. The districts are established to encourage the development of non-noxious industry that provide employment in the City of Dunkirk and expand the local tax base. Residential uses are not permitted in the M-1 District to minimize or eliminate potential conflicts that may occur. Limited commercial uses are allowed to service those people who work at the industries located in the M-1 District. The M-1 district is established to attract non-polluting industry.

§ 79-9020 Permitted Uses and Structures.

Permitted uses allowed in the M-1 Light Industrial District are subject to site plan review as specified in this Article.

§ 79-9030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the M-1 District:

- 1) signs subject to the provisions of Article XXI - Sign Restrictions;
- 2) satellite television receiving antennas subject to the provisions of Article XXVI - Supplemental Regulations;
- 3) fences, walls and hedges subject to the provisions of Article XXVI - Supplemental Regulations;
- 4) Utility buildings and facilities incidental to permitted uses and uses requiring site plan review or special permits;
- 5) Other uses and structures that are customarily incidental and clearly subordinate to permitted uses or uses that require site plan review or special permits.

§ 79-9040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) executive or administrative offices of industrial uses;
- 2) Uses of a light-manufacturing nature employing electricity or other

unobjectionable motor power or processes free from objectionable odors, fumes, dirt, dust, vibrations or noise beyond the limits of the walls of an enclosed building;

- 3) contractors offices, show rooms and storage yards;
- 4) laboratories and related facilities for research, experimentation, testing and product development when conducted entirely within a building;
- 5) warehouses including mini-storage facilities;
- 6) bottling works for milk or soft drinks;
- 7) saw, knife and tool sharpening shops, small equipment repair (chain saws, lawn mowers, outboard motors, hedge trimmers, etc.), equipment and household supply rental shops;
- 8) wholesale establishments, packaging, distributing and parcel delivery services, including retail incidental to wholesale;
- 9) wholesale bakeries (including on and off site sale);
- 10) when developed in conjunction with industrial uses:
 - a) drive-in business including restaurants and banks;
 - b) restaurants;
 - c) convenience stores;
 - d) day care facility;
- 11) trade or industrial schools;
- 12) bulk storage facilities;
- 13) manufacturing, packaging and processing of, when conducted entirely in an enclosed building:
 - a) apparel and finished fabrics and leather goods
 - b) furniture and household fixture products
 - c) professional equipment, scientific instruments and precision consumer products
 - d) general consumer products

- e) food and kindred products
 - f) textile mill products
 - g) lumber and wood products
 - h) paper and allied products
 - i) stone, clay and glass products
 - j) metal and metal fabricating products
 - k) similar manufacturing uses
- 14) lumber yards, building materials, welding supply shops and supplies stores;
 - 15) planing or woodworking mills;
 - 16) storage, sorting or baling wastepaper or rags;
 - 17) gunsmith, locksmith, engraving and taxidermy shops.

§ 79-9050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) junkyards.

§ 79-9060 Lot, Area and Yard Requirements.

The following lot requirements apply to the M-1:

Lot Requirements

Minimum Lot Frontage	100 feet
Minimum Lot Area	10,000 sq. feet
Maximum Lot Coverage	80% of the land area of the lot as defined in this Chapter

Yard Requirements

Minimum Front Yard	20 feet
Minimum Side Yard - abutting non-residential district	15 feet
Minimum Rear Yard - abutting non-residential district	25 feet
Minimum Side and Rear Yard abutting residential district	As required in the abutting abutting residential district

§ 79-9070 Buildings.

The following requirements apply to buildings constructed in the M-1 District:

Height

Maximum Building Height	30 feet
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Floor Area

Maximum Floor Area Ratio	2
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§ 79-9080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the M-1 Light Industrial District.

ARTICLE X
M-2 General Industrial District

§ 79-10010 Intent.

The M-2 Heavy Industrial District provides for a wider range of industrial uses and associated administrative offices. The districts are established to encourage the development of industry that provide employment in the City of Dunkirk and expand the local tax base. Residential uses are not permitted in the M-2 District to ensure conflicts between uses are minimized or eliminated. Limited commercial uses are permitted to service those people that are employed at industries in the district. The M-2 district is established to attract non-polluting industry to the City.

§ 79-10020 Permitted Uses and Structures.

Permitted uses allowed in the M-2 General Industrial District are subject to site plan review as specified in this Article.

§ 79-10030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the M-2 District:

- 1) all accessory uses permitted in the M-1 District, subject to all the restrictions specified for the M-1 District.

§ 79-10040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the M-1 District, subject to all the restrictions specified for the M-1 District;
- 2) caretaker or watch person residence;
- 3) railroad freight and classification yards;
- 4) welding shops;
- 5) foundries;
- 6) motor freight terminal, including any premises where any vehicles used in long distance freight hauling or where any tractor trailer combinations or automobile conveyors are parked, loaded or unloaded;
- 7) recycling centers and recyclable material processing center;
- 8) Machine, sheet metal, electric motor repair, pump and heavy equipment repair shops, well drilling shops, storage of contractor's equipment and materials;
- 9) automobile wrecking;
- 10) boiler making;
- 11) metal plating works, electrolytic or hot dip processes;
- 12) asphalt batch, cement and concrete plants, blast furnaces, coke oven;

- 13) manufacturing, packaging and processing of chemicals and allied products.

§ 79-10050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the M-1 District, subject to all the restrictions specified for the M-1 District,
- 2) adult book store or adult news-rack;
- 3) adult motion picture theater;
- 4) exotic cabaret.

§ 79-10060 Lot, Area and Yard Requirements.

The following lot requirements apply to the M-2:

Lot Requirements

All buildings, including those intended for industrial use, in whole or in part, shall comply with the lot requirements of the Light Industrial District (M-1).

Yard Requirements

All buildings, including those intended for industrial use, in whole or in part, shall comply with the yard requirements of the Light Industrial District (M-1).

§ 79-10070 Buildings.

The following requirements apply to buildings constructed in the M-2 District:

Height

Maximum Building Height 40 feet

Floor Area

Maximum Floor Area Ratio 3

§ 79-10080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the M-2 General Industrial Zone.

ARTICLE XI
O-S Open Space District

§ 79-11010 Intent.

The O-S Open Space District is designated to provide for park, recreation and open space uses of the City of Dunkirk's parks and open space areas. The O-S District is established to include public recreation facilities to ensure their continuation as parks and open space. A strip of land along the waterfront, approximately 15 feet, is also included in this district to promote public access to Lake Erie. City Council will have the final approval authority for projects proposed in the O-S Open Space District.

§ 79-11020 Permitted Uses and Structures.

Permitted uses allowed in the O-S - Open Space District are subject to site plan review as specified in this Article.

§ 79-11030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the O-S District:

- 1) signs subject to the provisions of Article XXI - Sign Restrictions;
- 2) fences and hedges subject to the provisions of Article XXVI - Supplemental Regulations;
- 3) other uses and structures that are customarily incidental and clearly subordinate to permitted uses or uses that require site plan review or

special permits.

§ 79-11040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) public parks, playgrounds, play lots and tot lots;
- 2) public play fields, athletic fields and facilities including, but not limited to: baseball/softball diamonds, basketball courts, volleyball courts, tennis courts, golf courses, bicycle courses and swimming pools;
- 3) other similar recreation and park uses;
- 4) public or private boat docking facilities, boat ramps, fishing and boating pond and lake access facilities.

§ 79-11050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) none.

§ 79-11060 Lot, Area and Yard Requirements.

The following lot requirements apply to the O-S District:

Lot Requirements

Minimum Lot Frontage	N/A
Minimum Lot Area	N/A
Maximum Lot Coverage	N/A

Yard Requirements

Minimum Front Yard Depth	To be established in conjunction with Site Plan Review or Special Permit
Minimum Side Yard	To be established in conjunction with Site Plan Review or Special Permit

Minimum of Both Side Yards	To be established in conjunction with Site Plan Review or Special Permit
Minimum Rear Yard	To be established in conjunction with Site Plan Review or Special Permit

§ 79-11070 Buildings.

The following requirements apply to buildings constructed in the R-1 District:

Height

Maximum Building Height	To be established in conjunction with Site Plan Review or Special Permit
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Floor Area

Maximum Floor Area Ratio	N/A
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§ 79-11080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the O-S District.

ARTICLE XII
H-1 Central Harborfront Overlay District

§ 79-12010 Intent.

The Lake Erie shoreline located within the City of Dunkirk plays a significant role in establishing the character of the City. The development of water-based uses along the waterfront will improve the economic base of the City, offer residents an opportunity to gain access to the Lake and help attract tourists to the City of Dunkirk. In addition, the City wishes to preserve and maintain safe and healthful conditions, prevent and control water pollution, protect fish and aquatic life, birds and other wildlife habitats, control building sites, placement of structures and land uses and conserve shore cover and visual, as well as actual points of access to inland and lake areas. Regulation of the shoreline is to be in compliance with and consistent with the NYS Coastal Management policies and Local Waterfront Revitalization Plan.

§ 79-12020 Designation.

There is established a Central Harborfront District for the City which shall consist of all that area designated in the Zoning Map of the City of Dunkirk. This Overlay District shall be designated as "H-1". The H-1 Central Harborfront Overlay District shall overlay with any principal zoning district consistent with the purpose and provisions of this district. Regulations established by the H-1 Overlay district shall be in addition to the regulations of the underlying principal zoning district with which they overlay. In the event of a conflict with the regulations of the underlying principal district, the provisions of the H-1 Overlay District shall apply. The H-1 Overlay District shall be shown on the zoning map along with the zoning district with which it overlays and shall be indicated by H-1.

§ 79-12030 Definitions.

For purposes of the H-1 Overlay District, rear yards shall conform to all requirements for front yards.

§ 79-12040 Harborfront Review.

A written statement, describing how the project is consistent with the City of Dunkirk's Local Waterfront Revitalization Plan, shall be submitted.

§ 79-12050 Site Plan Review.

All improvements, except single family residents, within the H-1 Central Harborfront Overlay District shall be subject to site plan review in accordance with Article XVII - Site Plan Review of this Chapter. In addition to the uses allowed in the C-1 Tourism Commercial District, the following uses shall be permitted:

- 1) parks;
- 2) refreshment and service buildings;
- 3) boat landing ramps;
- 4) yacht clubs;
- 5) boat rentals;
- 6) boat charters.

§ 79-12060 Buildings.

The following requirements apply to buildings constructed in the H-1 Overlay District to protect visual access to the Lake for all residents in the City of Dunkirk.

Height

Maximum Building Height	2 1/2 stories not to exceed 30 feet
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**ARTICLE XIII
H-2 Harborfront Overlay District**

§ 79-13010 Intent.

Lake Erie is an important natural resource in the City of Dunkirk; development of water-based uses along the waterfront will improve the economic base of the City, offer residents an opportunity to gain access to the Lake and help attract tourists to the City of Dunkirk. The H-2 Harborfront Overlay District has been established to direct the growth of the waterfront area not included in the H-1 Overlay District. The H-2 Harborfront Overlay District is designed to complement the H-1 Central Harborfront Overlay District. The final approval authority for the H-2 Overlay District is the Planning Board. Regulation of the shoreline is to be in compliance with and consistent with the NYS Coastal Management policies and Local Waterfront Revitalization Plan.

§ 79-13020 Designation.

The H-2 Harborfront Overlay District shall overlay any principal zoning district consistent with the purpose and provisions of this district. Regulations established by the H-2 Overlay District shall be in addition to the regulations of the underlying principal zoning district with which they overlay. In the event of a conflict with the regulations of the underlying principal district, the provisions of the H-2 Overlay District shall apply. The H-2 Overlay District shall be shown on the zoning map along with the zoning district with which it overlays and shall be indicated by H-2.

§ 79-13030 Definitions.

For purposes of the H-1 Overlay District, rear yards shall conform to all requirements for front yards.

§ 79-13040 Harborfront Review.

The following shall apply to uses proposed in the H-2 Overlay District:

- 1) Uses having frontage on Lake Erie shall include an easement with public access along the entire frontage of the Lake; the easement will be not less than 15 feet wide depending on restrictions of the lot and structures. Plans for the easement shall be approved by the City Council as part of the site plan review or special permit and approval provisions and shall be available for public use under a mutually acceptable arrangement between the City and property owner. In all cases where practical, the developer shall grant to the City a conservation easement, in accordance with the Environmental Conservation Law and General Municipal Law.
- 2) A written statement, describing how the project is consistent with the City of Dunkirk's Local Waterfront Revitalization Plan, shall be submitted.

§ 79-13050 Site Plan Review.

All improvements, except single family residents, within the H-2 Harborfront Overlay District shall be subject to site plan review in accordance with Article XVII - Site Plan Review of this Chapter.

All uses permitted in the underlying district shall be permitted in the overlay district except that non-residential uses are limited to those which are specified in the H-1 Overlay District.

§ 79-13060 Buildings.

The following requirements apply to buildings constructed in the H-1 Overlay District to protect visual access to the Lake for all residents in the City of Dunkirk.

Height

Maximum Building Height - Other Structures	2 1/2 stories not to exceed 30 feet
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**ARTICLE XIV
H-D - Historic Overlay District**

§ 79-14010 Intent.

There is established an Historical Overlay District for the City which shall consist of all area designated on the Zoning Map of the City of Dunkirk. This Overlay District shall be designated "H-D". The H-D Historic Overlay District is established to designate, preserve, protect and conserve the buildings, structures, districts and neighborhoods of historic/architectural significance that influence the character, culture and aesthetic heritage of the City of Dunkirk. Their preservation is essential for the welfare of all residents in the City. The H-D Overlay District will help ensure the preservation of existing and the construction of new structures are compatible and improve the quality of life in the City of Dunkirk.

§ 79-14020 Designation.

The H-D Overlay District shall overlay with any principal zoning district consistent with the purpose and provisions of this district. Regulations established by the H-D Overlay district shall be in addition to the regulations of the underlying principal zoning district with which they overlay. In the event of a conflict with the regulations of the underlying principal district, the provisions of the H-D district shall apply. The H-D Overlay District shall be shown on the zoning map along with the zoning district with which it is over-layed and shall be indicated by H-D.

§ 79-14030 Permits.

Permits for construction or alteration of any building or structure within an historical district shall be required for any work which results in a change in the appearance of the building. No painting or ornamental work of any kind shall be done, except in accordance with the permit.

No demolition or partial demolition shall be allowed without such permit. No permit shall be issued for demolition of any building in any historical district unless such demolition is deemed necessary, in the opinion of the Historic Commission/Planning Boards, upon consultation with the Building Inspector and Director of Public Works, to protect health and safety. Deteriorating buildings shall be repaired in accordance with the standards set forth in this Article. Compliance with these historical requirements shall be subordinate to requirements for the protection of the public and the users of the building.

All designs for any construction, repair or replacement purposes shall be in harmony with the general tone of the area. The same is true of color and materials. All such work shall correspond to the general tone of the area and harmonize with the other buildings and structures in the district.

Whenever strict enforcement of the provisions of this Chapter would result in prevention of the proposed change, because of requirements no longer possible to fulfil, the applicant shall apply for a variance from the strict terms of this Article. If such variance requested is of minor character and does not affect the general character of the area, permission to vary the provisions of this Article may be granted by the Zoning Board of Appeals.

§ 79-14040 Findings.

In approving the construction, demolition, relocation or material change in the exterior appearance of buildings and structures located on a lot in the H-D Overlay District, the Historic Commission/Planning Board must make one of the following findings in their recommendation:

- 1) The proposed work preserves, enhances or restores the exterior

appearance and architectural features of a building or structure and/or district of historic/architectural significance.

- 2) The proposed work compliments or enhances the exterior appearance and architectural features of a building or structure and/or district of historic/architectural significance.
- 3) The applicant has adequately demonstrated that the loss of a building or structure of historic/architectural significance is acceptable and/or made necessary by unsafe conditions which are economically unfeasible to correct.

§ 79-14050 Architectural Review.

Uses allowed in the H-D Overlay District shall be those uses permitted, permitted with site plan review or by special permit in the underlying zoning district on which the H-D Overlay districts overlay. The review and approval of the Historic Commission/Planning Board shall be required for any new construction, demolition, relocation or material change in the exterior appearance of buildings and structures zoned H-D Overlay. In addition to the application required for the underlying district, the following information shall be submitted:

- 1) a clear statement of the proposed work;
- 2) plans and elevations describing the size, height and appearance of the proposed structures or buildings. The plans and elevations shall show the relationship between the proposed work and adjacent buildings, structures and other features for all adjacent lots zoned H-D Overlay;
- 3) a site plan that includes information outlined in Article XVII - Site Plan Review;
- 4) information justifying the demolition of a building or structure shall also be included where a demolition is proposed. An applicant shall bear the burden of providing information to justify the demolition of a building or structure. Plans for the replacement or reconstruction of buildings or structures meeting the criteria above shall also be submitted if replacement or reconstruction is proposed;
- 5) other information deemed necessary to meet the purposes of the H-D Overlay District.

No person, firm, corporation or association shall build any new building or alter any existing building within the historical district without submitting the plans and specifications for the building or alteration to the Historic Commission/Planning Board for review. No

such construction or alteration shall be started until the Historic Commission/Planning Board has approved the plans as being in compliance with this Chapter.

Upon receipt of the plans, the Historic Commission/Planning Board shall determine whether the proposed construction or alteration complies with all of the terms and ordinances relating to the Historic Overlay District. In the case of new buildings, the plans must indicate a type of structure which will be compatible with the typical architecture of the Historic Overlay District. In the cases involving alterations to existing buildings, the plans will, to the extent feasible, show a design consistent with the existing building and with the architectural forms typical to the historic district.

Within 62 days, the Historic Commission/Planning Board shall approve or reject any plan, in whole or in part, in writing, with findings consistent with this Chapter.

§ 79-14060 Permitted Uses.

The uses permitted by this Chapter applicable to the area included in the historic district shall be permitted without restriction by the provisions of this Article, provided however that no advertisements, billboards or signs may be permitted in a historical district except for those identifying the property where they are installed or the use conducted on site. Such signage shall be compatible with the intent of this Article.

§ 79-14070 Repairs and Maintenance.

Neither the owner of nor the person in charge of a building or structure within a historical district shall permit such building or structure to fall in a state of disrepair which may result in the deterioration of any exterior appurtenance or architectural feature so as to produce, in the judgment of the Historic Commission/Planning Board a detrimental effect upon the character of the building or structure in question, including, but not limited to:

- 1) the deterioration of exterior walls or other vertical supports;
- 2) the deterioration of roofs or other horizontal members;
- 3) the deterioration of exterior chimneys;
- 4) the deterioration or crumbling of exterior plaster or mortar;
- 5) the ineffective waterproofing of exterior walls, roofs and foundations including broken windows or doors;
- 6) the deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition.

ARTICLE XV
Urban Renewal District

§ 79-15010 Intent.

Provisions for the Urban Renewal District are included to permit the establishment of areas in which diverse uses may be brought together in a unified development plan.

Notwithstanding any other provisions of this Chapter, the area designated as the City of Dunkirk Center Urban Renewal Project, No. NY R-179, shall be subject to the rules, regulations, controls and provisions of the Urban Renewal Plan for the project area and any amendments, as adopted by the Planning Board on April 29, 1968, the Urban Renewal Agency on June 3, 1968 and the Common Council on June 4, 1968.

The Urban Renewal District shall overlay any principal zoning district consistent with the purpose and provisions of this district. In the event of a conflict with the regulations of the underlying principal district, the provisions of the Urban Renewal District shall apply. The Urban Renewal Plan and accompanying map is included as Appendix - A.

Part III
Regulations Applying to all Districts

Article XVI
Non-Conforming Uses

§ 79-16010 Intent.

Within the districts established by this Chapter or any subsequent amendments, there exists lots, structures, uses of land and characteristics of use which were lawful before this Zoning Law was enacted, but which would now be prohibited, regulated or restricted under terms of this Chapter including future amendments. The regulations are established to create cohesive neighborhood characters and the eventual elimination of non-conforming uses is desired. Regulations for the continuance, change in use, repairs and alterations, restoration, enlargements and extensions, discontinuance and non-conformance due to reclassification of zoning districts are established to:

- 1) permit these non-conformities to continue, but to minimize any adverse effect on the adjoining properties and development;
- 2) regulate their maintenance and repair;
- 3) restrict their rebuilding if substantially destroyed;
- 4) require their permanent discontinuance if not operated for certain periods of time;
- 5) require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the City's comprehensive plan and Zoning Law.

§ 79-16020 Continuation of Existing Uses.

Any lawful use which is made a nonconforming use by this Chapter or by any subsequent amendments may be continued subject to the provisions in this Article.

