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ARTICLE I—TITLE, SCOPE, AND PURPOSES

§300-1. Title

This Chapter shall be known and may be cited as the “City of Newburgh, New York Zoning Ordinance.

§300-2. Introduction and User Guide

- A) This Chapter enables the City of Newburgh to protect the diverse character of the City while also giving landowners a range of options and choices for the use, development, and conservation of their land. It is designed to strike a balance between achieving the community’s goals as expressed in the City’s Comprehensive Plan and protecting the property interests of landowners, providing a development approval process that is predictable, efficient and fair.

- B) Overview: This section provides a brief overview of what is in the Zoning Law.
 - 1) This Chapter divides the City into land use and overlay districts and establishes rules for the use of land in each district. The text is accompanied by a Zoning Map which shows where the various districts are located.
 - 2) The Schedule of Use Regulations in Appendix A, identifies the uses allowed in each district. The definitions in §300-6 explain meanings of the different use categories. Several of the uses are also regulated by “supplementary regulations” in Article VIII, which are referenced in the Schedule of Use Regulations.
 - 3) Article V, and the Schedules in Appendix B, contain dimensional regulations for each district, covering lot size, setbacks, and other requirements about the permissible amount, size, type, and location of development on a lot.
 - 4) Articles VI and VII address “overlay” districts, which are special districts designed primarily to protect special resources from inappropriate development and to maintain the City’s character and natural and historic resources. The provisions of these districts apply in addition to those of the “underlying” land use district.
 - 5) §300-33 contains options for flexibility in development patterns, particularly the use of Conservation Development Districts (CDD), which preserve open space by concentrating development on a portion of a parcel.
 - 6) Article X contains rules for allowing the continuation of buildings and uses that were legal under previous regulations but do not conform to this Chapter.
 - 7) Supplementary regulations in Article VIII contain performance standards for all development, as well as additional requirements for specific types of uses and structures.
 - 8) Articles X, XI, XII and XIII explain the procedures for obtaining various types of approvals and permits from the City, including land use permits from the Building Inspector, Special Use Permits and Site Plan approval from the City Planning Board, and variances from the Zoning Board of Appeals. §300-123 contains the procedures for amending this Chapter to change the map or the text.

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- C) How to Use this Chapter. Landowners and others who use this Chapter are encouraged to meet with the Building Inspector to discuss how this Chapter applies to their property. For any large-scale development (a large business or a development of several homes), it is also a good idea to consult with the City's Comprehensive Plan to understand how to make a proposed development fit within the City's vision of its future. The usual sequence of steps in using this Chapter is as follows:
- 1) Check the Zoning Land Use District Map to determine land use district(s) in which your property is located.
 - 2) Check the Overlay District Map(s) to see which of the overlay districts apply to your land. Review the provisions of applicable overlay districts in §Articles V, VI and VII to see how they may affect what you can do with your land.
 - 3) Consult the Schedule of Use Regulations and text in §300-31, along with any relevant definitions in §300-6 to determine whether your proposed use is allowed in that district and what permits may be needed to approve it. Also, check the specific sections that address the district in which your land is located in as well as any supplementary regulations in Article VIII that may apply to your proposed use.
 - 4) Consult the Schedules of Area, Bulk, and Parking Regulations in Appendix B to see which setbacks and other dimensional standards apply.
 - 5) If your land is in the CDD, review the requirement of a conservation analysis and the various development options provided in §300-33 to determine which you want to pursue.
 - 6) If you have an existing use that is no longer permitted, or if your existing building or lot does not comply with dimensional standards for your zoning district, refer to Article X to determine what you can do with it.
 - 7) If the Schedule of Use Regulations indicates that your proposed use or structure can go forward with just a building permit, refer to Article III. If the use will require a Special Use Permit or Site Plan approval, turn to Articles X and XI for the procedures to follow.
 - 8) If your proposed use or structure is not permitted, you may want to petition for either a variance from the Zoning Board of Appeals (as provided in Article XIII) or a zoning amendment from the City Council (as provided in §300-123). These options should be discussed with the Building Inspector before they are pursued. Any zoning amendment must be consistent with the Comprehensive Plan.

§300-3. Scope

Except as hereinafter provided:

- A) No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the zoning district(s) in which it is located.
- B) No building shall hereafter be erected or altered to exceed the height, to house a greater number of families, to occupy a greater percentage of lot area, or to have narrower or smaller yards than is specified herein for the district(s) in which such building located.

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- C) No part of a yard or other open space about any building required for the purpose of complying with the provisions of this Chapter shall be included as part of a yard or other open space similarly required for another building.