§ 79-16030 Change of Use.

A nonconforming use shall not be changed to another use, except:

- 1) In any R District, a nonconforming use may be changed to a use of a more restricted classification, including a conforming use.
- 2) In any C District or M District, a nonconforming use may be changed to a use in the same use group or a use of a more restricted classification, including a conforming use. This provision shall not apply to a nonconforming residential use.
- 3) In any M District, a nonconforming residential use may be changed to a conforming use.
- 4) Once changed to a conforming use or to a more restricted use, no use there after shall revert to a less restricted use.

§ 79-16040 Repairs and Alterations.

Normal maintenance of a building or other structure containing a nonconforming use shall be permitted, including nonstructural repairs and incidental alterations not extending the nonconforming use.

No structural alterations shall be made in a building or other structure containing a nonconforming use except:

- 1) when required by law;
- 2) to restore to a safe condition any building or structure declared unsafe by the Building Inspector;
- 3) to permit enlargements as provided in this Article.

§ 79-16050 Restoration.

No nonconforming building or other structure which has been damaged or destroyed by any means where the cost of repairs exceeds fifty percent (50%) or more of its market value shall be rebuilt or repaired except in conformance with the regulations of this Chapter. In any reconstruction of a nonconforming building or structure, neither the floor area nor the cubical content shall be increased from the original.

Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use of a nonconforming structure must be made within six (6) months of the occurrence, and the repair, replacement or reconstruction must be completed within six (6) months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated and non-conforming structures shall be

brought into conformance.

§ 79-16060 Enlargements and Extensions.

A nonconforming use shall not be enlarged or extended, except as follows:

In any C or M District, any nonconforming use, other than dwellings, may be enlarged to an extent not exceeding twenty five percent (25%), of the gross floor area devoted to such nonconforming use. In no case shall such enlargement extend beyond the lot occupied by such nonconforming use. When the total of all enlargements equals twenty five percent (25%) of the gross floor area existing at the time such use became a nonconforming use, no further enlargement shall be permitted.

§ 79-16070 Discontinuance.

A nonconforming use or structure discontinued or abandoned for twelve (12) consecutive months shall not then be used or occupied except in conformity with the regulations of the district in which it is located.

Discontinuance of the active and continuous operation of a nonconforming use, or a part or a portion of the operation of the nonconforming use for a period of twelve consecutive months is construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such nonconforming use of the land and premises, then the abandonment shall be construed and considered to be completed within a period of less than twelve (12) months, and all rights to re-establish or continue such nonconforming use shall terminate.

§ 79-16080 Prior Approved Construction.

Nothing in this Article shall prevent the construction of a building for which a building permit has been issued for a building made nonconforming by this Chapter or subsequent amendments, provided that such building permit shall be void unless construction of such building shall have been diligently begun within six (6) months of the date of such permit and shall be completed within one (1) year from the date such building was made nonconforming.

§ 79-16090 Non-conformance Due to Reclassification of Zoning Districts.

The following uses may be continued for a period of three years, provided that after the expiration of such period any such nonconforming use shall become an unlawful use and shall be terminated

- 1) In any R District, a nonconforming use not in an enclosed building,

including, but not limited to junkyards, auto wrecking and dismantling and the storage of motor vehicles which do not qualify for a New York State motor vehicle inspection sticker.

- 2) In any R District, a nonconforming sign or a non conforming building or other structure with an assessed value under One Thousand Five Hundred Dollars (\$1,500.00).

The foregoing provisions of this Article shall also apply to buildings, structures, land, premises or uses which become nonconforming due to any reclassification of districts under this chapter or any subsequent change in the regulations of this chapter. Where a period of years is specified in this Article for the removal of nonconforming buildings, structures or uses, said period shall be computed from the effective date of such reclassification or change.

Article XVII Site Plan Review

§ 79-17010 Intent.

Development in the City of Dunkirk will impact the current and future residents of the community. To ensure development conforms to the comprehensive plan of the City, the following procedures for site plan approval have been established.

§ 79-17020 Required Site Plan Review.

Unless otherwise provided and as regulated by the City of Dunkirk Subdivision Law, site plan review and site plan approval shall be required for all uses, buildings and structures that require site plan review and approval as outlined in this Chapter. The authorizing agency shall act upon site plans following a public hearing. Fees outlined and adopted by the City of Dunkirk will apply to all site plan reviews.

§ 79-17030 Procedure for Review and Approval.

The content of the site plan shall be reviewed by the Building Inspector prior to filing and distribution to the appropriate authorizing agency to ensure completeness. The application and appropriate fees shall be submitted to the Building Inspector. The applicant shall submit fifteen (15) copies of all plans and supplementary information to the Building Inspector; additional copies may be requested for additional review agencies. The Building Department will distribute copies of the plans for review, report and recommendations to the following:

- 1) Department of Planning and Development;
- 2) Department of Public Works;
- 3) Fire Department;
- 4) Police Department;
- 5) Planning Board and/or City Council - one per member;
- 6) Building Department;
- 7) Other review Agencies, as Required.

Where site plan review and approval is required, the Building Inspector shall refer the application, site plan and supporting data to the authorizing agency. The authorizing agency shall review the application, site plan and supporting data and, at a regular meeting of the Board, after determining that all requirements have been met, shall:

- 1) approve; or
- 2) approve with modifications or conditions; or
- 3) disapprove;

the site plan. The authorizing agency's action shall be in the form of a written report of approval or disapproval of the site plan. In approving the site plan, conditions limiting the use and the occupancy of the land or proposed buildings consistent with the intent and purposes of this Chapter and other applicable laws may be imposed on the development.

If the site plan is denied approval, the authorizing agency shall state its reasons for disapproval.

Approval of any site plan shall remain in effect for a period of not more than one (1) year unless a successful application for a building permit has been made within that period. One six (6) month extension may be granted to obtain the building permit.

§ 79-17040 Submission of Site Plan and Additional Information.

The site plan shall include the following information, prepared by a licensed engineer, architect, landscape architect or surveyor as appropriate:

- 1) application form, notes and other required written information;
- 2) title of drawings, including the name of the development, name, telephone number and address of applicant and the name of the person who prepared the drawing;
- 3) key plan, north point, professional stamp, scale (1" = 20' or other appropriate scale) and date;
- 4) zoning, land use and ownership of surrounding and adjacent properties, including all structures on adjacent and surrounding properties;
- 5) A boundary survey of the proposed development, plotted to scale and existing topographic features including contours, spot elevations, large trees, buildings, structures, streets, property lines, utility easements, rights of way and land use;
- 6) layout, number and dimensions of lots;

- 7) all lot dimensions including, but not limited to, lot frontage, lot area, building coverage, lot coverage, front yard, side yard, rear yard, building heights and floor area ratio, where applicable;
- 8) all improvement dimensions, including, but not limited to, access roads, snow removal/storage areas, parking areas, walkways, buildings, etc.;
- 9) existing and proposed streets, sidewalks and pedestrian paths immediately adjoining and within the proposed site and the names of all proposed streets;
- 10) location and dimensions of all parking, loading and stacking areas with access drive;
- 11) paving, including typical cross sections and profiles of proposed streets, pedestrian walkways and bike ways;
- 12) location, proposed use, height, building elevations, floor plans and finished floor elevations of all structures;
- 13) colors, materials, dimensions, access and roof top plans of all structures;
- 14) location and proposed development of all open spaces, including parks, playgrounds, etc.;
- 15) existing and proposed watercourses, direction of flow and the impact on the watershed;
- 16) drainage plan showing existing and finished grades, stormwater management plan and the impact on the watershed;
- 17) water supply plan, including existing and proposed location of fire hydrants;
- 18) sewage disposal method;
- 19) landscape plan, stamped by a licensed landscape architect, indicating location, type and size of existing trees and vegetation, identifying those to be preserved or removed as well as the location, type and size of trees, vegetation and amenities to be provided;
- 20) location, design and illumination field of lighting, fences and walls;
- 21) location and dimension of all signs as required in this Chapter;
- 22) garbage screening and enclosures;

- 23) methods of barrier free access;
- 24) applicable pollution control;
- 25) size and location of hazardous storage areas;
- 26) location of bus stops and shelters;
- 27) proposed easements, restrictions, covenants and provisions for home owners associations and common ownerships;
- 28) estimated construction schedule and phasing plan for buildings, earth work and landscaping;
- 29) tentative budgeting and financing sources.

§ 79-17050 Additional Information Requirements.

In addition to the required site plan and supporting data indicated in Article XVII - Site Plan Review, the authorizing agency may request, of a property owner or their agent, additional supporting data or plans deemed necessary and relevant to carry out its responsibility for site plan review and provided in this Chapter.

§ 79-17060 Criteria for Review and Recommendations.

In considering and acting upon site plan reviews and approvals, the authorizing agency shall consider the public health, safety, welfare and comfort & convenience of the public in general, the residents of the proposed development and the residents of the immediate surrounding area. The authorizing agency may prescribe such appropriate conditions and safeguards as may be required in order that the results of its action shall, to the maximum extent possible, further the following:

- 1) Compatibility - the character of proposed use is compatible with the surrounding neighborhood and in harmony with the City's comprehensive plan, Waterfront Development Strategy, Local Waterfront Revitalization Plan and Subdivision Law.
- 2) Vehicular Access - the number of proposed access points are not excessive, all access points are adequate in width, grade alignment and visibility, access points are not located too close to intersections or places of public assembly and similar safety considerations are reviewed for all site plan approvals.
- 3) Parking - adequate off-street parking, queuing and loading spaces are provided to minimize the number of cars (associated with the development) parked or standing on public roads.

- 4) Pedestrian Circulation - the interior circulation system is adequate to provide safe accessibility to all parking areas and ensure adequate separation of pedestrian and vehicular traffic.
- 5) Landscaping and Screening - all parking, storage, loading and service areas on properties adjacent to residential areas are reasonably screened and the general landscaping of the site reflects the character of the neighborhood and surrounding area.
- 6) Natural Features - the proposed use is compatible with geologic, hydrologic and soil conditions of the site and adjacent areas and the existing natural scenic features are preserved to the greatest possible extent.
- 7) Public Facilities - the public facilities that service the proposed use, including water, sanitary sewer, drainage, roads and related facilities, parks and open space are adequate for the intended level of use.

§ 79-17070 Site Plan Review.

The site plan and supporting information shall be reviewed to ensure the plan is in conformance with this Chapter, the approved development plan, if one exists, and all other applicable laws. Within 62 of days of its receipt of the application for site plan approval, each agency shall review the plan and notify the authorizing agency, in writing, of its comments or recommendations.

Within 62 of days of its receipt of the application for site plan approval or renewal, the authorizing agency shall act on the plans and notify the Building Inspector, applicant and City Clerk of the action; this time period may be extended by mutual consent of the applicant and authorizing agency. In determining the action, the authorizing agency may seek advice from additional agencies deemed appropriate.

§ 79-17080 Performance Bond as Condition of Approval.

For all commercial and industrial uses, the authorizing agency shall require, as a condition of site plan approval, the property owner to file a performance bond in such amount and form as determined by the Department of Public Works to ensure that the proposed development is built in compliance with the approved plans.

§ 79-17090 Site Plan Revisions.

Property owners wishing to make any changes in an approved site plan shall submit a revised site plan to the authorizing agency for review and approval.

§ 79-17100 Planning Board Procedure.

The Planning Board shall adopt rules and regulations deemed necessary to administer this article and all applications for site plan approval shall be submitted and reviewed in compliance with the submission requirements and review procedures of the City of Dunkirk Planning Board.

ARTICLE XVIII Special Permits

§ 79-18010 Intent.

The special permit allows for the proper integration of uses which may be suitable only in certain locations or zoning districts. The special permit also ensures such uses are designed or arranged on the site in a suitable manner. Unless otherwise provided, the special uses outlined in the zoning districts of this law shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards outlined in this Chapter. All such uses possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

§ 79-18020 Application Procedure.

Uses which require special permit approval have been determined to have a special character that makes their establishment as a permitted or accessory use without prior review impractical and undesirable. This review shall be for the purpose of determining that each proposed use is, and will continue to be, compatible with surrounding existing and planned uses. The process also allows the Zoning Board of Appeals the opportunity to include special conditions as may be necessary to ensure the harmonious integration and compatibility of uses in the neighborhood and with surrounding areas. The following applies to all special permitted uses in the City of Dunkirk:

- 1) A site master plan including, but not limited to, building footprints, parking areas, circulation patterns and landscaped areas.

- 2) A plan for the proposed development of a site for a special permitted use shall be submitted with an application for a special permitted use. The plan shall show all requirements outlined for site plan approval in Article XVII - Site Plan Review of this Chapter.
- 3) The application and appropriate fees shall be submitted to the Building Inspector. The applicant shall submit fifteen (15) of copies of all plans and supplementary information to the Building Inspector; additional copies may be requested for additional review agencies. The Building Department will distribute copies of the plans for review, report and recommendations to the following:
 - a) Department of Planning and Development;
 - b) Department of Public Works;
 - c) Fire Department;
 - d) Police Department;
 - e) Planning Board;
 - f) Zoning Board of Appeals and/or City Council - one per member;
 - g) Other review Agencies, as required.
- 4) Applications for special permits shall be acted upon by the City of Dunkirk Zoning Board of Appeals (or City Council in the H-1 Overlay District) following a public hearing.
- 5) All special permitted uses are subject to the conditions set forth in Article XVIII - Special Permits.

§ 79-18030 Findings.

In approving a special permit, the Zoning Board of Appeals must make the following findings:

- 1) The proposed use, building, structure or development is consistent with the intent of each land use zone, the comprehensive plan and additional plans completed and adopted by the City of Dunkirk.
- 2) Conditions, as deemed necessary in the public interest, have been imposed.

- 3) The proposed use or structure will not be detrimental to the public health, safety and welfare of the community.

§ 79-18040 Additional Requirements.

- 1) General Screening Requirements for special permitted uses include:
 - a) Open storage areas, exposed machinery and outdoor areas used for the storage and collection of solid waste, shall be visually screened from roads and surrounding land uses. Suitable types of screening include opaque and semi-opaque fences of a height necessary to screen the intended use. Where planted hedges are proposed, plant species, size and layout should be developed to provide an effective screen within three years of the time of installation. Native and naturalized trees and shrubs shall be planted wherever possible.
 - b) In locations where potential health or safety hazards may arise, such as solid waste storage/collection areas, a solid wooden fence, a minimum of six feet in height may be required to deter children and animals from entering the premises.
 - c) Where new fencing would create a continuous surface greater than ten feet in length, the visual expanse of bare fence shall be minimized with plant grouping consisting of trees and shrubs as outlined in Article XXV - Landscaping Requirements.
- 2) Lighting
 - a) Exterior lighting proposed for the site shall be planned, erected and maintained so the light is confined to the property and will not cast direct light or glare upon adjacent properties or public roads. The light source shall not be higher than 20 feet and shall not be directed onto adjacent properties or public roads. High intensity lighting shall not be permitted.
- 3) Drainage
 - a) Surface water run-off shall be minimized and detained on site as long as possible and practical to facilitate ground water recharge. When available, municipal storm water sewers may be employed to handle excess run-off.
 - b) If storm water can not be channelled into municipal storm water sewers, storm water run-off shall be detained on-site. In no case shall increased run-off due to development activity be directed onto adjacent property. Techniques for delaying surface storm water run-

off shall be developed to effect no additional run-off rate as a result of storms with a twenty-five or less recurrence frequency.

- c) The natural state of watercourses, swales or rights of way shall be maintained as much as possible. All drainage facilities shall be designed for a 100 year storm minimum. The Zoning Board of Appeals (or City Council in the H-1 Overlay District) may require facilities sized for more intensive storms should development conditions in the vicinity of the site warrant a greater degree of protection.

4) Erosion and Sediment Control

Where significant soil erosion or sediment deposition may occur as a result of the disturbance of the land, the Zoning Board of Appeals (or City Council in the H-1 Overlay District) may require that applications for special permits be accompanied by an erosion and sediment control plan conforming to the standards and practices contained in the USDA Soil Conservation Service Engineering Field Manual (ESM) and the New York Guidelines for Urban Erosion and Sediment Control, or other erosion and sediment control manual recognized by the Department of Public Works and the Zoning Board of Appeals (or City Council in the H-1 Overlay District).

5) Adult Entertainment Uses

All adult entertainment uses shall require review and issuance of a special permit pursuant to the regulations outlined in this Article.

§ 79-18050 Expiration.

A special permit shall be deemed to authorize only one (1) special use and shall expire if the special permitted use shall cease for more than one (1) year.

**ARTICLE XIX
Planned Unit Developments**

§ 79-19010 Intent.

The Planned Unit Development District is designed to provide flexibility for development of significant parcels of vacant or under utilized land. This flexibility will lead

to more creative design of development than what is currently allowed in the conventional zoning districts. The PUD is further intended to promote:

- 1) the most appropriate use of the land;
- 2) a more efficient and economical arrangement of streets, utilities, buildings and open space;
- 3) the utilization of topography and other natural features to the best advantage of both aesthetic and conservation practices;
- 4) Integration of all aspects all into one cohesive and compatible unit.

§ 79-19020 Uses.

No uses, buildings or structures shall be allowed which are not in accordance with the Planned Unit Development approved scheme and the comprehensive plan of the City of Dunkirk.

§ 79-19030 Location.

The Planned Unit Development District shall be applicable to any area of the City of Dunkirk where the applicant can demonstrate that the characteristics of the development will satisfy the intent and objectives of this Article.

Where a Planned Unit Development is deemed appropriate, the rezoning of land to a Planned Unit Development District will replace all uses and dimensional specifications contained elsewhere in this Chapter. All Planned Unit Development Districts shall comply with the Harborfront and Historic Overlay provisions.

§ 79-19040 Minimum Area.

A Planned Unit Development shall include no less than 5 acres of contiguous land. Public roads shall be permitted to divide such acreage provided that a minimum of 2 acres of contiguous land area must exist in any portion.

§ 79-19050 Open Space.

A minimum of 25% of the site shall be used as open space, including walkways, plazas, landscaped areas and recreation areas. Parking areas and vehicle access facilities shall not be considered in calculating open space.

§ 79-19060 Common Areas.

Common property in a Planned Unit Development is a parcel or parcels of land together with improvements, the use of which is shared by the owners or occupants of the individual building sites. The landowner shall provide for and establish an organization for the ownership and maintenance of any common property. Such organization shall not be dissolved nor shall it dispose of any common property by sale or otherwise, with the exception that such land may be dedicated to the City of Dunkirk for public use.

§ 79-19070 Site and Structure Requirements.

The authorizing agency shall approve a Planned Unit Development District only if it finds that the planned unit development will satisfy standards of this Chapter including the following:

- 1) The Planned Unit Development is an efficient and unified treatment of the development possibilities on the project site while remaining consistent with the comprehensive plan of the City of Dunkirk. The Planned Unit Development shall make provisions for the preservation of natural features such as streams and shorelines, ponds, lakes, trees, grasses, wooded cover and rough terrain.
- 2) The Planned Unit Development must be compatible with the surrounding area. The development shall not unduly burden existing City facilities and services.
- 3) The developer shall ensure that sufficient financing and capability are available to complete the project as presented.
- 4) The developer shall provide all necessary water and sewer facilities, storm drainage, highway access, paved service streets, parking and loading facilities, off street lighting and make reasonable provisions for utility service connections with adjoining properties and other ownerships.
- 5) The right of way and pavement widths for internal roads serving all development shall be adequate and sufficient in size, location and design to accommodate the maximum traffic, parking and loading needs of the development. There shall be adequate access for fire fighting equipment, police and other emergency vehicles. Such pavement shall meet all applicable City Standards.
- 6) All electric, telephone, cable television and similar equipment shall be installed underground in accordance with the New York State Public Service Commission Standards.
- 7) The gross residential density, measured over the entire tract, but exclusive of any land to be occupied by non-residential uses or public or quasi-public

institutional or recreational facilities open to the general public, shall not exceed the density set forth in the underlying district or consistent with the comprehensive plan. Bonus density may be considered for outstanding development as deemed appropriate by the Planning Board.

§ 79-19080 Application Procedure.

The developer shall submit a preliminary plan of the proposed Planned Unit Development with the rezoning application. The preliminary plan shall be to scale and shall clearly illustrate the following:

- 1) The various types of land uses required and the areas covered by each.
- 2) The outline of the interior road system and all existing and proposed public or private right of ways and easements.
- 3) Delineation of the various residential areas, if any, indicating the number and size of dwelling units by each housing type plus a calculation of the residential density.
- 4) The area, location and degree of development of common open space with a statement of how the property will be maintained.
- 5) The interior drainage system and how it is proposed to be connected to the drainage systems of adjoining areas.
- 6) If the Planned Unit Development is to be phased, a general indication of how the phasing is to proceed.
- 7) Evidence, in the applicant's own behalf, demonstrating the developers competence to carry out the plan to completion and the developers awareness of the scope of such project, both physical and financial.

§ 79-19090 Planning Board Action.

The Planning Board shall review the preliminary site plan and application package and, within 62 days of submission, shall submit it to the City Council along with its recommendations that the Planned Unit Development be approved, modified or disapproved.

If, in any such evaluation, the Planning Board finds that any submission requirements, regulations, standards or criteria prescribed by this Chapter are inapplicable because of unusual conditions of the Planned Unit Development, or the nature and quality of the proposed design, it may recommend to the City Council that adjustments in such regulations, standards or criteria be made.

A report to the City Council shall include the following findings:

- 1) The proposal conforms to the comprehensive plan of the City of Dunkirk.
- 2) The development project meets the intent and objectives of the Planned Unit Development District.
- 3) The proposal is conceptually sound in that it meets community needs in the:
 - a) layout of the proposed roadway system, land use configuration, open space and drainage systems;
 - b) scale and relationship of the elements of the plan;
 - c) the proposed uses are of such location, size and character that, in general, they will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
- 4) There are adequate public facilities, services and utilities available or proposed to be made available to serve the development.

Should a recommendation be made to City Council to deny the Planned Unit Development, the Planning Board shall issue a statement which contains the reasons for the unfavorable recommendation. The Planning Board may also recommend further study of the preliminary site plan and re-submission after revisions or re-design.

§ 79-19100 Rezoning.

The City Council shall follow procedures for zoning amendments in accordance with Article XXIX - Amendments of this Chapter.

The City Council shall act on the rezoning application within 62 days of the Planning Board's recommendation. Approval of the Planned Unit Development shall be noted on the Zoning Map of the City of Dunkirk.

§ 79-19110 Final Site Plan.

The final site plan shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the Planning Board or City Council. The final site plan shall conform to all requirements of Article XVII - Site Plan Review. The rezoning shall not become effective until final site plan approval has been secured.

The application for final site plan approval shall be made within 12 months from the date of the City Council approval of the rezoning.

No construction or site improvement work may commence until final site plan approval has been granted.

No building permits shall be issued for construction within a Planned Unit Development District until improvements are installed or performance bonds or other security is posted with the same procedures outlined in Article XVII - Site Plan Review.

ARTICLE XX Clustering Provisions

§ 79-20010 Intent.

This Article is intended to provide for more flexibility for development of unique or under utilized parcels of land. The application of this Article to future housing development will lead to more creative design solutions to ensure the character of the community is protected.

The purpose of the cluster development is to:

- 1) permit a procedure for development which will result in improved living and working environments;
- 2) promote more flexible subdivision layout without increasing densities;
- 3) encourage a variety of types of residential dwellings;
- 4) encourage ingenuity and originality to subdivision and site design;
- 5) preserve open space to serve recreational, scenic and public service purposes;

§ 79-20020 Authority.

The Planning Board or other authorizing agency of the City of Dunkirk is authorized to modify applicable provisions of this Chapter simultaneously with the approval of any plat within the City subject to the conditions set forth in this Article.

Cluster housing of attached or detached units shall be permitted within all R-Districts and C-Districts as defined in this Chapter.

§ 79-20030 Clustering Requirements.

The minimum development are for cluster housing shall apply to a land area of not less than two (2) acres.

§ 79-20040 Density Transfer.

In each zone allowing cluster development, the lot requirements may be reduced from the lot requirements established in this Chapter as deemed acceptable to the Planning Board or authorizing agency. All such lot reductions shall be compensated for by an equivalent amount of land in cluster open space to be preserved and maintained for its scenic value, recreation or conservation purposes.

In the approval of a cluster subdivision, in no case shall the maximum density specified for the applicable zone be increased, nor shall the other applicable regulations or use limitations for the zone be changed or modified.

Nothing shall prevent the Planning Board or authorizing agency from requiring that ten (10) percent of the entire cluster housing subdivision be set aside or otherwise permanently dedicated for park and recreation purposes and provisions for maintenance of said area shall be established to the satisfaction of the City Council. Under certain conditions, the City Council may require the payment of a recreational fee per dwelling unit rather than the dedication of park land. In either instance, the park space or fee shall be in addition to the private land assembled in common as the result of the clustering process referred to in these regulations.

§ 79-20050 Review Criteria.

Cluster development shall be allowed only if evidence is presented to the Planning Board or authorizing agency which establishes:

- 1) That the proposed development will be in harmony with the general purpose, goals, objectives and standards of the City's comprehensive plan, this Chapter and the City of Dunkirk Subdivision Regulations.
- 2) That the proposed building or use complies with all applicable regulations of this Chapter except as modified pursuant to the authority of this Article.
- 3) That the proposed building or use will not have a substantial impact upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare of the residents of the City of Dunkirk.
- 4) That the proposed development will be served adequately by essential public facilities and services such as highways, roads, parking spaces, pedestrian circulation, police and fire protection, drainage structures, refuse disposal, water & sewers and schools.

- 5) That the proposed development will not result in the destruction, loss or damage of any natural, scenic or historic feature of significant importance.

§ 79-20060 Open Space Requirements.

At least 25% of the total acreage is to be devoted to common, permanent open space. The open space shall be reserved and maintained as a natural area, landscaped park or recreational space. This 25% is exclusive of the 10% dedication of land for park and recreation purposes or recreational fees.

The land set aside shall be provided in such a manner that the area is usable for recreation or other activities and is accessible to all residents of the subdivision or, where the land has been dedicated to the City, to the general public.

If cluster open space is not dedicated to the City, the land shall be protected by legal arrangements, satisfactory to the Planning Board or authorizing agency, sufficient to assure its maintenance and preservation for whatever purpose intended. Covenants or other legal arrangements shall specify:

- 1) ownership of the cluster open space;
- 2) method of maintenance;
- 3) responsibility for maintenance;
- 4) maintenance taxes and insurance;
- 5) compulsory membership and compulsory assessment provisions;
- 6) guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the Planning Board or authorizing agency;
- 7) Any additional specifications deemed necessary by the Planning Board or authorizing agency.

All cluster open space shall be considered taxable unless deeded to the City of Dunkirk.

§ 79-20070 Lot, Area and Yard Requirements and Building Requirements.

The lot and building requirements will be determined in conjunction with site plan review of the proposed development.

ARTICLE XXI
Sign Restrictions

§ 79-21010 Intent.

The purpose of this Article is to provide standards for the regulations of the height, size, location and appearance of signs to:

- 1) protect and enhance property values and neighborhood character;
- 3) protect public and private investment in buildings and open spaces;
- 3) preserve and improve the appearance of the City of Dunkirk as a place to live and work and as an attraction to visitors;
- 4) encourage sound signing practices to aid business and provide information to the public;
- 5) prevent excessive and confusing sign displays;
- 6) reduce hazards to motorists and pedestrians;
- 7) protect the public health, safety and general welfare.

The regulations outlined shall apply to signs in all districts in the City of Dunkirk.

§ 79-21020 Exceptions.

For the purposes of this law, the term "sign" does not include:

- 1) signs erected and maintained pursuant to any governmental function;
- 2) integral, decorative or architectural features of building, except letters or trademarks;
- 3) signs, not exceeding eight (8) square feet per face, directing and guiding traffic and parking on private property and bearing no advertising. The location shall be approved as a part of a site plan or special permit by the authorizing agency;
- 4) signs, not exceeding one (1) square foot per face advertising the cost of gasoline when attached to a gasoline pump or service island canopy.
- 5) directional signage erected by the City of Dunkirk

§ 79-21030 General Provisions.

No sign shall be erected or maintained except in accordance with the following:

- 1) Illumination - Any illuminated sign or lighting device shall employ only lights

emitting a light of constant intensity and no sign, other than that part used to report time, temperature, stock market and/or news reports, shall be illuminated by or contain flashing, intermittent, rotating or moving light or lights. In no event shall any illuminated sign or lighting device be placed so as to permit the beams and illumination to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance. The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced. Overhead wires or exposed wires on a sign or its supporting members are prohibited.

- 2) Signs on Public Property - No private sign shall be placed in any street right of way or on other public property.
- 3) Roof Signs - No signs, except such direction devices as may be required by the Federal Aeronautical Authorities, shall be placed, inscribed or supported upon or above the height part of the facade line.
- 4) Traffic Safety - No sign shall create a traffic hazard by obstructing the view at any street intersection or by design resemblance through color, shape or other characteristics common to traffic control devices.
- 5) Maintenance of Signs - Every sign shall at all times be in a safe and structurally sound condition and maintained by replacement of defective or worn parts, painting, repainting and cleaning. The Building Inspector shall require compliance with all standards of this chapter. If the sign does not comply with adequate safety standards, the sign shall be removed at the property owner's expense.

No person shall maintain, or permit to be maintained on any premise owned, occupied or controlled by them, any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises.

- 6) Abandoned Signs - Except as otherwise provided in this Chapter, any sign which is located on property which becomes vacant and unoccupied for a period of one (1) month or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises.
- 7) Unlawful Signs - No person shall erect on any premise owned or controlled by them or use any sign which does not comply with the provisions of this Chapter.

- 8) Off Site Signs - No off site signs shall be permitted in the City of Dunkirk.
- 9) Video Signs - Video signs shall be prohibited in the City of Dunkirk.
- 10) Awning Signs - The area of awning signs shall be included in calculations for allowed signage.

§ 79-21040 Zoning District Sign Restrictions.

- 1) Accessory signs in all zones - In all zones, the following signs shall be considered accessory to the principal use of the premises on which they are located. Such sign may be illuminated only by a shielded, non-flashing light:
 - a) a single sign not over two (2) square feet in area attached to a building or detached and located in the front yard for each dwelling unit described as a home occupation located on site.
 - b) a single real estate sign not over six (6) square feet in area attached to a building or detached and located in front yard relating to sale, rental or lease of premises.
 - c) plaques or markers indicating that a building or property is an historic resource.
 - d) one (1) sign indicating the name and address of the occupants of a dwelling, not exceeding two (2) square feet. An address sign shall not be permitted if a sign permitted for the office of a resident professional is in use.
 - e) one (1) sign indicating the project name and the names of the architect, engineer, contractor and participation public and private governmental agencies and officials, placed on the premises where construction, repair or renovation is in progress, not exceeding thirty two (32) square feet in face area, fifteen (15) feet in height nor located less than twenty five (25) feet from the lot line and seventy five (75) feet from any dwelling not within the project;
 - f) one sign prohibiting trespassing not exceeding two (2) square feet.
- 2) R-1, R-2 and R-3 Residential Zones - In all residential zones, the following signs shall be considered accessory to the principal use of the premises on which they are located. Such signs may be illuminated only by a shielded, non-flashing light:
 - a) a single sign not over eight (8) square feet in area attached to a

building or detached and located in the front yard describing an apartment house or a conforming non-residential building or use.

3) C-1 and CBD Zones - The following signs shall be permitted in the C-1 and CBD Commercial Zones:

- a) Attached or projecting signs identifying uses or services on the premises, totalling one and a half (1.5) square feet in area for every foot of an occupant's building frontage to a maximum of two hundred (200) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street. Projecting signs shall be a minimum of ten (10) feet in height. Projecting signs shall extend no more than three (3) feet beyond the building.

Such signs may be painted on or affixed to any wall of a building, or signs composed of individual letters without a background may be located on the edge of a roof or wall on a flat roof or at the line of the eaves on other types of roof, but not projecting above the edge of the facade or wall or line of the eaves. The area of signs composed on individual letters without a background shall be taken as that enclosed by a series of lines joined to form a perimeter bounding all parts of the display. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a shielded non-flashing light. Animated or revolving signs shall be prohibited.

- b) Detached signs shall not be permitted in the C-1 and CBD Commercial Zones unless the following provisions are met:
- i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed eight (8) feet above the ground;
 - ii) Detached signs shall be set back a minimum of five (5) feet from the street right of way;
 - iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty five (25) feet from the street right of way;
 - iv) No detached signs shall be permitted to create a hazard or obstruction to vehicular or pedestrian circulation or to interfere with traffic sight lines;

- v) Detached signs shall be limited in display surface area to a maximum of thirty (30) square feet per side of sign, with such sign area to be included within the two hundred (200) square feet overall maximum sign area permitted in the C-1 and CBD Zones;
- vi) Detached signs shall be limited in number to one (1) sign (single or double sided) per lot;
- vii) All detached signs shall be fixed in place and of a permanent nature. Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.

(4) C-2 Zone - The following signs shall be permitted in the C-2 Zone:

- a) Attached, detached or projecting signs, single or double faced, identifying uses or goods sold or services rendered on the premises totalling one and one half (1.5) square feet of area for every foot of an occupant's building frontage to a maximum of two hundred fifty (250) square feet for each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Projecting signs shall be a minimum of ten (10) feet in height. Projecting signs shall extend no more than three (3) feet beyond the building.

For shopping centers developed under a single ownership, such signs may total not more than one (1) square foot for each foot of an occupant's building frontage.

Detached signs shall not extend to an elevation greater than twenty (20) feet above ground level where erected. No attached sign or supporting structure shall extend above the level of a flat roof or the level of the eaves on other types of roofs.

Such signs may be located on any part of the premise, except that no sign shall be constructed or orientated in such a manner as to face an adjoining lot in a residential zone and no sign shall be constructed in the rear yard or side yard of any premise, the rear property line or side property line of which abuts a lot in a residential zone.

(5) M-1 and M-2 Zones - The following signs shall be permitted in the M-1 and M-2 zones. Special requirements for signage related to adult entertainment shall follow the provision set forth:

- a) Attached, detached or projecting signs identifying uses or articles produced or services rendered on the premises.

Attached signs identifying uses or services on the premises, totalling one (1.0) square feet in area for every foot of an occupants building frontage to a maximum of two hundred (200) square feet of each premise shall be allowed. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

A maximum of two (2) signs on each lot identifying the name of the company and product or services rendered shall be allowed. These signs shall not exceed a surface area of one hundred (100) square feet in each sign and shall be located only on the face of the building or free-standing, within fifteen (15) feet of the ground level at the location of the sign. Illuminated signs shall be erected so as not to create a nuisance to abutting properties or safety hazards on adjacent public streets.

Such signs may be located on any part of the premises, except that no sign shall be constructed or orientated in such a manner as to face an adjoining lot in a residential district and no sign shall be constructed in the rear yard or side yard of which abuts a lot in a residential zone. Such sign may be illuminated but no flashing or intermittent signs shall be permitted.

- 6) H-1 and H-2 Harborfront Overlay Districts - The following shall be permitted in the H-1 and H-2 Overlay Districts:

- a) Attached signs identifying uses or services on the premises, totalling one (1) square foot in area for every foot of an occupants building frontage to a maximum of one hundred (100) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Such signs may be painted on or affixed to any wall of a building. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a shielded, non-flashing light. Animated, neon or revolving signs shall be prohibited.

- b) Detached signs shall not be permitted in the H-1 and H-2 Overlay Districts.

- 7) H-D - Historic Overlay District - The following are permitted in the H-D Overlay District:

- a) Attached signs identifying uses or services on the premises, shall not exceed a maximum of fifty (50) square feet on each premise.

Such signs may be affixed to any wall of a building. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a shielded, non-flashing light. Animated or revolving signs shall be prohibited.

- (b) Detached signs identifying uses or services on the premises, totalling one (1) square foot in area for every foot of an occupants building frontage to a maximum of fifty (50) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street. The following shall apply:

- i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed eight (8) feet above the ground.
- ii) Detached signs shall be set back a minimum of ten (10) feet from the street right of way.
- iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty five (25) feet from the street right of way.
- iv) Detached signs shall be limited in number to one (1) sign (single sided only) per lot.
- v) Detached signs shall be limited in display surface area to a maximum of twenty five (25) square feet per side of sign, with such sign area to be included within the two hundred (50) square feet overall maximum sign area permitted in HD Overlay District.
- vi) All detached signs shall be fixed in place and of a permanent nature. Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.

§ 79-21050 Temporary or Portable Signs.

- 1) A portable sign is defined as any movable sign not permanently attached to the ground, a building or other permanent fixture on a parcel of land. A sign on a registered motor vehicle is not defined as a sign within the meaning of this section. Temporary or portable signs shall be used for the following purposes only:

- a) new business enterprises;
 - b) celebration of the anniversary date of a new business enterprise;
 - c) business enterprises which have lost the use of an existing sign by reason of fire or other catastrophe;
 - (d) limited activities in connection with the principal use or activity on the premises.
- 2) Temporary and portable signs shall be permitted only in the R-3, C-1, C-2, CBD, M-1 and M-2 zones. In no instance will they be permitted to be so located that they will interfere with the sight distance of traffic passing through a heavily travelled intersection, as determined by the Director of Public Works and Building Inspector.
 - 3) The Building Inspector shall issue permits for temporary or portable signs of not more than fourteen (14) days in duration. Successive permits not to exceed three (3) in number may be obtained. In no case shall a temporary or portable sign remain on the premises for more than forty two (42) days during the calendar year.
 - 4) No more than one (1) temporary or portable sign may be maintained on any parcel or upon any number of contiguous parcels of land under common ownership. A permit from the Building Inspector must be obtained prior to the display of such sign.
 - 5) No temporary or portable sign shall be more than five (5) feet by eight (8) feet in size.
 - 6) Portable signs shall conform to the front yard setback requirement inasmuch as the signs shall not be allowed to encroach on the public sidewalk or the City street right of way. Signs shall in no instance be placed within the public right of way so as to interfere with the sight distance at a heavily travelled intersection or with the free passage of pedestrians on the public sidewalk.
 - 7) No permanent, temporary or portable sign shall be illuminated by flashing lights of any kind or color.

§ 79-21060 Window Signs.

No signs erected or maintained on the window of a building shall occupy more than thirty percent (30%) of the area of said window.

§ 79-21070 Political Signs.

Temporary signs in support of a political party or candidate are permitted in all zones in the City of Dunkirk. Signs may be erected up to three (3) weeks prior to the election and must be removed within seven (7) days following the election. No political signs shall be permitted in the public right of way.

ARTICLE XXII Adult Entertainment Facilities

§ 79-22010 Intent.

The operation of adult entertainment facilities may have serious operational characteristics and damaging effects upon their surroundings as a result of their siting and concentration within the facilities. Special regulations pertaining to these uses are necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These regulations will help ensure that adverse effects on the public health, safety, morals, comfort, convenience and general welfare are mitigated.

The development and proliferation of Adult Entertainment Facilities without regulation as to siting and concentration may result in the deterioration of residential and business neighborhoods. If placed near schools and other youth related facilities, Adult Entertainment Facilities may adversely effect upon the welfare and morals of minors residing within the City.

§ 79-22020 Location of Adult Entertainment Facilities.

The following provisions shall apply to the location of adult entertainment facilities:

- 1) adult entertainment facilities shall be permitted in the M-1 and M-2 Industrial Zones upon approval of a special permit;
- 2) no adult entertainment facilities shall be permitted within five hundred feet of any area zoned for residential use;
- 3) no adult entertainment facility shall be permitted within one thousand feet of any of the following:
 - a) a school;
 - b) a religious institution;
 - c) a public park or public recreation facility.

§ 79-22030 Additional Sign Requirements.

The following provisions shall apply to signs erected or maintained in connection with an "adult book store" or an "adult motion picture theater":

- 1) No off site signs shall be permitted.

§ 79-22040 Public Display of Certain Matter Prohibited.

Materials offered for sale from "adult news-racks" shall not be displayed or exhibited in a manner which exposes to the public view any pictures or illustrations depicting any "specified sexual activity" or any "specified anatomical area". Materials offered for sale or viewing at any Adult Entertainment Facility shall not be displayed or exhibited in a manner which exposes any depiction of any "specified sexual activity" or any "specified anatomical area" to the view of persons outside the building or off the premises on which such store or theater is located.

§ 79-22050 Restrictions Cumulative.

The restrictions set forth in this Chapter are in addition to any other applicable provision of this Chapter. In the event of any conflict between any such provisions, the more restrictive shall apply.

ARTICLE XXIII
Flood Damage Prevention Regulations

§ 79-23010 Intent.