§300-4. Purposes

This Chapter has been adopted and deemed necessary to achieve the following purposes:

- A) To promote the orderly development and redevelopment of the City.
- B) To recognize, preserve, and promote the character of the City, which is one of mixed use, tightly knit, and urban in nature.
- C) To promote the goals and objectives of the Comprehensive Plan.
- D) To establish the appropriate location of various uses, buildings, and open spaces necessary to protect public health and safety.
- E) To provide a range of housing opportunities for all segments of the population with due consideration of regional housing needs.
- F) To encourage a range of business activities in appropriate locations by concentrating businesses in or near transportation corridors, and to promote economic development by building on the tremendous physical, aesthetic, and historical assets of the City.
- G) To preserve the historic and architectural features and districts that make Newburgh unique and desirable, as well as for the basis for the overall character of the community.
- H) To promote the appropriate use and enjoyment of the public spaces of the City, including sidewalks, streets, parks and the waterfront.
- I) To conserve the natural resources of the City by encouraging development in appropriate locations and by limiting building in areas where it would adversely affect the City's ecological habitats.
- J) To improve transportation facilities in areas designated for more intensive development, taking advantage of existing regional transit programs and encouraging the implementation of new programs.
- K) To reduce traffic congestion on Broadway and other major transportation routes by establishing a pattern of development and circulation that reduces the need for driving, provides alternative routes between destinations, and encourages walking, bicycling and the use of regional transportation services.

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ARTICLE II—DEFINITIONS AND WORD USAGE

§300-6. Definitions and Word Usage

- A) Except where specifically defined herein, all words used in this Chapter shall carry their customary meanings. Words used in the present tense include the future and the plural the singular. The word “shall” is intended to be mandatory, while “should” is not; and “occupied” or “used” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied.” In general, this Chapter uses the word “permitted” to describe an action that requires a permit and “allowed” when a permit is not required.
- B) Definitions:
1. **ACTIVITY FACILITY:** A business which, for compensation, offers indoor recreational activities such as dance, martial arts, arts and crafts, musical or theatrical instruction, children’s gyms and play center, and other places of public or private entertainment. Activity facilities shall not include facilities intended primarily for spectator activities, such as, but not limited to stadia and arenas, automotive tracks, bowling alleys, parlors or amusement parks.
 2. **ADULT DAY CARE FACILITY:** An establishment which provides day-care services for hire to adults who, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, are unable or substantially unable to live independently without supervision.
 3. **ADULT USES:** An adult bookstore, adult motion picture theater, or adult entertainment cabaret, as defined herein.
 - a) **ADULT BOOKSTORE:** An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, or other periodicals, films, slides and videotapes, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to sexual activities or exposing specified anatomical areas.
 - b) **ADULT FILM THEATER:** An enclosed building used primarily for presenting material motion pictures, films, slide shows or videotapes distinguished or characterized by an emphasis on matters depicting, describing or relating to sexual activities or exposing specified anatomical areas.
 - c) **ADULT ENTERTAINMENT CABARET:** A building or portion thereof regularly featuring dancing or other live entertainment if the dancing or entertainment that constitutes the primary live entertainment is distinguished or characterized by an emphasis on the exhibiting of sexual activities or specified anatomical areas for observation by patrons therein.
 4. **AMUSEMENT CENTER:** A place of business wherein three or more coin-operated machines, games of skill or chance or other machines of a similar nature are available for use or play by the general public.
 5. **ANIMAL CARE CENTER:** Any building or portion of a building designed or used for the care, observation, or treatment of domestic animals, or for the keeping, breeding or