It is the purpose of the floodplain damage prevention regulations to establish regulations and standards to protect persons and property from the hazards of development of the floodplain of Lake Erie, Crooked Brook and its tributaries, Goose Creek and Hyde Creek. These regulations and standards are necessary to:

- 1) protect the public health, safety and welfare of individuals potentially affected by flood hazards;
- 2) reduce the costs incurred by the community at large from inappropriate and unsuitable development located in the floodplain;
- 3) minimize the need for rescue and relief efforts associated with flooding;
- 4) minimize prolonged business interruptions;
- 5) minimize damage to public facilities and utilities.

The flood damage prevention regulations also implement the regulations of the National Flood Insurance Program and Related Regulations that are administered by the Federal Emergency Management Agency (FEMA). The floodplain management regulations are established to implement the policies of the safety element of the comprehensive plan regarding flood hazards associated with Lake Erie, Crooked Brook and its tributaries.

The degree of flood protection required by these regulations is considered

reasonable for regulatory purposes and is based on scientific and engineering considerations; in no circumstances is development allowed in the floodway as defined by the Federal Emergency Management Agency. Larger floods will occur on rare occasions.

Flood heights may be increased by person made or natural causes. These regulations do not imply that land outside the areas of special flood hazards, or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the City, any officer or employee, or the Federal Insurance Administration, for any flood damages that result from reliance on these regulations or any administrative decision lawfully made.

§ 79-23020 General Provisions.

The flood damage prevention regulations shall apply to all areas and lots within the 100 year flood boundary ("Zone A") designation on the map entitled Flood Insurance Rate Map - City of Dunkirk, New York - Chautauqua County dated February 1981 as they exist now or may be amended, on file in the Building Department. These regulations are not intended to supersede the regulations of FEMA and as the FEMA regulations are changed or amended, these regulations will continue to conform with their restrictions.

These regulations shall be in addition to other regulations established by this title. In the event of a conflict in regulations, the flood damage prevention regulations shall apply.

§ 79-23030 Floodplain Administration.

The Housing, Building and Zoning Officer of the City of Dunkirk is appointed to administer and implement these regulations. The duties and responsibilities of the floodplain administrator shall include, but not be limited to:

- 1) review of all applications for development within floodplain to ensure compliance with the floodplain management regulations of this title so that proposed building sites are reasonably safe from flooding;
- 2) obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other sources, when base flood elevation has not been provided;
- 3) notify adjacent communities, the New York State Department of Environmental Conservation and the Federal Insurance Administration prior to the alteration or relocation of a watercourse. The flood carrying capacity of the altered or relocated portion of a watercourse shall be maintained;
- 4) make interpretations, when needed, as to the exact location of the boundaries of the areas included in the 100 year flood area;

- 5) maintain, for public inspection, the certificates of elevation and construction and other information and records required pursuant to the National Flood Insurance Program and the City's flood damage prevention regulations.

§ 79-23040 Permit Review Required.

The following provisions shall apply to the review and approval for projects on lands to which this Article is applicable:

- 1) The review and approval by the floodplain administrator shall be required prior to the issuance or approval of the special permit by the Zoning Board of Appeals or site plan approval by the Planning Board. Information necessary to determine compliance with the Flood Damage Prevention Regulations together with any information, plans, diagrams, etc. for the requested permit shall be submitted to the floodplain administrator for review and approval.
- 2) The following activities shall require the review and approval of the floodplain administrator when located in the floodplain:
 - a) construction, enlargement, alteration, repair, improvement or moving any building or structure;
 - b) Any person made change to an improved or unimproved real estate, including, but not limited to: constructing buildings or other structures, mining, dredging, filling grading, paving, excavation or drilling;
 - c) placement of manufactured home on improved or unimproved real estate;
 - d) Subdivision of any property;
 - e) Establishment of a manufactured home development or mobile home park.
- 3) A licensed civil engineer shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with the accepted standards of practice. A licensed civil engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level.

§ 79-23050 Application to Historic Structures.

The floodplain administrator may waive requirements for minimum floor elevations, flood proofing or other provisions of this Article for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or designated as landmarks by the State of New York or City of Dunkirk.

§ 79-23060 General Development Standards and Requirements.

The restrictions set forth in this Article are in addition to any other applicable provision of this code. In the event of any conflict between any such provisions, the more restrictive shall apply. The following development standards shall be observed on all lots in the floodplain:

- 1) All new construction and substantial improvements, including new and replacement of manufactured homes, shall be secured to a permanent foundation system to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- 2) All new construction and substantial improvements, including new and replacement of manufactured housing, shall be constructed and designed:
 - a) with materials and utility equipment resistant to flood damage;
 - b) using methods and practices that minimize flood damage;
 - c) with electrical, heating, ventilation, plumbing and air condition equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - d) with adequate drainage paths around structures on slopes to guide floodwater around and away from structures;
- 3) All new construction and substantial improvements, including new and replacement of manufactured housing, shall have the lowest floor, including basement, elevated to one foot or more above the base flood elevation and be designed so they are fully enclosed areas below the lowest floor automatically equalizes hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwater. In the case of non-residential structures, the structures will be flood proofed so that below the base flood elevation, the structure is water tight with walls substantially impermeable to the passage of water and have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The minimum criteria for equalizing hydrostatic flood forces shall include a flood

proofing standard approved by the Federal Insurance Administration.

Certification by a licensed civil engineer that the structure complies with this subsection shall be required prior to any occupancy of such structure. Final elevations of the lowest floor and/or basement shall be included in this certification.

- 4) New and replacement water, gas, electrical and sanitary sewage systems shall be designed to:
 - a) minimize or eliminate infiltration of floodwater in the system and discharge from the system into floodwater;
 - b) avoid impairment or contamination during flooding in the case of on site waste disposal systems.
- 5) All tentative subdivision maps, regardless of the number of lots proposed, shall:
 - a) identify the special flood hazard area and elevation of the base flood on the tentative map;
 - b) show how any existing or future buildings, structures or utilities will comply with the development standards of this Article;
 - c) identify the elevation of any existing structures, buildings or proposed building pads including any building sites with fill above the base flood elevation on the final map.

Certification by a civil engineer that the subdivision complies with this subsection shall be required for the final map. Final elevations of all proposed or existing building sites shall be included in this certification.

- 6) Flood capacity in the floodplain shall be maintained by use of storage or detention areas.
- 7) Impervious surfaces shall be minimized in the floodplain.
- 8) Filling of wetlands and the floodplain is prohibited.

ARTICLE XXIV
Parking, Stacking and Loading Requirements

§ 79-24010 Intent.

Off street parking, stacking and loading requirements, must meet the standards set forth in this Article. As permitted uses in certain zones, they shall be considered an accessory use when required or provided to serve conforming uses in any zone. The following off street parking, loading and stacking requirements are established to:

- 1) relieve congestion and facilitate the movement of vehicular traffic;
- 2) promote the safety and convenience of pedestrians by locating parking and areas so as to reduce the impact of vehicles;

- 3) protect adjoining residential uses from negative impacts of on-street parking;
- 4) promote the general convenience, welfare and prosperity of commercial, service, research, production and industrial development;
- 5) ensure parking facilities are designed and consider orderly arrangement, topography, landscaping and ingress/egress as part of the overall site design;
- 6) provide regulations and standards for development of off street parking to protect the character of the City of Dunkirk.

§ 79-24020 General Provisions.

- 1) Employee Parking - Whenever parking requirements are based on the number of employees, it shall mean the maximum number of employees on duty in the premises at one time or any two (2) successive shifts.
- 2) Net Floor Area - The net floor area is defined as the total floor area less permanent concourses, stair halls, lobbies, elevator shafts, areas permanently devoted to warehousing and rooms housing equipment servicing the entire building.
- 3) Fractional Requirements - When units of measurements used in computing the number of required off street parking, loading and stacking spaces result in the requirement of the fractional space, the nearest whole number of off-street parking spaces shall be required.
- 4) Seating Capacity - The number of seating units installed or indicated on the plans which shall be less than one (1) unit per fifteen (15) square feet of floor area. Where units are not indicated on the plan, it shall be assumed that seating units will be provided at a ratio of one (1) for each ten (10) square feet of floor area.

§ 79-24030 Residential Districts.

- 1) Location - If the required off street parking space cannot reasonably be provided on the same lot as the principal building, such parking space may be provided on other property located not more than three hundred (300) feet as measured along the nearest pedestrian route.
- 2) Front Yard Parking - Front yard parking for residential uses, with the exception of access drives, shall be in conformance with the required minimum front yard setback.

§ 79-24040 Commercial and Industrial Districts.

- 1) Location - In all non-residential districts, off street parking, loading and stacking facilities shall be provided on the same lot as the principal use or on another non-residential lot located not more than three hundred (300) feet as measured along the nearest pedestrian route.
- 2) Off street parking, stacking and loading improvements:
 - a) will not increase the congestion on adjoining residential streets in such a way as to promote a traffic hazard or a nuisance to adjoining resident;
 - b) will be properly screened, lighted and designed so as to prevent nuisance to adjoining residents;
 - c) will be landscaped as required by this Chapter;
 - d) will be used for the purpose of passenger automobiles or commercial vehicles only (off street parking, only);
 - e) no commercial repairs, sales or services shall be conducted;
 - f) shall be located not less than ten (10) feet from any adjacent residential lot line.

§ 79-24050 Special Parking Restrictions.

- 1) Civic Uses and Places of Assembly - Parking areas serving churches, clubs, community centers and other public facilities within or adjacent to a residential district shall be located within the side and rear yards. Driveways may be located within the front yard. Driveways and parking areas shall be located not less than ten (10) feet from any adjacent residential lot lines.
- 2) Motor Vehicle Service Station - Unenclosed parking of motor vehicles at gasoline service stations shall be limited to four (4) vehicles, and no vehicle shall remain so parked in excess of twenty four (24) hours. Unenclosed overnight parking of motor vehicles at automobile washing establishments is prohibited.
- 3) No more than one (1) commercial vehicle shall be permitted in any residential zone.

§ 79-24060 Payment in Lieu of Providing Off Street Parking.

Municipal off street parking facilities shall continue to be developed and maintained by the City on City owned or leased land and may, upon payment of the fee

adopted by the City Council, be used in lieu of off-street parking required to be provided by existing and future buildings, structures and uses.

Parking may be waived by the Planning Board providing the proposed use is within 500 feet of a municipally operated off street parking facility. The Planning Board shall, at the time of approval of the site plan, certify on such plan that the municipally operated off street parking facility has adequate capacity to accommodate the need generated by the use.

- 1) Changes or Alterations: When in the C-1, C-2 or CBD, additional off street parking is required to be provided for an existing building because of:
 - a) change of use of all or any portion of a building or structure;
 - b) an interior increase of floor area for which off street parking must be provided, and such required off street parking cannot be provided because of the non-availability of space in the zoning lot upon which the building is located

The authorizing agency, upon written application, may permit the payment of a fee by the applicant to allow the City to provide such additional required off street parking in lieu of the applicant providing such required off street parking.

- 2) New Construction: When, in the C-1, C-2 or CBD, a new building or structure is erected or a structural addition is added to an existing building or structure for which off street parking is required by the provisions of this Chapter, upon written application, the authorizing agency may authorize the payment of a fee by the applicant to allow the City to provide such required off street parking in lieu of the applicant providing such off street parking of such required off street parking.
- 3) Collected Fees: All fees collected and all interest earned under the provisions of this Chapter shall be placed in the Parking Facilities Fund established by the City Council and shall be used only for the acquisition of land, improvement or maintenance of municipally owned or leased off street parking facilities for the benefit of those buildings, structures and uses in the C-1, C-2 or CBD and the general community.

§ 79-24070 Exceptions.

The requirements of this article may be reduced to the extent that the applicant can demonstrate that less parking is required for one of the following reasons:

- 1) unique use times - uses operate at times other than "normal" business hours and, thus, could make arrangements with surrounding land owners to

- utilize their parking facilities through a formal agreement;
- 2) overlap coverage - adjacent uses may operate at different times and could, thus, develop a shared parking facility;
 - 3) the regulation is excessive for proposed development, as applied to individual land owner;
 - 4) the new development is in close proximity to a public parking facility.

§ 79-24080 Off Street Parking Requirements.

In all zones, the following minimum off street parking requirements shall be provided and maintained in the case of new construction, alterations which increase the number of units and changes in use:

Auditoriums, theaters, gymnasiums and other places of public assembly: One (1) parking space for each five (5) seats.

Automobile Repair Shops: Two (2) parking spaces per bay with a minimum of six (6) parking spaces.

Automobile (new and used) facilities: Two (2) parking spaces for each employee.

Bowling Alleys - Two (2) parking spaces per alley.

Church - One parking space for each five (5) fixed seats. If no fixed seats, one (1) parking space for each twenty five (25) square feet of net floor area.

Convenience Store - One space for every one hundred (100) sq. ft. of gross floor area.

Dancing Studios: One (1) parking space per seventy five (75) feet of net floor area devoted to the activity.

Dwelling (single family): Two (2) spaces per dwelling unit.

Dwelling (multiple family): One and one half (1.5) spaces per dwelling unit.

Dwelling (senior): One (1) parking space per dwelling unit.

Fraternity or Sorority: One (1) parking space per two (2) occupants.

Funeral Homes: One (1) parking space for each five (5) seats.

Health Spas and Swimming Pools: One (1) parking space per fifty (50) square feet

of net floor area and pool area devoted to activity.

Hospitals: One (1) parking space for each patient bed.

Hotels: One (1) parking space for each guest room plus one (1) space per six (6) seats for the restaurant/bar area.

Industrial plants, wholesale distribution, laboratories, etc.: One (1) parking space per employee.

Medical and Dental Offices/Clinics: One (1) parking space per one hundred fifty (150) square feet of net floor area.

Miniature Golf: One (1) parking space for each hole.

Offices (General): One (1) parking space for each four hundred (400) square feet of net floor area.

Private Clubs: One space per three (3) seats and one (1) parking space per one hundred fifty (150) square feet for customer area or takeout services.

Public and Semi-Public Buildings: One (1) parking space per two hundred (200) square feet of net floor area. If devoted to uses other than office, one (1) parking space per five (5) seats.

Restaurant Bar and Banquet Hall: One space per three (3) seats and one (1) space per one hundred fifty (150) square feet for customer area or takeout services.

Retail Stores (under 6,000 square feet): One (1) parking space for each two hundred fifty (250) square feet of net floor area.

Retail Stores (over 6,000 square feet): One (1) parking space for each one hundred (100) square feet of net floor area.

Nursing Homes: One (1) parking space for each five (5) beds plus one (1) parking space for each employee.

Schools (nursery and primary): One (1) space for each teacher, employee and administrator.

Schools (secondary): One (1) parking space for each ten (10) seats used for purposes of instruction. If no fixed seats, one (1) parking space for each one hundred (100) square feet used for purposes of instruction.

Shelters: One (1) parking space for every two (2) employees.

Shopping Centers: Six (6) parking spaces for each one thousand (1000) square feet of net floor area.

Tennis Clubs: Three (3) parking spaces per court.

Tourist Home, motel: One (1) parking space for each sleeping room.

§ 79-24090 Stacking Requirements.

In addition to minimum parking requirements established in this Chapter, the following stacking areas are required. The size of a stacking space shall be twenty (20) feet in length by nine (9) feet in width.

Car Wash (Coin Operated): Two (2) spaces per stall

Car Wash (Rapid): Ten (10) spaces per stall

Drive in Bank: Five (5) spaces per lane

Drive in Photographic Facility: Two (2) spaces per service window

Drive in Oil Change and Quick Lube Facility: Three (3) spaces per bay

Drive in Facilities (General): Five (5) spaces per booth, customer facility or service window

§ 79-24100 Loading Requirements.

Off street loading shall be provided and maintained as long as such building is occupied or unless equivalent facilities are provided in conformance with the regulations of this Article. Space required and allocated for any off street loading facility shall not be used to satisfy the space requirements for off street parking or stacking. An off street loading space shall not be used for repairing or servicing of motor vehicles.

- 1) Location of Facility - All required loading facilities shall be related to the building and provide for loading and off-loading of delivery and other service vehicles and shall be so arranged that they may be used without blocking or otherwise interfering with the use of access ways, parking or stacking facilities, public streets or sidewalks. A required loading space shall not face or be visible from the frontage street and shall not be located in a rear yard or a required side or rear yard if adjoining a residential district.
- 2) Access Driveway - Each required off street loading space shall be designed for vehicular access by means of a driveway, or driveways, to a public street

in a manner which will least interfere with adjacent traffic movements and interior circulation.

- 3) Minimum Size Criteria - Off street loading space shall be at least twenty feet in length by twelve (12) feet wide. The area shall be exclusive of the maneuvering space and each loading facility shall have a vertical clearance of at least fourteen (14) feet.
- 4) Required Loading Facilities - The following off street loading facilities shall be provided as required:

	<u>Use</u>	<u>Square Feet</u>	<u>Required Number</u>
a)	Retail Stores and Services	under 5,000	1 bay
		5,000–40,000	2 bays
		40,001-50,000	3 bays
		50,000+	4 bays
b)	Wholesale and Industrial Operations	under 40,000	1 bay
		40,001-100,000	2 bays
		100,001+	3 bays
c)	Office Building, Hotels	100,000+	1 bay
d)	Hospitals and Nursing Homes	2 bays 1 of which is for emergency vehicles	

§ 79-24110 Design Guidelines.

- 1) Each space shall be provided access to a public street through a drive or aisle of not less than ten (10) feet wide.
- 2) Dimensions - Parking shall be designed in dimensions according with the following:

Angle	Stall Length	Aisle Width	Stall Width	Total Width
90	19'00"	24'00"	9'00"	62'00"
60	21'00"	18'00"	10'05"	60'00"
45	19'10"	13'00"	12'09"	52'08"

Parking for the physically challenged shall be a minimum of:

Angle Stall Width

90 degree	12.0'
60 degree	13.9'
45 degree	16.9'

and shall be provided in accordance with all applicable regulations.

- 3) Grading and Paving - Parking, stacking and loading areas and access shall be graded and drained so that surface water shall not be allowed to flow onto adjacent properties.

- 4) Maintenance - Parking, stacking and loading areas shall be arranged, marked and maintained as shown on the final approved site plan in order to provide for orderly and safe parking, storing and loading of vehicles. The authorizing agency may also require structural or landscape features including, but not limited to, bumper guards, curbs, walls or fencing, landscaping or berming, to ensure protection of property and persons and privacy screening for adjacent land uses with visual, noise and air standards.
- 5) Illumination - Parking, stacking and loading areas shall be illuminated only to the extent necessary to ensure public safety. Illumination shall not be used for the purpose of advertising or attracting attention to the principal use. Lighting fixtures shall be designed, sized and located so as not to cast direct rays of excessive brightness upon adjoining premises or cause glare hazardous to pedestrians or person using adjacent public streets.
- 6) Pedestrian Walkways - Walkways will be provided to link parking areas and buildings on the site to ensure pedestrian safety. Special consideration will

be given when drive thrus are incorporated in the design to ensure safety for pedestrians as vehicles are moving.

- 7) Driveways to Parking Areas - Entrance and exit driveways serving parking facilities, drive in businesses and other parking areas shall be provided in location, size and number so as to minimize interference with uses on adjacent properties and the flow of traffic on adjacent streets.

ARTICLE XXV
Landscaping Requirements

§ 79-25010 Intent.

Landscaping requirements in the City of Dunkirk are established to:

- 1) promote the public health, safety and welfare of all residents in the City of Dunkirk by requiring all non-residential developments to landscape their lands, including parking areas;
- 2) establish minimum landscaping standards and criteria for all non-residential developments;
- 3) minimize the unnecessary clearing and disturbing of land to ensure protection of natural, existing flora and replace native flora that has been removed;
- 4) reduce the effects of wind and air turbulence, heat, noise and the glare of automobile lights;
- 5) provide unpaved areas of a development and regulate the amount of impervious surface to ensure absorption of storm water;
- 6) prevent soil erosion;
- 7) provide shaded areas in developments;

- 8) protect property values and character of neighborhoods in the City of Dunkirk;
- e) Ensure the development of new parking areas have minimal visual effects on the neighborhood.

§ 79-25020 Applicability.

All non-residential uses and residential uses requiring site plan approval or a special permit are subject to the provisions of this Article. All planting strips, yards, setbacks and other required open space area shall be landscaped in accordance with a landscaping plan, prepared by a landscape architect, architect or engineer, approved by the authorizing agency.

§ 79-25030 Maintenance.

All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these Standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning. All required fences and walls shall be maintained and, when necessary, repaired or replaced.

§ 79-25040 Guidelines.

Prior to the issuance of zoning permits, site plan approval, special permits, etc., fifteen (15) copies of the Landscaping Plan shall be submitted to the City of Dunkirk as part of the application package. The following guidelines shall be used in developing the landscaping plan:

- 1) Plants selected shall be suited to the climate and region as well as the geologic and topographic conditions of the site. Protection and preservation of native plant materials and natural areas is encouraged by the City of Dunkirk.
- 2) Water intensive ornamental plant materials shall not exceed 10% of the total landscaped area.
- 3) Decorative water features should use re-circulating water, when possible;
- 4) Landscaping shall provide privacy and screening for adjacent land uses, with visual, noise and air quality factors considered.

§ 79-25050 Landscaping Plans and Additional Information.

Landscaping plans shall be drawn to scale, including dimensions and distances, and shall clearly delineate:

- 1) plant materials, including trees, shrubs, ground cover, turf and other vegetation, shall be shown clearly on the plan. In addition, plants shall be labelled by botanical name, common name, calliper or container size, spacing and quantities in each group;
- 2) property lines and street names;
- 3) streets, driveways, walkways and other paved area;
- 4) pools, ponds, water features, lighting fixtures, fences and retaining walls;
- 5) existing and proposed buildings and structures, including elevation, if applicable;
- 6) natural features, including, but not limited to, rock outcroppings, existing plant materials that will be preserved;
- 7) tree staking, plant installation, soil preparation details and all other applicable planting and installation details;
- 8) calculation of the total landscaped area;
- 9) designation of recreation areas, if applicable.

§ 79-25060 Landscaping Plan Standards - General.

For purposes of this section, the landscaped area shall include the area required or permitted, under this section, to be devoted to landscaping and environmental improvement, which may include existing and new vegetation, berms, lighting, street furnishings and ornamental features which are integrated with the vegetation. The following standards shall be observed for all projects subject to this Article:

- 1) a minimum ground area of not less than twelve (12) percent of the total lot area shall be landscaped;
- 2) a landscaped area shall have a minimum width of five (5) feet excluding curbs, retaining walls or similar enclosing structures;
- 3) landscaping materials shall be contained so as not to spill or intrude into the public right of way;
- 4) all trees shall be staked and all planting areas mulched;
- 5) the use of synthetic vegetation (turf, plastic plants, etc.) shall not be allowed for any required landscaping;
- 6) the minimum size for a shrub shall be 30" in height and the minimum size for a tree shall be a 2" calliper.

§ 79-25070 Landscaping Plan Standards - Residential.

The following standards shall be observed in residential projects that are subject to this Article:

- 1) nursery grown trees of at least 2" calliper size shall be selectively sited throughout all common open areas to naturalize the site. The number shall be determined by requiring one (1) tree for every forty (40) feet of perimeter of the lot.

§ 79-25080 Landscaping Plan Standards - Parking Lots and Parking Areas.

The following standards shall apply to all parking lots and parking areas subject to the provisions of this Article:

- 1) A minimum on one (1) landscaped area with a minimum size of one hundred seventy one (171) sq. ft (approximately 9' by 19') shall be provided for every nine (9) parking spaces.
- 2) The following standards shall apply to the screening of parking lots, parking areas and other open storage areas subject to this Article:
 - a) Parking lots and parking areas shall be screened from public streets, alleys, paths and private streets by dense landscaping having a minimum height of three (3) feet. An earth berm may be credited toward the height required. At all intersections and driveways, screening shall be restricted to a maximum height of two (2) feet and trees shall be maintained to a clearance of seven (7) feet above ground to ensure sight lines remain unobstructed.
 - b) Parking lots and parking areas shall be screened from abutting lots with a minimum height of five (5) feet. An earth berm may be credited toward the required height. At all intersections and driveways, screening shall be restricted to a maximum height of two (2) feet and trees shall be maintained to a clearance of seven (7) feet above ground to ensure sight lines remain unobstructed.
 - c) Equipment and open storage areas shall be screened from public streets, alley, paths, private streets and abutting lots to a minimum height of six (6) feet.

ARTICLE XXVI
Supplemental Regulations

§ 79-26010 Intent.

The supplemental regulations contained in this article address uses that are allowed, allowed following site plan review or as a special permitted use in various zoning districts. These regulations consider the unique characteristics of each use and the potential impacts they may have on the community and its residents.

§ 79-26020 Accessory Buildings.

Unless otherwise specified, all accessory buildings shall observe the same yard requirements as principal buildings except for the following:

- 1) In all Residential Districts, accessory buildings lying wholly within a rear yard may extend not closer than five (5) feet to the side and rear lot line.
- 2) In Commercial and Industrial Districts, accessory buildings lying wholly within a rear yard shall be a minimum of five (5) feet from side or rear lot lines, except that accessory buildings used for business or individual purposes shall be a minimum of twenty five (25) feet from any Residential District boundary.
- 3) In any district, the distance between the main building and the accessory building shall be a minimum of ten (10) feet.

§ 79-26030 Storage.

To provide visual protection from the storage of equipment and materials, all such storage in any District shall be within completely enclosed buildings or, if left open to the sky, shall be effectively screened from public view. Screening shall be of sufficient height and density to completely hide the storage from public view. In certain cases, fencing may be necessary to supplement landscaping. All screening shall be maintained in such manner as to present a neat and orderly appearance at all times.

§ 79-26040 Corner Visibility.

Within the triangle formed by two (2) intersecting street lines and a line joining points on such street lines thirty (30) feet from the intersection, no fence, wall, hedge or dense foliage shall be erected, planted or maintained between the heights of two (2) feet and seven (7) feet. Open type fences less than ten percent (10%) solid may be three and one half (3 1/2) feet in height.

§ 79-26050 Fencing and Walls.

The authorizing agency may require fences, vegetation or other appropriate material in non-residential districts where they abut residential districts to assure privacy for adjacent land uses with visual, noise or air quality factors considered. The following shall apply to all fences and walls in the City of Dunkirk:

- 1) No fence or wall in a residential district shall exceed six (6) feet in height.
- 2) A fence of twelve (12) feet shall be allowed to enclose a tennis court.
- 3) In no event shall fences or walls in non-residential districts abutting residential districts exceed six (6) feet in height.
- 4) Within a non-industrial district, no fence or wall, other than a necessary retaining wall, over three (3) feet in height shall extend into the front yard of any lot.
- 5) The height of all fences or walls shall be measured from the average finished grade of the lot.

§ 79-26060 Automotive Use Areas.

Any portion of a lot, with the exception of one and two family homes, used for open off-street parking or reservoir space for open sales, service or storage areas for motor vehicles, contractor's equipment or boats, shall be deemed to be an automotive use area.

No building, pump, motor vehicle or any other equipment or storage shall be closer than twenty five (25) feet of a Residential District, nor twenty (20) feet of a street line. New automotive use areas or alterations of existing automotive use areas shall be subject to the following requirements:

- 1) Surfacing - Every automotive use area and access driveway shall be surfaced with a durable and dustless material and shall be so graded and drained as to dispose of surface water accumulations.
- 2) Lighting - Any fixture used to illuminate any automotive use area shall be arranged so as to direct the light away from the street and from adjoining lots in any Residential District.
- 3) Screening - Every automotive use area, except off street parking areas for less than five (5) vehicles, shall be screened from any adjoining lot in any Residential District by a landscaped buffer of no less than five (5) feet in width. Such buffer shall be landscaped and maintained by the owner
- 4) Access - No entrance or exit to an automotive use area shall be permitted within thirty (30) feet of any intersecting street lines and, except for permitted residential off-street parking areas in the Residential Districts, no entrance or exit shall be permitted within ten (10) feet of a lot in any Residential District.
- 5) Restriction - No automotive use area shall be used for auto wrecking or for storage of wrecked, partially dismantled or junked vehicles or equipment, or motor vehicles which do not qualify for New York State motor vehicle

registration.

§ 79-26070 Cesspools and Septic Tanks.

- 1) No cesspool, septic tank or drilled sink shall be permitted within the City of Dunkirk except as provided in this Article. In the industrial districts, where a public sanitary sewer main is not reasonably accessible in the opinion of the authorizing agency, alternative provisions, approved by the Director of Public Works, may be made for the disposal of sanitary waste if the following are met:
 - a) No on-site disposal shall be permitted in low, swampy areas with a high water table (permanent, fluctuating or seasonal), areas with ledge rock or areas that are subject to flooding;
 - b) All installations shall otherwise conform to the requirements of the Chautauqua County Health Department.

§ 79-26080 Dwelling Units.

Slope of Yards - No building containing dwelling units shall henceforth be constructed, nor shall any existing building be altered so as to contain dwelling units, unless the surface grade of the front yard at the front wall of such building is more than one (1) foot above the established grade of the sidewalk. Where a sidewalk grade has not been established, the surface grade of the front of the front wall of the dwelling shall not be less than one (1) foot above the center line of the street measured at the midpoint between the side lot lines of the lot. Where there is unusual difficulty in meeting this provision, the Housing, Building and Zoning Officer may accept a substitute gradient, providing that no minus gradient its established within fifteen (15) feet of the front wall or within six (6) feet of either side of the rear wall of the dwelling.

§ 79-26090 Mobile Homes.

The following shall apply in addition to all other regulations of the City:

- 1) Temporary Storage - No mobile home shall be parked and occupied in any district outside an approved mobile home court for more than forty eight (48) hours except upon a special permit issued by the Zoning Board of Appeals. Such permit shall be issued for a period not to exceed thirty (30) days and shall not be renewable within the same calendar year.
- 2) As an exception, a permit may be issued for parking and occupying a mobile home on land owned by the occupant or occupants during the construction of a house, for a period not exceeding one hundred eighty (180) days and shall be renewable for an additional period not exceeding one hundred eighty (180) days.

§ 79-26100 Mobile Home Parks.

The following shall apply in addition to all other regulations of the City regarding mobile home parks:

- 1) Permit - It is unlawful within the City of Dunkirk for any person or persons to construct or operate a mobile home park without first securing a written permit from the City of Dunkirk and complying with the regulations of this chapter.
- 2) Application - Any applicant for a mobile home park license shall state that as agent or owner, shall be responsible for the proper maintenance and upkeep of the proposed park and shall furnish the following information:
 - a) boundaries of plot area;
 - b) entrances, exits and walkways;
 - c) trailer sites or lots;
 - d) method and plan of sewage disposal;
 - e) method and plan of garbage disposal;
 - f) water supply;
 - g) electric lighting;
 - h) owners and operators name and address.
- 3) Park Plan - The park plan shall include the following:
 - a) in the R-3 zone, a mobile home park shall have an area of not less than ten (10) acres
 - b) in the R-3 zone, no mobile home lot or office or service building shall be closer to a street, road or other property line than one hundred (100) feet;
 - c) in all other zones where mobile home parks are allowed, no mobile home or trailer lot, office or service building shall be closer to any street or road line than one hundred (100) feet or closer to any other property line than fifty (50) feet.
- 4) Additional Requirements - Wherever located, a mobile home park shall

conform to the following additional requirements:

- a) the park shall be located on a well drained site suitable for the purpose, with an adequate entrance road at least twenty (20) feet wide;
 - b) individual mobile home lots shall have an area of not less than three thousand (3000) square feet with a minimum width of forty (40) feet and a minimum depth of seventy five (75) feet;
 - c) the total number of mobile home lots shall not exceed twelve (12) per gross acre;
 - d) margins alongside of the rear property line shall be densely planted to trees and shrubs for a depth of not less than twenty five (25) feet
 - e) each mobile home shall have an entrance platform to conform with the overall plan;
 - f) Each mobile home park shall provide sanitary services and conveniences including water supply, sewage disposal, lighting, garbage disposal and incinerator, according to the regulations in this Article.
- 5) Water Supply - A sufficient supply of water obtained from the City of Dunkirk water system shall be provided to each mobile home.
 - 6) Sewage and Refuse Disposal - Waste from showers, toilets and laundries shall be connected to the City of Dunkirk waste water system in a manner approved by the Director of Public Works. All kitchen sinks, washbasins, lavatories, bath and showers in the mobile home located in any mobile home park shall empty into the City of Dunkirk sewer system.

§ 79-26110 Quarries, Gravel Pits, Topsoil Removal, Major Excavations, Grading and Filling.

- 1) Prohibition - The extraction or mining of any natural materials from the earth, including soil, sand, gravel, stone, rock, shale and minerals is not a permissible land use in any zoning district in the City of Dunkirk.
- 2) Non-conforming Uses - All existing extraction and mining operations, wherever located in the City of Dunkirk, will become non-conforming uses upon the effective date of this law and will be governed by Article XVI - Non-conforming Uses.

- 3) Stripping of Top Soil - No person, firm or corporation shall strip, excavate or otherwise remove top soil for sale or for use other than on the premises from which the same shall be taken except in connection with the construction or alteration of a building on such premises and excavation or incidental grading.

§ 79-26120 Shopping Centers.

The authorizing agency may authorize the issuance of a permit or permits for the construction of a shopping center in applicable zones provided the center conforms to the following requirements:

- 1) Plan - The proposed development shall be in accordance with a site plan submitted to the City of Dunkirk and approved by the authorizing agency. It shall not be required that the entire development be in a single ownership, built or financed by a single party if satisfactory evidence is shown that all parties financially or otherwise concerned in the development are legally bound to conform to the submitted site plan.
- 2) Vehicular Access - All vehicular entrances and exits upon public roads shall be approved by the proper highway authority and the Director of Public Works.
- 3) Setbacks - No building shall be placed closer to any street or road line than fifty (50) feet or closer to any other property line than two hundred (200) feet. No parking space shall extend nearer to any street or road line than the established building line or closer to any other property line than fifty (50) feet and the boundaries along all side and rear property lines abutting upon a residential district shall be appropriately landscaped and maintained for a depth of not less than fifty (50) feet. Where the shopping center area is directly adjoined by land in a business or industrial district or by a railroad right of way, building may extend to within fifty (50) feet of the property line and automobile parking space may extend to within twenty five (25) feet of the property line.

§ 79-26130 Satellite Television Receiving Antennas.

Satellite television receiving antennas are allowed in any zoning district as an accessory use to any permitted use provided:

- 1) No more than one satellite television receiving antenna is allowed per residential lot;
- 2) In all zoning districts, except residential districts, the roof-mounted satellite television receiving antenna can be no more than ten (10) feet in diameter and must be accompanied by drawings stamped by a licensed engineer

indicating wind load imposed, roof structure design or re-design of roof structure to carry added wind/weight load;

- 3) In residential districts, ground mounted satellite antennas are allowed only in rear yards and shall not be greater than 12 feet in height. Its perimeter shall adhere to all setback requirements set forth in this Chapter;
- 4) In residential districts, roof top mounted satellite antennas shall be prohibited;
- 5) In commercial and industrial districts, satellite antennas shall not be more than twenty five (25) feet above grade. Ground mounted systems in commercial districts shall be screened with appropriate fencing or landscaping indicated in Article XXV - Landscaping Requirements.

§ 79-26140 Solar Efficiency.

To promote and protect the use of solar efficiency in the City of Dunkirk, the following shall apply:

- 1) The placement of structures or modification of existing structures containing solar structures shall be by Special Use Permit. If no protection from adjacent development is sought for a system, then no permit shall be required for the installation unless the floor space is increased. Consideration will be given to locating the structures the furthest distance from adjoining properties, on the southern exposure, which is reasonably possible. This distance shall be a minimum of 100 feet and may be required to more if the slope so dictates.
- 2) The placement of structures, trees, towers, etc. which have the potential of blocking the sun from adjacent solar collectors established by Special Use Permit shall only be allowed by Special Use Permit. The placement of said potential obstruction shall be such that it least interferes with the adjacent solar collectors while still allowing reasonable use of the land.
- 3) If protection is sought, owners of all properties within 200 feet of the property on which the solar collector is to be placed will be notified, in writing, of the intent to place a system in the neighborhood and the possible effects this could have on future development. The date, time and location of the public hearing shall be included in the notification.

§ 79-26150 Swimming Pools.

A private swimming pool installed or maintained as an accessory use in a residential district, shall meet the following requirements:

- 1) The pool shall be used only as an accessory use to a dwelling or to a special permit use in a residence district for the private use of the owner or occupant of such dwelling or building and their family, guests or employees.
- 2) All pools shall be completely enclosed by a security fence not less than four (4) feet in height, with all gates or doors opening through such enclosure equipped with self closing and self latching devices designed to keep, and capable of keeping, such gates or doors securely closed at all times when not in actual use of a type approved by the Housing Building and Zoning Officer.
- 3) Such fence will not be required if:
 - a) buildings more than four (4) feet in height;
 - b) walls or a fence approved by the Zoning Official not less than four (4) feet in height with a self locking gate; or
 - c) any combination of the same;stand as a continuous barrier between the pool and any approach by land to the pool.
- 4) All swimming pools wherein the water level and/or sidewalls are four (4) feet or more above ground level shall not require the installation of a fence. However, if any such pool has a side deck with stairs, solitary stairs, a ladder attached to a slide or other recreational device, a solitary ladder any other means of access to the water, such stairs, ladder or other means of access shall be installed so as to allow their removal when the pool is not in use, thereby preventing access to the pool. All such stairs, ladders or other means of access, after removal from the pool, shall be stored in a place to prevent unauthorized use of the pool.
- 5) All provisions for fences as outlined in Article XXVI - Supplemental Regulations are applicable.
- 6) Such pool shall be maintained in a manner sufficient to meet the bacterial standards established by the provision of the New York State Sanitary Code relating to public swimming pools.
- 7) Pools equipped with an integral filtration system and filter pumps or other mechanical devices which shall be so located and constructed so as not to interfere with the peace, comfort and repose of the occupant of any adjoining property.

§ 79-26160 REGULATION OF TELECOMMUNICATION FACILITIES [Added 7-7-

1998 as L.L. No. 1-1998]

§ 79-26160.01 LEGISLATIVE INTENT.

- 1) The City of Dunkirk recognizes the increased demand for wireless communication transmitting facilities and the need for the services they provide. Often these facilities require the construction of a communication Tower and/or similar facilities. The intent of this local law is to regulate the location, construction, and
 - a) Modification of these facilities in accordance with sound land use planning by minimizing adverse visual effects of Towers and/or similar facilities through careful design, siting, and vegetative screening and/or buffering.
 - b) Avoiding potential damage to adjacent properties from Tower failure or falling debris through engineering and careful siting of Tower structures.
 - c) Maximizing use of any new and/or existing Tower or existing building and/or structure to reduce the number of Towers and/or similar facilities needed in the City.
 - d) Providing for the general health, safety and welfare of the City in and by the regulation of these facilities as such regulation is permitted under applicable Federal and/or State law.
 - e) Accommodating and allowing wireless service providers to meet their service objectives consistent with these regulations and/or other applicable Federal or State law.

§ 79-26160.02 DEFINITIONS.

ACCESSORY STRUCTURE - A non-habitable accessory facility or structure serving or being used in conjunction with communications Tower and/or similar facility or antenna, and located on the same lot as the communications Tower or antenna. Examples of such structures include utility or transmission equipment, regeneration buildings, (underground transmission lines) storage sheds or cabinets.

ANTENNA - A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication services (PSC), and microwave communications.

CO-LOCATED ANTENNAS - Telecommunications facilities that utilize existing

Towers, buildings, or other structures for placement of antennas and do not require construction of a new Tower.

FALL DOWN ZONE - The radius around a Tower within which all portions of the Tower and Antennas would fall in the event of a structural failure of the Tower.

TELECOMMUNICATION FACILITIES - Towers and/or Antennas and accessory structures, including accessory structures related to underground communication services, together used in connection with the provision of cellular telephone service, personal communication services (PCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.

TOWER - A structure designed to support Antennas. It includes without limitation free-standing Towers, guyed Towers, monopoles, and similar structures, which do, or do not, employ camouflage technology.

§ 79-26160.03 TELECOMMUNICATION FACILITY PERMIT REQUIRED.

1. No Telecommunication Facility shall be sited, located, constructed, erected, or modified without the issuance of a permit as prescribed in this Local Law.
2. The Zoning Board of Appeals may waive any provision of this Local Law for Telecommunication Facilities whose total height above ground does not exceed thirty (30) feet.

§ 79-26160.04 ZONING DISTRICTS AND BULK REQUIREMENTS.