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- boarding for compensation of dogs, cats, or other domestic animals, when such boarding is for more than three (3) consecutive hours.
6. **APARTMENT HOUSE (SAME AS MULTIFAMILY DWELLING):** A residential building that contains more than four (4) dwelling units, with one primary entrance to access all dwelling units contained therein. An apartment house may include accessory uses shared by residents of the apartment house, including recreational facilities, laundry rooms, parking, seating areas and open space for the exclusive use of residents residing in the complex.
 7. **APARTMENT, ACCESSORY:** A self-contained residential dwelling unit, clearly incidental and secondary to the principal dwelling of which it is a part, having a separate entrance and containing separate cooking, eating, sanitation and sleeping facilities for the exclusive use of the occupant in a one-family dwelling, or in a separate accessory structure on the same lot as a one-family dwelling.
 8. **ASSEMBLY HALL/BANQUET HALL:** Buildings in which the primary or intended occupancy or use is the assembly for amusement, athletic, civic, dining, educational, entertainment, political, recreational, religious, social, or similar purposes, except an assembly hall shall not include any use defined elsewhere herein, in which kitchen facilities may or may not exist.
 9. **AUTOMOBILE-GASOLINE STATION:** Any building or land area used for the retail dispensing or sales of automobile fuels, which activity may be accompanied by accessory uses such as sales of lubricants, tires, accessories or supplies, and prepackaged food items and tangible consumer goods, primarily for self-service by the customer.
 10. **AUTOMOBILE SALES:** Any building, land area or other premises used for the display, sale or lease of new or used automobiles, vans, trucks, trailers, or boats, but not including any repair work. Such facilities may not conduct repair services as an accessory use other than warranty or other minor repair service.
 11. **AUTOMOBILE WASH:** Any building or land area, the use of which is devoted to the business of washing or waxing automobiles for a fee, whether by automated cleansing devices or otherwise.
 12. **AUTOMOBILE-SERVICE/REPAIR:** Any area of land, including structures thereon, available to the public, operated for gain, and which are used for repair, greasing, washing, servicing, adjusting or equipping of automobiles or other vehicles.
 13. **BANK:** A financial institution that is open to the public and engaged in deposit banking, and that may perform closely related functions, such as making loans, investments, and fiduciary activities.
 14. **BAR:** A commercial establishment, open to the general public, which sells and serves alcoholic beverages for consumption on the premises and where food may be served as an accessory use. The term “bar” includes “barroom”, “wine bar”, “tavern”, “pub”, and “saloon”.
 15. **BASEMENT:** A story that is wholly or partly below grade, but at least ½ of its height, measured from floor to ceiling, is above the average established curb level or finished grade of the ground adjoining the building.
 16. **BED AND BREAKFAST:** A lodging facility in an owner occupied dwelling offering from one to five (1-6) guest rooms, without separate kitchen facilities, for paying,

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transient guests for a period not to exceed fifteen (150 consecutive days per guest. A dining room and kitchen may be provided for serving guests of the facility, but shall not be open to the public. AirB&B is a variant of this use.

17. **BILLIARD PARLOR:** A building, or portion thereof, having within its premises three (3) or more pool tables, billiard tables, or a combination thereof.
18. **BOARDING HOUSE:** An owner occupied dwelling unit, with non-transient boarders, and with common rooms used and accessible to all residents, within which are boarding units that are rented individually and occupied for sleeping and/or living purposes to non-transient occupants. A boarding house shall not be considered a rooming home.
19. **BOARDING UNIT:** Any room or group of rooms forming a habitable unit used or intended to be used for living or sleeping but not used for cooking purposes.
20. **BOAT REPAIR:** A facility where boats are repaired and may be stored.
21. **BOWLING ALLEY:** Indoor facility for the sport of bowling, with customary accessory uses, such as snack bars.
22. **BUILDING ACCESSORY:** A building, the use and size of which is incidental to, and complimentary of, the principal building on a lot.
23. **BUILDING FRONT LINE:** The line of the face of the building nearest the front lot line. The face includes covered porches, but does not include steps.
24. **BUILDING MAIN (PRINCIPAL):** The building in which is conducted the primary use of the lot on which it is located.
25. **BUIDING:** (Includes “structure”) Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.
26. **CABARET:** Any room, place, or space in which any musical entertainment, singing, dancing, or other similar amusement takes place in connection with a bar and/or restaurant, except for an Adult Cabaret.
27. **CAR RENTAL:** A business that rents vehicles to persons or businesses for use on a transient basis. The business may include on-site facilities for servicing, storing, repairing, and fueling the vehicles.
28. **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.
29. **CEMETERY:** A place used for the interment of human or animal remains or cremated remains.
30. **CHILD DAY CARE CENTER:** A facility that is not also a dwelling unit that provides care for infants and preschool children and may offer pre-kindergarten educational service, on a regular basis for more than three hours per child and is defined in 18 NYCRR Part 413 and regulated in accordance with 18 NYCRR 418.
31. **COLLEGE/UNIVERSITY:** An institution for post-secondary education, which is licensed by the State of New York to grant associate, baccalaureate, or higher degrees.
32. **COMMERCIAL LAUNDRY:** An establishment that launders and/or dries articles for commercial and not individual, customers.
33. **COMMUNITY CENTER:** A place, structure, area, or other facility used for providing religious, fraternal, social, educational, or recreational programs generally open to the