1. City or Government owned property, General Industrial and Light Industrial Zoned areas: Site plan application per City of Dunkirk Zoning Ordinance Requirements and §79-26160.05 of this Local Law. If the tower is to be set back in any of these districts less than the height of the proposed tower to any residential district then the application will require a Tower Special Permit per §79-26160.05 and site plan approval. All Towers shall be set back a minimum of 500 feet from any residential dwelling, school or historic structure.
2. Residential, all other districts and Highway Commercial Zoning Districts Site plan review and a Tower Special Permit as forth in Section 5.
3. Towers are prohibited in the open space and Harborfront (H1) Districts.
4. The tower must be set back a minimum of the height of the tower from any residentially zoned property or any front yard line and be a minimum of 500 feet from any residential dwelling, school or historic structure.

5. Towers exceeding 175 feet in height shall be treated as Type I Actions under the State Environmental Quality Review Act (SEQRA).
6. Towers shall not be allowed on any other districts except as specifically set forth herein.

§ 79-26160.05 GENERAL STANDARDS.

1. No permit or renewal thereof or modification of the conditions of a current permit relating to a Telecommunication Facility shall be authorized by the Zoning Board of Appeals unless it finds that such Telecommunication Facility:
 - a) Is necessary to meet current or expected demands for the services supported by the Telecommunications Facility;
 - b) Conforms with all applicable regulations promulgated by the Federal Communications Commission and/or any other applicable State or Federal regulatory agency;
 - b) Is designed and constructed in a manner which minimizes its visual impact. Lighting of area must be kept to a minimum;
 - d) Complies with all other requirements of the Zoning Law of the City;
 - e) Is the most appropriate site within the immediate area for the location of a Telecommunication Facility? It is preferred that Telecommunication Facilities be located on industrial, business, or municipal property and/or co-located;
2. All applicants are required to provide a report which establishes to the satisfaction of Zoning Board of Appeals that the applicant is required to provide service to locations which it is not able to serve through existing facilities which are located either within or outside the City showing the specific locations and/or areas the applicant is seeking to serve.
3. The report shall set forth an inventory of existing facilities and/or structures within or outside of the City which might be utilized or modified in order to provide coverage to the locations applicant is seeking to serve and include a report on the possibilities and opportunities for a co-location as an alternative to a new site.
4. The applicant must demonstrate that the proposed facility cannot be accommodated on any such existing facility or structure either within or outside of the City, due to one or more of the following reasons:

- a) The proposed equipment would exceed the existing and reasonable potential structural capacity of existing facilities or structures within or outside of the City considering existing and planned use for those facilities or structures.
- b) The existing or proposed equipment would cause interference with other existing or proposed equipment, which could not reasonably be mitigated or prevented.
- c) Said existing facilities or structures do not have space on which the proper equipment can be placed so it can function effectively and reasonably and/or the applicant has not been able, following good faith efforts, to reach an agreement with the owner or owners of such facilities or structures.
- e) Other reasons which make it impracticable to locate or place the proposed equipment on said facilities or structures.

§ 79-26160.06 CO-LOCATED ANTENNAS PREFERRED.

- 1. The shared use of existing Telecommunication Facilities or other structures shall be preferred to the construction of new such facilities. Any application for a Telecommunication Facility Permit or renewal thereof or modification of the conditions of a current Telecommunication Facility Permit shall include proof that reasonable efforts have been made to co-locate with an existing Telecommunication Facility or upon an existing structure. The application shall include an adequate inventory report specifying existing Telecommunication Facility sites and structures of height exceeding 75% of the height of the proposed Tower within a one mile radius from the proposed site if the application is for cellular telephone or personal communication use, or a five mile radius for other services and for cellular telephone or personal communication use and outlining opportunities for shared use as an alternative to the proposed location. The application must demonstrate that the proposed Telecommunication Facility cannot be accommodated on all sites in the inventory due to one or more of the reasons set forth in the above Section 79-26160.05.

§ 79-26160.07 SPECIAL PERMIT OR TELECOMMUNICATION FACILITIES TOWERS/ANTENNAS.

- 1. All applicants for Special Use Permit for Telecommunication Facilities Towers and/or Antennas shall make a written application to the Zoning Board of Appeals of the City. This application shall include:
 - a) Tower Special Permit application form, supplied by the City;

- b) Long form Environmental Assessment form (EAF), including but not limited to a Visual EAF Addendum;
- c) Applicable Fees;
- e) Site plan in form and content acceptable to the City, prepared to scale and in sufficient detail and accuracy, showing on a minimum:
 - i) The exact location of the proposed Tower, together with guy wires, guy acres, if applicable;
 - ii) The maximum height of the proposed Tower;
 - iii) A detail of Tower type (monopole, guyed, free-standing, or other);
 - iv) The color or colors of the Tower;
 - v) The location, type, and intensity of any lighting on the Tower;
 - vi) The property boundaries (a copy of a property survey must also be provided);
 - vii) Proof of the landowner's consent if the applicant will not own the property (a copy of a lease agreement must also be provided if the applicant will not own the property);
 - viii) The location of all structures on the property and all structures on any adjacent property within fifty (50) feet of the property lines, together with the distance of these structures to the Tower;
 - ix) Names and addresses of adjacent land owners;
 - x) The location, nature and extent of any proposed fencing, landscaping or screening;
 - xi) The location and nature of proposed utility easements and/or access roads, if applicable;
 - xii) Building elevations of accessory structures or immediately adjacent buildings.
- e) Before and after propagation studies prepared by a qualified radio frequency engineer demonstrating existing signal coverage contrasted with the proposed signal coverage resulting from the

proposed Telecommunication Facility.

- f) A search ring prepared by a qualified radio frequency engineer and overlaid on an appropriate background map demonstrating the area within which the Telecommunications Facility needs to be located in order to provide proper signal strength and coverage to the target area or cell. The applicant must be prepared to explain to the Board why it selected the proposed site, discuss the availability or lack of availability of a suitable site within the search ring, which would have allowed co-located antennas and to what the extent the applicant explored locating the Tower in a more intensive use district. Correspondence with other Telecommunication companies concerning co-location is part of this requirement.
 - g) The applicant must submit a copy of its policy regarding co-location of the proposed Tower with other potential applications. Such policy should allow co-location if new antennas and/or equipment do not or will not exceed structural loading requirements, interfere with Tower space use, or pose any technical or radio frequency interference with existing equipment.
 - h) A report prepared by a New York State licensed professional engineer, which in the case of a Tower describes its height and design, including a cross section of the structure, demonstrates the Tower's compliance with applicable structural standards and describes the Tower's capacity, including the number and type of antennas it can accommodate. In the case of an antenna or antennas mounted on an existing structure, the report shall indicate the existing structures suitability to accept the Antenna and proposed method of affixing the Antenna to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.
 - i) An agreement by the applicant in writing to remove the Telecommunication Facility if such Facility becomes technically obsolete or ceases to be used for its originally intended purpose for twelve (12) consecutive months.
2. Upon receipt of the application materials as set forth in §79-26160.07 above, the Zoning Board of Appeals shall refer the application to the Planning Board. The Planning Board shall review the site plan and recommend changes, if any, to the Zoning Board of Appeals. The Zoning Board of Appeals shall consider the application and approve or deny same in accordance with the procedures and standards set forth in this Local Law and in the Zoning Law.

3. The Zoning Board of Appeals shall determine the application for a Telecommunications Tower Special Use Permit in accordance with their requirements established for determining a Special Use Permit under the City's Zoning Law and under this Local Law. Any and all grants of a Special Use Permit for a Telecommunications Facility under this Local Law shall be non-assignable and non-transferable and shall not run with the land, notwithstanding anything in the General Zoning Laws of the City to the contrary.
4. The applicant, at the time of obtaining a Special Use Permit, must provide a financial security bond with the City as assignee in an amount fixed by the Zoning Board of Appeals, but not less than \$1,000,000. (See §79-26160.09 (1)(a)).
5. The City reserves the right upon review of the application to request reasonable, additional, visual, and aesthetic information it deems appropriate on a case by case basis and as it may pertain to a residential zone, historic district, agricultural use or other special situation.

§ 79-26160.08 TELECOMMUNICATIONS FACILITIES SPECIAL USE PERMIT STANDARDS.

The following criteria will be considered by the City prior to the approval/denial of a request for a Special Use Permit for a Telecommunications Facility. The criteria list that may be used as a basis to impose reasonable conditions upon the applicant.

1. **SITING PREFERENCES:** The City may express a preference that the proposed Telecommunications Facility be located in a higher intensity use district or on higher intensity use property. As a general guideline, the City's preference from most favorable to least favorable districts shall be as follows:
 - a) Property with existing structure suitable for co-location;
 - b) Municipal or government owned property;
 - c) General Industrial and Light Industrial;
 - d) Commercial; and
 - e) Residential.
2. **AESTHETICS:** Telecommunication Facilities shall be located and buffered to the maximum extent practicable and technologically feasible to help insure capability with surrounding land uses. In order to minimize any adverse aesthetic impact on neighboring residents to the extent possible,

the Zoning Board of Appeals may impose conditions on the applicant, including the following:

- a) Tower height, location and design are matters of primary public concern. The City may require a monopole or guyed Tower instead of a free-standing Tower.
- b) The City may require reasonable landscaping consisting of trees or shrubs to screen the base of the Tower, and/or to screen the Tower to the extent possible from the adjacent property. Existing on site trees and vegetation shall be preserved to the maximum extent possible.
- c) All Telecommunications Facilities shall be separated from residential dwellings, schools, houses of worship, places of public assembly, and designated historical sites and/or districts by the greater of 500 feet or five (5) times the height of the Facility. The Zoning Board of Appeals may modify this condition if the Facility is attached to an existing structure or for other satisfactory reasons supported by expert testimony.
- d) Towers shall be designed and sited so as to avoid whenever possible application of FAA lighting and painting requirements. The Towers shall not be artificially lighted except as required by the Federal Aviation Administration or the City. The Towers shall be of a non-reflective finish, color subject to City approval unless otherwise required by the FAA. Any lighting, which may be required by the FAA, shall not consist of strobe lights unless specifically mandated by FAA.
- e) All Permits shall include a fall zone surrounding any support, which fall zone must have a radius of at least equal to the height of such support Tower and any Antenna attached thereto. The entire fall zone may not include public roads, must be on private property, either owned or leased by the applicant, or for which the applicant has obtained an easement. It may not contain any structure other than those associated with the Telecommunication Facilities and may not be located within any set back area established by this Local Law. If the Facility is attached to an existing structure fall-zone requirements may be modified by the Zoning Board of Appeals.
- f) No Tower or device or Facility shall contain any signs or advertising. The City may, however, require appropriate signage indicating ownership of the facility and telephone number to call in case of emergency.

- g) Towers and auxiliary structures shall be surrounded by a fence or wall at least eight (8) feet in height of a design approved by the Board so as to make intrusion difficult. Barbed wire is not to be used in a residential area or on public property unless specifically permitted by the Board. There shall be no permanent climbing pegs within fifteen (15) feet of the ground on any Tower or facility.
- h) All other uses ancillary to the Telecommunications Facility and associated equipment are prohibited unless otherwise permitted in zone.
- i) The City may impose as a condition on the applicant that the Antennas be operated only at FCC designated frequencies on power levels and/or EPA technical exposure limits and that the applicant provide competent documentation to support the maximum allowable frequencies, power levels, and exposure limits will not be exceeded.

§ 79-26160.09 TELECOMMUNICATIONS FACILITIES MAINTENANCE

1. All Telecommunications Facilities, both predating and otherwise, this Local Law shall fulfill the requirements of this section. The City Code Enforcement Officer and/or Building Inspector is empowered to enforce these regulations.
 - a) The sufficiency of the bond for removal shall be confirmed at least every five (5) years by an analysis of the cost of removal and property restoration performed by a licensed New York State professional engineer with the results to be communicated to the City. If the bond amount in force is insufficient to cover the cost of removal, it shall be immediately increased to cover such amount.
 - b) The Facility shall be inspected at least every two (2) years for structural integrity by a New York State licensed professional engineer, and a copy of the inspection report submitted to the City.
 - c) All Telecommunications Facilities shall be maintained in good order and repair and all such work shall comply with all applicable code requirements of any governmental body issuing such rules and/or regulations.
 - d) Any additional Antennas, reception or transmission devices or other similar or transmitting devices proposed for attachment to an existing facility shall require review in accordance with this Local Law. The intent of this requirement is to insure the structural integrity, visual aesthetic and land use compatibility of communication towers upon

which additional Antennas, reception or transmission devices are to be installed.

- e) No outside storage of vehicles, materials or waste shall be allowed except for limited periods when the facility is undergoing construction, repair, or maintenance.

§ 79-26160.10 EXEMPTIONS.

1. Towers and Antennas may be repaired and maintained without restriction.
2. Antennas used solely for residential household television and radio reception are exempt from the provisions of this section, provided they do not exceed thirty (30) feet in height.
3. Other Antennas or devices exempt under FCC rule or regulation.

§ 79-26160.11 VIOLATIONS/PENALTIES.

1. This Local Law is adopted pursuant to the zoning and planning powers granted to the City of the State of New York and other applicable law, rule, and regulation. In the event of any violation of this Local Law or any permit issued hereunder, the City may seek enforcement under any available applicable authority, or as provided in §79-28050.
2. Any applicant, upon receipt of a Special Use Permit for Telecommunication Facilities that does not substantially meet any of the requirements and/or conditions of that permit, shall have its permit revoked and the Telecommunications Facilities removed within ninety (90) days notification by the City of such violation.

§ 79-26160.12 MISCELLANEOUS.

1. In the event of any conflicts or inconsistencies between this Local Law and any other Local Law, Zoning Ordinance, Rule or Regulation, this Local Law is meant to regulate Telecommunication Facilities and is not generally applicable unless otherwise specifically referenced in this Local Law.
2. The term Special Use Permit as used in this Local Law shall be deemed to be a Telecommunication Facilities Special Use Permit.

**Part IV
Administration and Enforcement**

**ARTICLE XXVII
Exceptions and Modifications**

§ 79-27010 Intent.

Because each property is unique and possesses different characteristics, modifications will sometimes be allowed. These exceptions and modifications are granted on an individual basis if the landowner or use meets the requirements set forth in this article.

§ 79-27020 Exceptions to Yard Requirements.

- 1) Front Yard Exceptions - Except as otherwise provided, to protect front yards where special circumstances may arise, the maximum front yard for dwellings in any District shall not exceed the accepted minimum by more than fifteen (15) feet.
- 2) Rear Yard Exceptions for Through Lots - On a through lot where the rear lot line coincides with a street line, a front yard equivalent shall be provided. The rear yard depth requirements in the district regulations shall not apply on that portion of a through lot where the front yard equivalent is required.
- 3) Side Yard Exceptions for Corner Lots - On a corner lot where the rear lot line coincides with a side lot line of an adjoining lot, the required width of the exterior side yard shall be a minimum of twenty five (25) feet; the required width of the interior side yard shall be a minimum of five (5) feet.

§ 79-27030 Exceptions to Area Requirements.

The following are exceptions to area requirements in the City of Dunkirk

- 1) Any lot separately owned and recorded on the Tax Map of the City of Dunkirk at the time of enactment of this law which has a frontage of less than the prescribed number of feet permitted in an applicable district may be used as a building lot if it has sufficient area to permit the required setbacks within such district.

§ 79-27040 Exceptions to Height Limitations.

The following are exceptions to height restrictions in the City of Dunkirk:

- 1) Chimneys, flues, spires and belfries;
- 2) Flagpoles, radio or television antennas, masts or aerials - located on a building and extending not more than twenty (20) feet above the roof of such building;
- 3) Elevator or stair bulkheads - provided that such structures do not occupy more than ten percent (10%) of the roof area;
- 4) Solar energy systems not more than 1/2 story above the roof of such building.

ARTICLE XXVIII
Administration

§ 79-28010 Intent.

The administrative procedures outlined in this Article are designed to assist the City in evaluating specific land uses and their applicability in the City of Dunkirk.

§ 79-28020 Administrative Procedure.

The site plan review and harborfront overlay review are designed to allow the authorizing agency to evaluate specific projects. The review includes consideration for natural site conditions, compatibility with surrounding land uses and the proposed development's conformance with the overall comprehensive plan for the City. The review is intended to minimize potential adverse effects on the health, safety and welfare of local residents.

1) **Site Plan Review**

The City Planning Board, or other authorizing agency, is authorized to review and approve, approve with conditions or disapprove site plans prepared in accordance with such standards outlined in this Chapter.

- a) **Application** - Application for Site Plan Review shall be made to the Planning Board on a form provided by the City Building Department and shall be accompanied by a fee as set by the City Council.
- b) **Sketch Plan** - A sketch plan conference shall be held between staff and the applicant prior to the preparation and submission of a formal site plan to the authorizing agency. Preparing a sketch plan offers an opportunity for the applicant to determine the issues and satisfy staff that the site plan is in conformance with the comprehensive plan and Zoning Law. The conference also enables staff to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required on the site plan. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant shall submit a preliminary sketch of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the sketch plan conference to avoid possible future delays. The preliminary sketch plan should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans.

- c) **Preliminary Site Plan** - As required in this Chapter, an application for site plan approval shall be made, in writing, to the Chairperson of the Planning Board, or other authorizing agency, and shall be accompanied by a preliminary site plan as outlined in Article XVII - Site Plan Review. The plan shall be reviewed by the authorizing

agency that shall approve, approve with conditions or disapprove the preliminary site plan.

- d) **Public Hearing** - After reviewing the preliminary site plan and recommendations from other involved City or County agencies, the authorizing agency shall hold a public hearing. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.
- e) **Final Site Plan** - A final site plan shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the staff or the authorizing agency. The final site plan shall conform to all requirements of Article XVII - Site Plan Review. The application for final site plan approval shall be made within six (6) months from the date of the preliminary approval. An extension may be granted if agreed to by both the applicant and Planning Board.
- f) **Planning Board Action** - Within sixty-two (62) days of receipt of the complete application for final site plan approval, the Planning Board, or other authorizing agency, shall render a decision of approval,

conditional approval or disapproval. This time period may be extended by mutual consent of the applicant and the authorizing agency.

- i) **Approval** - Upon approval, the authorizing agency shall endorse its approval on a copy of the site plan and shall immediately file it with a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
 - ii) **Conditional Approval** - The authorizing agency may conditionally approve the site plan. Upon adequate demonstration by the applicant that all conditions have been met, the authorizing agency shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
 - iii) **Disapproval** - Upon disapproval of the site plan, the decision of the authorizing agency shall immediately be filed with the City Clerk and a copy mailed to the applicant
- g) **Reimbursable Costs** - Costs incurred by the authorizing agency for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.

2) **H-1 Central Harborfront Overlay Review**

The City Council is authorized to review and approve, approve with conditions or disapprove site plans prepared in accordance with such standards outlined in this Chapter for projects proposed in the H-1 Overlay District.

The City Council shall follow the procedure outlined in Article XVII - Site Plan Review in reviewing projects proposed in the H-1 Central Harborfront Overlay District.

As part of the approval process, within forty-five (45) days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Harbor Commission and Planning Board for review. The Harbor Commission shall make recommendations to the Planning Board, which shall make recommendations to the City Council within forty-five (45) days. This time period may be extended by mutual consent of the applicant, City Council, the Planning Board and the Harbor Commission. The Planning Board and Harbor Commission may recommend:

- a) **Approval**
- b) **Conditional Approval**
- c) **Disapproval**

To override the recommendation of the Planning Board, Council must obtain a majority vote of the entire Council.

3) **H-2 Harborfront Overlay Review**

The City Planning Board is authorized to review and approve, approve with conditions or disapprove site plans prepared in accordance with such standards outlined in this Chapter for projects proposed in the H-2 Overlay District.

The Planning Board shall follow the procedure outlined in Article XVII - Site Plan Review for site plan review in the H-2 Harborfront Overlay District.

As part of the approval process, within forty-five (45) days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Harbor Commission for review. The Harbor Commission shall review the site plan and make recommendations on the project to the Planning Board within forty-five (45) days. This time period may be extended by mutual consent of the applicant, the Planning Board and the

Harbor Commission. The Harbor Commission may recommend:

- a) **Approval**
 - b) **Conditional Approval**
 - c) **Disapproval**
- 4) **Use and Area Variance Review**

The City Zoning Board of Appeals is authorized to review and approve, approve with conditions or disapprove area and use variances prepared in accordance with the standards outlined in this Chapter.

- a) **Application** - Application for variances shall be made to the Zoning Board of Appeals on a form provided by the City Building Department and shall be accompanied by a fee as set by the City Council.

- b) **Staff Review** - A staff review shall be held between staff and the applicant prior to the preparation and submission of a formal application to the authorizing agency. Preliminary consultation offers an opportunity for the applicant to determine the issues and satisfy staff that the application is complete and in conformance with the comprehensive plan and Zoning Law. The conference also enables staff to review the basic variance requested, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required for the application. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant shall submit a preliminary application of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the preliminary review to avoid possible future delays. The preliminary application should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans. A description of the variance sought shall also be outlined in the application.

- c) **Preliminary Review** - As required in this Chapter, an application for variance approval shall be made, in writing, to the Chairperson of the Zoning Board of Appeals through the Building Department and shall be accompanied by a preliminary application.
- d) **Public Hearing** - After reviewing the preliminary application and recommendations from other involved City or County agencies, the Zoning Board of Appeals shall hold a public hearing. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.
- e) **Final Review** - A final review shall incorporate any revisions or other features recommended by the staff or the Zoning Board of Appeals. The application for final approval shall be made within six (6) months from the date of the preliminary review.
- f) **Zoning Board of Appeals Action** - Within sixty two (62) days of receipt of the complete application for final approval of the variance, the Zoning Board of Appeals, shall render a decision of approval, conditional approval or disapproval. This time period may be extended by mutual consent of the applicant and the authorizing

agency.

- i) **Approval** - Upon approval, the Zoning Board of Appeals shall endorse its approval on a copy of the variance application and shall immediately file it with a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.

- ii) **Conditional Approval** - The Zoning Board of Appeals may conditionally approve the variance. Upon adequate demonstration by the applicant that all conditions have been or shall be met, the Zoning Board of Appeals shall endorse its approval on a copy of the application and shall immediately file it and a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
- iii) **Disapproval** - Upon disapproval of the variance, the decision of the Zoning Board of Appeals shall immediately be filed with the City Clerk and a copy mailed to the applicant

- g) **Reimbursable Costs** - Costs incurred by the Zoning Board of Appeals for consultation fees or other extraordinary expense in connection with the review of a proposed variance shall be charged to the applicant.
- h) **Appeals** - Procedures relative to appeal for administrative review, variance or application for a variance shall include:
 - i) Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of the City may apply to the Supreme Court for relief by a proceeding under Article 78 of the CPLR. The process must be instituted within thirty (30) days after filing of a decision in the office of the City Clerk.
 - ii) Costs shall not be allowed against the Zoning Board of Appeals unless it shall appear to the Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

5) Special Permit Review

The City Zoning Board of Appeals is authorized to review and approve, approve with conditions or disapprove special permit applications prepared in accordance with such standards outlined in this Chapter.

- a) **Application** - Application for Special Permits shall be made to the Zoning Board of Appeals on a form provided by the City Building Department and shall be accompanied by a fee as set by the City Council.
- b) **Sketch Plan** - A sketch plan conference shall be held between staff and the applicant prior to the preparation and submission of a formal special permit application to the authorizing agency. Preparing a sketch plan offers an opportunity for the applicant to determine the issues and satisfy staff that the special permit is in conformance with the comprehensive plan and Zoning Law. The conference also enables staff to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required on the site plan. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant shall submit a preliminary sketch of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the sketch plan conference to avoid possible future delays. The preliminary sketch plan should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans.

- c) Preliminary Special Permit and Site Plan - As required in this Chapter, an application for special permits shall be made, in writing, to the Chairperson of the Zoning Board of Appeals and shall be accompanied by a preliminary site plan as outlined in Article XVIII - Special Permits. The permit application and plan shall be reviewed by the Zoning Board of Appeals who shall approve, approve with conditions or disapprove the preliminary special permit application.

As part of the approval process, within forty-five (45) days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Planning Board for review. The Planning Board shall make recommendations to the Zoning Board of Appeals within forty-five (45) days. This time period may be extended by mutual consent of the applicant, the Planning Board and the Zoning Board of Appeals.

- d) Public Hearing - After reviewing the preliminary special permit

application, site plan and recommendations from other involved City or County agencies, the Zoning Board of Appeals shall hold a public hearing. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.

- e) Final Special Permit and Site Plan - A final site plan for the special permit application shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the staff or the Zoning Board of Appeals. The final site plan shall conform to all requirements of Article XVII - Site Plan Review. The application for final special permit approval shall be made within six (6) months from the date of the preliminary approval.
- f) Zoning Board of Appeals Action - Within sixty-two (62) days of receipt of the complete application for final special permit approval, the Zoning Board of Appeals shall render a decision of approval, conditional approval or disapproval. This time period may be extended by mutual consent of the applicant and the authorizing agency.
 - i) Approval - Upon approval, the Zoning Board of Appeals shall endorse its approval on a copy of the site plan and shall immediately file it with a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
 - ii) Conditional Approval - The Zoning Board of Appeals may conditionally approve the special permit. Upon adequate demonstration by the applicant that all conditions have been met, the Zoning Board of Appeals shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
 - iii) Disapproval - Upon disapproval of the special permit, the decision of the Zoning Board of Appeals shall immediately be filed with the City Clerk and a copy mailed to the applicant
- g) Reimbursable Costs - Costs incurred by the Zoning Board of Appeals for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged

to the applicant.

§ 79-28030 Planning Board.

- 1) Establishment - The City of Dunkirk, pursuant to its City Charter, has established the City of Dunkirk Planning Board. Efforts will be made to ensure qualified members of the Planning Board represent a variety of ethnic, professional and civic groups in the City of Dunkirk.

The City Council in the City of Dunkirk may adopt attendance and training requirements for members of the Planning Board. These requirements shall be adhered to by all members of the City of Dunkirk Planning Board.

- 2) Membership

- a) The Planning Board shall consist of five members, no more than two of which shall hold any other public office or position in the City of Dunkirk, and none of which may be members of the City of Dunkirk Common Council.
- b) The members of the Planning Board shall be appointed by the Mayor. Terms of membership shall be three (3) years.
- c) Members of the Planning Board, appointed in accordance with the provisions of this Chapter as then in effect and in office when this Chapter takes effect shall continue to serve for the balance of the terms for which they were originally appointed and until their successors have been appointed and qualified.

- 3) Powers and Duties

- a) The Planning Board shall have full power and authority to make such investigations, maps and reports and recommendations relating to the planning and development of the City or other matters as referred to said Board by either the Mayor or Common Council or governing body having the authority.
- b) Matters referred to the Board by the City Council shall be placed on the agenda for consideration and action at the first meeting of the Board after such reference.
- c) The Planning Board shall, upon approval by City Council, have the power and authority to employ experts and a staff and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all, the appropriation, if any, that may be made for such Board.

- d) The Planning Board shall have the power to act on any matter on which the Planning Board is required or authorized to act by the provisions of the City of Dunkirk City Charter, any ordinance of the City, by general law or any actions of the City Council.
- 4) Quorum - A majority of the members of the Board shall constitute a quorum for the transaction of business.
- 5) Meeting Schedule - Regular meetings of the Planning Board shall be held on the first Monday of the month or as scheduled by the Planning Board for its convenience. Meetings will be convened in the second floor conference room at City Hall.
- 6) Annual Meetings - The Planning Board shall hold its annual organization meeting at the regular meeting following the appointment of new Planning Board member by the City Council. At the organization meeting, a chairperson and a vice-chairperson shall be elected by a majority of the members present. A recording secretary shall also be appointed at this meeting.
- 7) Notice - Notices of the meetings and agendas shall be mailed to all members and postmarked at least 48 hours (excluding Saturdays, Sundays and holidays) prior to the meeting.
- 8) Duties of the Chairperson
 - a) At all special meetings, only such business as shall have been specified in the call for such special meetings shall be considered. No official business shall be conducted at special meetings in the absence of a quorum.
 - b) The chairperson shall preside at all meetings of the Board and shall have a vote upon all questions brought before the Board.
 - c) The chairperson shall sign all documents and correspondence of the Board.
 - d) No member may serve more than two (2) consecutive terms as chairperson.
- 9) Duties of the Vice chairperson

- a) In the event of the absence or illness of the chairperson, the vice-chairperson shall preside and shall exercise all the authority vested in the chairperson. In the event of the absence of both chairperson and vice chairperson at the regular or special meeting, the secretary of the Board shall call the meeting to order, and the Board shall elect a chairperson of the Board pro tem.
- b) The vice-chairperson shall succeed the chairperson if the office is vacated before the term is completed. The vice-chairperson shall serve the un-expired term of the vacated office. A new vice chairperson shall be elected at the next regular meeting.

10) Duties of the Recording Secretary

- a) The secretary shall be responsible for keeping minutes of all proceedings of the Board and shall see to the proper and correct filing of all books, papers and recommendations placed in their care. The secretary shall relay to the City Council, and all actions of the Planning Board, as required by the Zoning Law, along with the reasons for such action as expressed by the members of the Planning Board.
- b) The secretary shall be responsible for calling special meetings of the Board upon receiving a request from the chairperson or a written request by a majority of the Board to call a special meeting. Special meetings shall be called by giving a written notice of said meeting to each Board Member; the purpose of the meeting shall be outlined in the written notice. Said notice shall be mailed to the members of the Board and be postmarked at least 48 hours, excluding Saturdays, Sundays and holidays, prior to the time of the meeting. Special meeting of the Board, as ordered by the City Council, shall be the only exception to this ruling.

11) Duties of the Director of Development

- a) The Director of Development shall handle funds allocated to the Board in accordance with its directions, the law and the City regulations.
- b) The Director of Development shall advise and guide the Board in its operation and shall act as its agent in performing the planning function.

12) Rules of Order

- a) Roberts Rules of Order shall be the parliamentary guide for all meetings of the Board. Said rules of order shall consist of roll call, public participation (discretion of the chairperson at the onset of the meeting), approval of minutes, communications, old business, new business, report of Director of Development, report of committees or assigned delegates and miscellaneous matters.
- b) Any member of the Board shall be allowed to call an aye or nay vote. Any member of the Planning Board who believes they have a conflict of interest on any matter on the Planning Board agenda shall voluntarily excuse themselves from discussion and voting on the matter.
- c) All resolutions brought before the Board shall be submitted to the secretary, in writing, and all communications to the Board or its officers shall be filed with the secretary.
- d) No committees or designated representatives of the Board shall exercise any authority except under the specific direction of the Board.

13) Miscellaneous

- a) No rule of the Board shall be suspended except by a majority of the members present.
- b) Any member of the City of Dunkirk Planning Board may, at any reasonable time, examine the records of the secretary of the Board.
- c) Amendments to these rules or laws may be made at any regular meeting by the unanimous consent of the entire Board or by a majority vote of the members present and voting at a regular meeting.

§ 79-28040 Zoning Board of Appeals.

- 1) Establishment - The City of Dunkirk Zoning Board of Appeals is established
- 2) Membership
 - a) The Zoning Board of Appeals shall consist of five (5) members. The Mayor shall appoint the members of the Zoning Board of Appeals.

- b) No person who is a member of the Common Council in the City of Dunkirk and no member of the Planning Board of the City of Dunkirk shall be eligible for appointment to the Zoning Board of Appeals.
 - c) Members of the Zoning Board of Appeals, who have been appointed in accordance with the provisions of this Chapter as then in effect and in office when this Chapter takes effect shall continue to serve for the balance of the terms for which they were originally appointed and until their successors have been appointed and qualified.
 - d) Vacancies shall be filled by the Mayor. If vacancies shall occur other than by the expiration of a term, they shall be filled by appointment for the unexpired term.
- 3) Powers and Duties
- a) Interpretation - Upon appeal from a decision by an administrative official, the Zoning Board of Appeals shall decide any question involving interpretation of any provisions of this local law. Such appeal shall be initiated within sixty (60) days of the adverse decision.
 - b) Special Permits - The Zoning Board of Appeals shall hear and decide all applications for Special Permits in the City of Dunkirk. The special permit process shall conform to the Site Plan review process outlined in Article XVII -Site Plan Review.
 - c) Variances - On an appeal from an order, requirement, decision or determination of any administrative official charged with the enforcement of this local law, where it is alleged by the appellant that there are practical difficulties or unnecessary hardships in the way of carrying out the strict application of any provision of this local law, the Zoning Board of Appeals may grant a variance in the strict application of such provision, in accordance with the following:
 - i) Use Variance - Before the Zoning Board of Appeals may grant a use variance, unnecessary hardship must be established based upon all of the following criteria:
 - The applicant can not realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

- The requested use variance, if granted, will not alter the essential character of the neighborhood and;
 - The alleged hardship has not been self-created.
- ii) Area Variance - Area variances may be considered where setback, frontage, lot size, density or yard requirements of this local law cannot be reasonably met. The Zoning Board of Appeals may grant an area variance on the ground of practical difficulty, such practical difficulty to be determined by consideration of the following:
- 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;
 - Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - Whether the requested area variance is substantial;
 - Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and;
 - Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision to the City of Dunkirk Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- iii) Conditions - No variance under the above provisions shall be authorized by the Zoning Board of Appeals unless it finds that such variance:
- Will be in harmony with the general purposes and intent of this law, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with it and the size of the site in respect to streets giving access;
 - Will not tend to depreciate the value of adjacent property, taking into account the possibility of screening or other protective measures to protect

adjacent properties;

- Will not create a hazard to health, safety or general welfare;
 - Will not alter the essential character of or be detrimental to the neighborhood;
 - Is the minimum necessary to afford relief.
- 4) Quorum - A majority of the members of the Zoning Board of Appeals shall constitute a quorum.
 - 5) Meeting Schedule - The Zoning Board of Appeals shall meet on the fourth Tuesday of each month. All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals may determine. All meetings of the Zoning Board of Appeals shall be open to the public.
 - 6) Chairperson - The Mayor shall choose the Chairperson of the Zoning Board of Appeals.
 - 7) Minutes
 - a) The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact.
 - b) The Zoning Board of Appeals shall also keep records of the examination and other official actions. Every rule, regulation, every amendment or repeal and every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Housing, Building and Zoning Officer and shall become public record.
 - 8) Interpretation of Permitted Uses - When a use is not specifically listed as a "Permitted Use", "Permitted Use with Site Plan Review" or "Permitted Use with Special Permit" within any zoning district, it shall be assumed to be a prohibited use unless it is determined, in a written decision by the Zoning Board of Appeals, that said use is similar to permitted uses, meets the intent specified in the zoning ordinance and is not inherently a nuisance, menace or danger to the health, safety or welfare of the residents of the municipality.

§ 79-28050 Penalties for Violation.

- 1) Complaints of Violations - Whenever a violation of this local law occurs, any person may file a complaint, in writing. All such complaints must be filed with the Building Inspector who shall properly record such complaint and immediately investigate and report to the City Council.
- 2) Penalties for Violation - Any person who violates any provision of this local law, or any regulation adopted, is guilty of an offence punishable by a fine not exceeding one hundred (\$100) dollars for each violation. Each daily continued violation shall constitute a separate violation.

**ARTICLE XXIX
Amendments**

§ 79-29010 Intent.

The regulations, restrictions and boundaries established by this Chapter may, from time to time, be amended, supplemented, changed or repealed to meet the growing and changing needs of the City of Dunkirk. This article outlines the procedure to make these amendments.

§ 79-29020 Authorization.

The City Council may, subject to the provisions and restrictions contained in this Article, from time to time on its own motion, on petition or on recommendation of the Planning Board, by amendment, supplement, repeal or change the regulations and provisions of this law. All such changes to this law shall be made in accordance with applicable law. Any proposed change shall be submitted to the Planning Board for report and recommendation prior to any action by the City Council. If the Planning Board recommends against the enactment of any proposed change, it shall become effective only by a majority vote of the City Council.

§ 79-29030 Submissions.

In the case of a proposed amendment, the Planning Board or City Council shall require the petitioner to submit a development plan showing the extent, location and character of proposed structures and uses. The Planning Board or City Council may require that the development plan be modified to meet municipal or public concerns. No building permit or zoning permit shall be issued for any property within the area described by said amendment, except in accordance with the approved development plan including any conditions and limitations imposed by the Planning Board or City Council.

§ 79-29040 Procedure.

- 1) Filing of petition - A petition to amend, change or supplement the text of this local law or any zoning district, as designated on the zoning map shall be filed with the Clerk on forms obtained from the Building Department and transmitted to City Council. The project's status under the State Environmental Quality Review Act shall be determined at this time.
- 2) Referral to Planning Board - Each proposed amendment, except those initiated by the City Planning Board, shall be referred to the City Planning Board for an advisory report prior to the public hearing held by the City Council.
- 3) Public Hearing - The City Council shall hold a public hearing for the proposed amendment. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet of the property line. The hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.
- 4) The City Council shall act on the rezoning application within 62 days of the

Planning Board's recommendation. Approval of the rezoning shall be noted on the Zoning Map of the City of Dunkirk.

ARTICLE XXX
Definitions

§ 79-30010 Usage.

Except where specifically defined, all words used in this Chapter shall carry their customary meanings. The following rules shall apply to the text of this Chapter:

- 1) words in the present tense include the future;
- 2) words in the singular include the plural and the plural the singular;
- 3) the word "shall" is intended to be mandatory;
- 4) the word "lot" shall include the word "plot" or "parcel";

- 5) the word "person" shall include an individual, firm or corporation;
- 6) the words "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied";
- 7) a building or structure includes any part;
- 8) the word "and" indicates that all connected items, conditions, provisions or events shall apply;
- 9) the word "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination;
- 10) The words "either/or" indicates that the connected items, conditions, provisions or events may apply singly but not in any combination.

Any question as to the precise meaning of any word used in this law may be appealed to the Zoning Board of Appeals and clarified under their powers of interpretation.

§ 79-30020 Definitions.

For the purpose of this Chapter, certain terms or words used shall be interpreted or defined as follows:

Accessory Use - A use customarily incidental and subordinate to the main use or building and located on the same lot. In no case shall such accessory use dominate, in area, extent or purpose, the principal lawful use or building.

Accessory Apartment - An apartment in a single family dwelling that is clearly subordinate to the primary use of the dwelling as a residence for a single family.

Accessory Building - A subordinate building located on the same lot with the main building, occupied by or devoted to an accessory use. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Accessory Structure - A non-habitable accessory facility or structure serving or being used in conjunction with communications Tower and/or similar facility or antenna, and located on the same lot as the communications Tower or antenna. Examples of such structures include utility or transmission equipment, regeneration buildings, (underground transmission lines) storage sheds or cabinets. **[Added 7-7-1998 as L.L. No. 1-1998]**

Adult Book/Video/Media Store - An establishment having as its stock-in-trade, books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined below, or an establishment with a segment or section devoted to the sale or display of such material.

Adult Entertainment Facilities - Means and refers to "adult news-racks", "adult book stores" and "adult motion picture theaters".

Adult Motion Picture/Video Theater - An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by persons within the use.

Specified Sexual Activities -

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

Specified Anatomical Areas -

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the areola;
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Adult Newsrack - Any coin operated machine or device which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to the "specified sexual activities" or "specified anatomical areas" defined in this Article.

Alley - A public way having a right-of-way width of twenty (20) feet or less.

Ancillary Use - Uses clearly subordinate to the primary or principal use on a lot.

Antenna - A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication services (PSC), and microwave communications. **[Added 7-1-1998 as L.L. No. 1-1998]**

Co-Located Antennas - Telecommunications facilities which utilize existing Towers, buildings, or other structures for placement of antennas and do not require construction of a new Tower. **[Added 7-1-1998 as L.L. No. 1-1998]**

Area, Land - When referring to the required area per dwelling unit, net land area, the area exclusive of street and other public open space.

Area, Total Floor - The area of all floors of a building, including finished attics, finished basements and covered porches.

Autobody Repair Station - A business premises designed and used for the repair or refinishing of motor vehicles including painting and body work.

Automatic Coin Laundry and/or Dry Cleaner - A business premises equipped with individual clothes washing and/or cleaning machines for the repair, brake work, muffler replacement, tire repair or similar activities.

Automobile or Trailer Sales Area - An open area, other than a street or public place, used for the display, barter, purchase, sale or rental of new or used motor vehicles or trailers and where no repair work is done, except minor incidental repair of vehicles to be displayed, sold or rented on the premises.

Automobile Service Station - See Automobile Repair Station.

Automobile Wash - An establishment for the washing of motor vehicles as a principal use.

Automobile Wrecking - The dismantling or wrecking of used automobiles or the storage, sale or dumping of dismantled, partially dismantled or wrecked vehicles or their parts.

Base Flood - The flood having a one percent chance of being equalled or exceeded in any given area (also called the 100 year flood). (Applicable to Flood Damage Prevention Regulations Only)

Basement - That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.

Bed and Breakfast - A house, or portion, where short-term lodging rooms and breakfast are provided. The operator of the bed and breakfast shall live on the premises or in adjacent premises.

Billboard or Signboard - Any structure, or portion, situated on private premises, on which lettered, figured or pictorial matter is displayed for advertising purposes other than the name and occupation of the user of such premises or the nature of

the business conducted on the such premises or the products primarily sold or manufactured, or any such structure or portion, the area of which, devoted to advertising purposes, exceeds one hundred (100) square feet.

Boarding or Rooming House - A dwelling, other than a hotel or lodging house, where meals or housing accommodations for five (5) or more persons are provided. This definition shall not be construed to affect local and state licensing provisions.

Building - Any structure having a roof supported by columns or walls. When such a structure is divided into separate parts by one (1) or more un-pierced walls extending from the ground up, each such part shall be deemed to be a separate building, except as regards requirements for side yards as before provided. Garages attached with an un-pierced wall shall not be deemed as a separate building.

Building, Alteration Of - Any change in supporting members of a building, except such changes as may be required for its safety, any addition to a building, any change in use from one district classification to another, or removal of a building from one location to another.

Building, Floor Area - The sum of the gross horizontal area of the several floors, including the basement of a building and its accessory buildings on the same lot and including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Building, Height Of - The vertical distance measured from the mean of the highest and lowest exposed part of the foundation to the highest point of the roof.

Building, Principal - A building including covered porches, in which is conducted the principal use of the lot on which it is situated. In any residence district, any dwelling shall be deemed the principal building on the lot on which the same is situated.

Bulk Storage - The storage of chemicals, petroleum products and other materials in containers for subsequent resale to distributors or retail dealers or outlets.

Camp Trailer - A vehicle designed to be towed by an automobile that includes, but is not limited to, sleeping and eating facilities.

Cellar - That space of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.

Cemetery - Land used or intended to be used for the disposition and

memorialization of dead human beings and dedicated for cemetery purposes, including columbarium, crematories, mausoleums and mortuaries when operated with, and within, the boundary of such cemetery.

Center Line of Street or Road - A line midway between and parallel to two (2) street or property lines or as otherwise defined by the Planning Board.

Church - See Religious Institution.

Clinic, Dental - A structure designed for the practice of dentistry, in which nonresident patients are treated.

Clinic, Medical - A structure designed for the practice of medicine, in which nonresident patients are treated.

Club, Private - A social organization whose premises are restricted to its members and their guests.

Clubhouse - A building to house a club or social organization not conducted for profit and which is not adjunct to, or operated by, or in connection with, the public tavern, cafe or other public place.

Cluster Development - A form of development for residential development that permits a reduction in lot area requirements, provided there is no increase in the number of lots permitted under a conventional development and the resultant land area is devoted to open space.

Commercial Use - Activity carried out for monetary gain.

Convenience Store - A small shop or store (less than 5,000 square feet) offering for sale pre-packaged food products, household items and other goods commonly associated with the same; such use shall not include gas islands or service.

Court - An unoccupied open space, other than a yard. An outer "court" is one that extends to the street or to the front or rear yard. An inner "court" is any other "court".

Development - Any person made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, minimizing, dredging, filling, grading, paving, excavation or drilling operations. (Applicable to Flood Damage Prevention Regulations Only)

Drive-In Business - Includes drive-in outdoor theaters, refreshment stands, banks and the like where patrons enter the premises and are served or entertained in automobiles. Deposit and pick-up services shall not be considered drive-in businesses as defined.

Dwelling - A building, or portion, designed or used exclusively as the residence or sleeping place of one (1) or more persons. The word dwelling shall not include boarding houses or rooming houses, tourist homes, motels, hotels or other structures designed for transient residence.

Dwelling Unit - One (1) or more rooms designed for occupancy for cooking, living and sleeping purposes.

Dwelling, Single Family - A building containing one (1) dwelling unit and designed or used exclusively for occupancy by one (1) family.

Dwelling, Two Family - A building containing two (2) dwelling units and designed or used exclusively for occupancy by two (2) families living independently of each other or two (2) one family dwellings having a party wall in common.

Dwelling, Multi Family - A building, or portion, containing three (3) or more dwelling units and designed or used for occupancy by three (3) or more families living independently of each other.

Dwelling, Single Family Attached - A building containing dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as townhouse, row or group homes.

Dwelling, Single Family Detached - A dwelling having no party wall in common with another building.

Dwelling, Semi-Detached - A detached building containing two (2) dwelling units separated by a party wall, each having one (1) side yard.

Educational Institution - An accredited college or university giving general academic instruction. Included within this term are areas or structures used for administration, housing of students and faculty, dining halls, social or athletic activities, when located on the institution's land that is not detached from land where classroom facilities are maintained.

Essential Facilities - The operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment, storage and transmission facilities, pumping stations or similar facilities.

Exotic Cabaret - An establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar

entertainers and where the sale of beer or intoxicating liquor for consumption on the premises is permitted.

Factory - A building or group of buildings, usually with equipment, where goods are manufactured.

Fall Down Zone - The radius around a Tower within which all portions of the Tower and antennas would fall in the event of a structural failure of the Tower. **[Added 7-1-1998 as L.L. No. 1-1998]**

Family - One (1) or more persons living together in one (1) dwelling unit and maintaining a common household, including domestic servants and gratuitous guests, together with boarders, roomers or lodgers not in excess of four (4) unrelated persons occupying a dwelling unit and living together as a single housekeeping unit.

Farm - Any parcel of land containing at least five (5) acres which is used in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used. It excludes fur farms, commercial stables and dog kennels.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from:

- 1) the overflow of floodwater;
- 2) the unusual and rapid accumulation or runoff of surface waters from any source;
- 3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which result in flooding as defined in this definition. (Applicable to Flood Damage Prevention Regulations Only).

Flood Insurance Rate Map - The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of special flood hazards, the floodway and the risk premium zones applicable to the community. (Applicable to Flood Damage Prevention Regulations Only)

Floodplain or Flood - Prone Area - Any land area susceptible to being inundated by water from any source. (Applicable to Flood Damage Prevention Regulations)

Only)

Floor Area - See Area, Total Floor.

Floor Area Ratio - The floor area of a building divided by the area of the lot which it occupies.

Fraternity or Sorority House - A dwelling maintained exclusively for members of the fraternity or sorority enrolled in, or employed by, an academic college or university.

Garage, Private - A detached accessory building or portion of a main building, used by the occupants of the premises, used exclusively for the parking or temporary storage of motor vehicles.

Garage, Public - A structure, or portion, other than a private garage, used for the parking or temporary storage of vehicles or trailers.

Gas Station - Any premises where gasoline and other petroleum products are sold. This use will also include premises where light maintenance activities such as engine tune ups, lubrication, minor repairs or carburettor cleaning are conducted.

Grade, Established - The elevation of the center line of the streets as officially established by the Director of Public Works.

Grade, Finished - The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs.

Gross Leasable Area - The total floor area for which the tenant pays rent and which is designed for the tenant's occupancy and exclusive use.

Home Occupation - An occupation for gain or support conducted only by members of a family residing in the premises and conducted entirely within the dwelling provided that no article is sold or offered for sale, except as such may be produced by members of the immediate family on the premises. Customary home occupation shall not be construed to include those which require the presence of the customer on the premises for the performance of the occupation, or those which require the presence in the home of noxious machinery or equipment normally associated with commercial or industrial activities. Home occupations may include, but not be limited to, the office of a resident member of a learned profession, real estate, insurance sales, offices of brokers, musicians, dressmakers, hair dressers and tailors.

Hospital - An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanatorium and shall be

limited to the treatment or other care of humans.

Hospital, Animal or Veterinary Clinic - An establishment for temporary occupation by sick or injured animals for the purpose of medical diagnosis and treatment and shall exclude the treatment or other care of humans.

Hotel - A dwelling containing twelve (12) or more sleeping rooms in which lodging is provided and offered to the public for compensation. This definition shall not be construed to affect local or state licensing provisions.

Industry - Includes the entire range of economic activity, and, as applied to specifics, i.e., manufacturing, wholesale, retail, services, etc., shall have the meaning set forth in the Standard Industrial Classification Manual, published by the Executive Office of the President, Bureau of Management and Budget - 1988.

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

- 1) Two or more junk vehicles;
- 2) Two or more abandoned mobile homes or recreational camping vehicles;
- 3) Two or more abandoned all-terrain vehicles or snowmobiles (as defined in the New York State Vehicle and Traffic Law);
- 4) Five or more inoperable appliances including, but not limited to, lawn and garden machines, washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions,
- 5) Five and more inoperable pieces of equipment;
- 6) Collection and storage of any second-hand or used material which, taken together, equal in bulk volume of 2000 cubic feet or more;
- 7) Any combination of the above that totals five items.

This definition shall not be construed to include the on-premise storage and maintenance of motor vehicles, machinery and equipment used in the business of farming, logging or contracting. This definition shall not be construed to include the indoor parking and storage of motor vehicles in connection with a New York State licensed new and/or used car business or a bona fide motor vehicle repair business and the parking of no more than ten vehicles in the process of waiting for repairs.

Junk Storage Area - The area of any parcel of land intended to be used for the placement or storage of junk.

Junk Vehicle - Any motor vehicle, whether automobile, bus, trailer, truck, tractor, motor home, motorcycle, mini-bike or snowmobile, or any other device originally intended for travel on the public highways, which meets any of the following conditions:

- 1) Its registration has expired and;
- 2) It is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled or;
- 3) It is not in any condition for legal use upon the public highway.

With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more than six months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk vehicle.

Kennel - Any place in or at which four (4) or more dogs are kept for the purpose of sale, or in connection with boarding care or breeding, for which any fee is charged.

Lodging House - A dwelling, other than a hotel, where housing accommodations for five (5) or more persons are provided for hire for less than a week at one (1) time. This definition shall not be construed to affect local or state licensing provisions.

Lowest Floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistance enclosure, useable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Article. (Applicable to Flood Damage Prevention Regulations Only)

Lot - A designated parcel or tract of land established by plat, subdivision or as otherwise permitted by law, to be used, developed or built upon as a unit.

Corner Lot - A parcel of land at the junction of and fronting on two or more intersecting streets.

Interior Lot - A lot other than a corner lot.

Through Lot - An interior lot having frontage on two parallel or approximately parallel streets.

Lot Depth - The mean horizontal distance between the front and rear lot

lines.

Lot Frontage - The length of the front lot line measured at the road line.

Lot Frontage On Circular Roads - The length of the line measured by a line 15 feet back from and parallel to the chord of the lot frontage; the chord of the lot frontage is the straight line joining the two (2) points where the side lot lines intersect the front lot line.

Lot Line - A line of record bounding a lot which divides one lot from another lot or from a public or private road or any other public space.

Lot Of Record - A lot for which a valid conveyance has been recorded in the Office of the County Clerk prior to the effective date of the City of Dunkirk Subdivision Law of the City of Dunkirk City Code, or is either part of a subdivision plat approved by the Planning Board and filed in the County Clerk's office, or was exempt from the City of Dunkirk Subdivision Regulations at the time of recording with the County Clerk.

Lot Area - The total area within the lot lines of a lot, excluding any road rights of way.

Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For the purpose of the City's Flood Damage Prevention Regulations, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. (Applicable to Flood Damage Prevention Regulations Only)

Marina - A commercial facility for the storing, servicing, fuelling, berthing and/or securing of pleasure vessels.

Maximum Building Coverage - The maximum percentage of a lot to be covered by buildings.

Maximum Lot Coverage - The maximum percentage of a lot to be covered by buildings, structures, accessory uses and impervious materials.

Mean Sea Level - For the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) to which base flood elevations on the flood insurance rate are referenced. (Applicable to Flood Damage Prevention Regulations Only)

Medical Offices - Offices and related spaces of a single business establishment for use as professional services as provided by medical practitioners.

Metes and Bounds - A method of describing the boundaries of land by directions and distances from a known point of reference.

Mobile Home - A structure, transportable in one or more sections, which is at least 8 feet in width and 32 feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home shall be construed to remain a mobile home, subject to all regulations applying, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. This definition shall not be construed to include factory manufactured homes known as "modular homes" bearing an insignia issued by the State Fire Prevention and Building Code Council as required in 9 NYCRR 1212.

Mobile Home Park - Land on which are located, or which is maintained or used by two or more mobile homes.

Mobile Home Site - An area of land in a mobile home park intended for the exclusive occupancy of a single mobile home.

Motel or Motor Court - Shall mean a public inn containing not less than eight (8) rental units with provisions for, but not limited to:

- Automobile parking space to accommodate not less than one (1) car per unit and;
- Separate toilet facilities and hot and cold running water for each rental unit

Motor Freight Terminal - Any premises used by a motor freight company regulated by the Public Utility Commission of New York and/or the Interstate Commerce Commission as a carrier of goods, which is the origin and/or destination point of goods being transported for the purpose of storing, transferring, loading and unloading such goods.

Motor Vehicle Service Station - Any area of land, including structures, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and which may or may not include facilities for lubricating, washing or other wise servicing motor vehicles, but not including the painting, body and fender work, or the dismantling or replacing of engines.

Nonconforming - A lot of record, structure or use of land which lawfully existed prior to the enactment of this Chapter or conformed to the regulations of the district in which it was located prior to the amendment of this Chapter or which does not conform to the regulations of the district in which it is located following the

enactment or amendment of this Chapter.

Nursery School - A school designed to provide daytime care or instruction for three (3) or more children from two (2) to five (5) years of age inclusive and operative on regular basis.

Nursing or Convalescent Home - An establishment which provides full time convalescent or chronic care or both for three or more individuals who are not related by blood or marriage to the operator and who, by reason of chronic illness or infirmity, are unable to care for themselves. No care for the acutely ill, or surgical or obstetrical services, shall be provided in such a home. A hospital or sanatorium shall not be construed to be included in this definition.

Occupancy - The utilization of a building, structure or land.

Occupancy, Seasonal - Occupancy for a period not exceeding four (4) months.

Office, Accessory - Offices and related spaces of a single business establishment as an accessory use of a dwelling or mobile home for use as professional services as provided by medical practitioners, attorneys, architects, engineers and similar professions.

One Hundred Year Flood or 100-Year Flood - A flood which has one percent annual probability of being equalled or exceeded. The 100 year flood is identical to the "base flood" which will be the term used throughout this Chapter.

Open Space - An unoccupied space open to the sky, required by the terms of this law.

Parking Area, Private - An unroofed, off-street area used as a private garage.

Parking Area, Public - An unroofed, off-street area used for the temporary storage of self-propelled vehicles and available for public use, whether free, for compensation or as an accommodation for clients or customers.

Paved - Use of blacktop, asphalt, concrete or other similar substance to create a smooth surface, including bituminous penetration, but not the use of dirt, slag or crushed stone.

Personal Service Establishments - Establishments engaged in providing services involving the care of the person or their apparel, such as laundries, dry cleaning establishments, photographic studios, beauty and barber shops, but not including commercial or industrial laundries.

Plat - A map of a subdivided tract of land showing the boundaries and location of individual properties and roads.

Planned Unit Development - A development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open spaces and other site features and improvements.

Private Club - See Club, Private.

Public and Semi-Public Facility - Any one or more of the following uses including grounds and accessory buildings necessary for their use: playgrounds and recreational areas, public cemeteries, schools, public libraries, fire, civic buildings, public meeting halls and community centers.

Quarry, Sand Pit, Gravel Pit, Topsoil Stripping - A lot or land, or part, used for the purpose of extracting stone, sand, gravel or topsoil for sale as an industrial operation, and exclusive of the process of grading preparatory to the construction of a building or highway construction.

Religious Institution - A church, synagogue or temple and minor accessory uses, but not including parish houses.

Road - See Street.

Rooming House - See Boarding or Rooming House.

Sanatorium - A private hospital, whether or not such a facility is operated for profit.

Satellite Television Receiving Station - An accessory structure capable of receiving or sending, for the sole benefit of the principal user, radio or television signals from a transmitter/receiver, or transmitter relay located in planetary orbit.

School - Any place of instruction in any branch of knowledge.

School, Elementary - Any school having regular sessions with regularly employed instructors who teach those subjects that are fundamental and essential in general education, under the supervision of the State of New York or a lawfully constituted ecclesiastical governing body, or a private corporation meeting the requirements of the state.

School, Secondary - Same as elementary school, except education provided.

School, Vocational - Any schools having regular sessions with regularly employed instructors who, as a principal activity, provide training in a trade or vocation and teach those subjects that are fundamental and essential in

elementary or secondary education, under the supervision of the State of New York or a lawfully constituted ecclesiastical governing body, or a corporation meeting the requirements of the state.

Setback - The distance between a lot line, road line or the mean high water line of a body of water and a particular development feature of a lot such as a building, structure, on site sewage system component or parking area.

Shelter - A facility which, in addition to providing food and shelter to a defined population, provides guidance or counselling services. Such services are a primary function of the facility.

Shopping Center - A grouping of retail business and service uses on a single site with common parking facilities.

Sign - Any material, structure or device, or part, composed of lettered or pictorial matter which is located out of doors, or on the exterior of any building, or indoors as a window sign, displaying an advertisement, announcement, notice or name, and shall include any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interests of any person or business or cause when such is placed in view of the general public. Signs will include, but not be limited to, business signs, real estate signs, home occupation signs, political signs, pennants, etc.

Site - Any area of land to be used, developed or built upon as a unit.

Special Use Permit - A permit for special uses which requires review and approval of the Planning Board prior to the issuance of a special permit by the Planning Board or a zoning permit by the Housing, Building and Zoning Officer.

Start of Construction - Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on the site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include:

- 1) the installation of streets and/or walkways
- 2) the excavation for a basement, footings, piers or foundations
- 3) the erection of temporary forms
- 4) the installation on the property of accessory buildings such as garages or

sheds, not occupied as dwelling units or not part of the main structure
(Applicable to Flood Damage Prevention Regulations Only)

Story - That portion of a building, including a basement, between the surface of any floor and the surface of the floor next above; also, any portion of a building used for human occupancy between the topmost floor and the roof.

Half Story - That part of a building between a pitched roof and the uppermost full story, having a ceiling height of seven (7) feet or more for not exceeding one half (1/2) the floor area of such full story. For purposes of side yard determination, a basement shall be counted as a half story.

Street - A public way established by or maintained under public authority, a private way open for public use and a private way plotted or laid out for ultimate public use, whether or not constructed.

Structure - Anything constructed or erected which requires permanent location on the ground or attachment to something having such location.

Structure, Principal - A structure through which the principal use of the lot on which it is located is conducted.

Structure, Accessory - See Building, Accessory.

Substantial Improvement - Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure either:

- 1) before the improvement or repair is started or
- 2) if the structure has been damaged, and is being restored, before the damage occurred

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include:

- 1) any project for improvement of a structure to comply with existing state/local health, sanitary/safety code specifications solely necessary to assure safe living conditions
- 2) any alteration of a structure listed on the National Register of Historic Places (Applicable to Flood Damage Prevention Regulations Only)

Telecommunication Facilities - Towers and/or Antennas and accessory

structures, including accessory structures related to underground communication services, together used in connection with the provision of cellular telephone service, personal communication services (PCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services. **[Added 7-7-1998 as L.L. No. 1-1998]**

Tourist Home - A private residence in which overnight accommodations are provided for not more than nine (9) transient paying guests.

Tower - A structure designed to support Antennas. It includes without limitation free-standing Towers, guyed Towers, monopoles, and similar structures which do, or do not, employ camouflage technology. **[Added 7-7-1998 as L.L. No. 1-1998]**

Transient Guest - A guest of a tourist home whose stay is temporary and does not exceed thirty (30) days.

Trade, Vocational or Industrial School - School conducted as a commercial enterprise for teaching barbering or hairdressing or for teaching industrial skills in which machinery is employed as a means of instruction.

Use, Principal - The primary or predominant use of any lot.

Yard - An open space on the same lot with a building or structure.

Yard, Front - An open space extending the full width of the lot between a main building and the front lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the front of the main building.

Yard, Rear - An open space extending the full width of the lot between the rearmost main building and the rear lot line, unoccupied and unobstructed by buildings or structures from the ground upward, except as before specified, the depth of which shall be the least distance between the rear lot line and the rear of such main building.

Yard, Side - An open space extending from the front yard to the rear yard between a main building and the side lot line, unoccupied and unobstructed by buildings or structures from the ground upward. The required width of a side yard shall be measured horizontally from the nearest part of the main building. An interior side yard is any side yard not on the street side of a corner lot.

Zoning Officer - The Housing, Building and Zoning Enforcement Officer of the City of Dunkirk.

Zoning Permit – A permit issued that indicates a lot, structure or use of land has been developed in conformity with this law and/or complies with the provisions of this chapter.