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- public, not operated for profit, and designed to accommodate and serve significant segments of the local community.
34. **COOPERATIVE HOUSE:** A dwelling unit that is rented as a singular unit and not occupied by a family, as defined in this Chapter, within which are two or more boarding units occupied for sleeping and/or living purposes by non-transient occupants. A cooperative house shall not be considered to be a rooming house.
 35. **COTTAGE INDUSTRY:** A use that is conducted wholly within an enclosed building that involves the manufacturing, production, processing, fabrication, assembly, treatment, repair, or packing of finished products predominantly from previously prepared or refined materials (or from raw materials that do not need refining). Light industry is capable of operation in such a manner that does not cause a noticeable amount of noise, dust, odor, smoke, glare, or vibration outside of the building in which the activity takes place. Such a use may or may not contain retail space. A machine shop is included in this category.
 36. **COVERAGE, BUILDING:** The area that is covered by all of the buildings on the lot.
 37. **CURB LEVEL:** The established elevation of the street grade at the point that is opposite the center of the wall nearest to and facing the street line. Where a building is on a corner lot, the curb level is the average of the mean levels of the curb line on the two intersecting streets. Where there is uncertainty about the curb level, it shall be determined by the City Engineer.
 38. **DISTRIBUTION FACILITY/WAREHOUSE:** A facility involving the storage and shipment of goods in allotments. This use does not involve the manufacture or sale of goods from the premises.
 39. **DORMITORY:** A building intended or used principally for sleeping accommodations, where such building is directly related to an educational or public institution, or house of worship. Such building may include common kitchen and gathering rooms, but does not contain complete dwelling units.
 40. **DRIVE THRU (BANK, FAST FOOD RESTAURANT, PHARAMACY):** An establishment that dispenses products or services to patrons who remain in vehicles.
 41. **DRY CLEANER:** An establishment for the on-premises mechanical cleaning of garments, articles or goods of fabric for retail customers, or where drop-off and pick up occurs for garments or articles that are sent to another location for mechanical cleaning or laundering. A dry cleaning establishment does not include a laundry or laundromat, which provides self-service washing or drying for use by retail customers.
 42. **DWELLING UNIT:** A single unit with one or more rooms with provisions for living, cooking, sanitary and sleeping facilities arranged for the use of one family only.
 43. **DWELLING, DETACHED:** A dwelling having no common walls, floors or ceilings with any other dwelling unit.
 44. **DWELLING, FOUR-FAMILY:** A building containing four (4) dwelling units only, on a single lot of record.
 45. **DWELLING, MULTI-FAMILY:** See APARTMENT HOUSE.
 46. **DWELLING, SINGLE FAMILY:** A building containing not more than one dwelling unit and not having more than one kitchen on a single lot of record.
 47. **DWELLING, ROW OR ATTACHED (TOWNHOME):** A dwelling, having common walls with one or more dwelling units, also referred to as a “townhome”. A row

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dwelling sharing one common wall shall be deemed an end unit. This term shall also refer to two dwellings sharing one party or lot line wall and commonly referred to as a “duplex”.

48. DWELLING, THREE-FAMILY: A building containing three (3) dwelling units only, on a single lot of record.
49. DWELLING, TWO-FAMILY: A building containing two (2) dwelling units only, on a single lot of record.
50. DWELLING: Any building or portion thereof designed or used exclusively for non-transient residential use.
51. FAMILY DAY CARE: A facility located in a residential structure, which is owner-occupied as a family residence, that provides daytime care of more than three (3) hours per day per child for three to twelve (3 – 12) infants, pre-school children, and school age children 6 to 12 years of age for compensation. A Family Day Care includes those day care facilities defined by New York State in 18 NYCRR Part 413 as “Family Day Care Home” and “Group Family Day Care Home”. Such facility must be licensed by New York State and operated in accordance with all applicable regulations.
52. FAMILY: One, two, or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.
53. FLOOR AREA, BUILDING: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.
54. FRONTAGE OCCUPANCY: The percentage of the lot width which must be occupied by either a front building façade or structures that screen parking, located within the area of the front lot line and the maximum front yard setback.
55. FRONTAGE: The length of a lot that borders a single street.
56. FUNERAL HOME: The establishment of a funeral director or undertaker, which includes facilities for the conduct of funeral services, but not cremation.
57. GARAGE, PRIVATE: Part of a principal residential building, or an accessory building located on the same lot as the principal residential building, designed primarily for the storage of motor vehicles.
58. HEIGHT, BUILDING: the vertical distance measured from curb or grade level at the front of the building to the highest level of a flat or mansard roof or to the average height of a pitched, gable, hip or gambrel roof, excluding bulkheads, and similar constructions enclosing equipment or stairs, provided that they are less than twelve (12) feet in height and do not occupy more than thirty percent (30%) of the area of the roof upon which they are located.
59. HOME OCCUPATION: Any use customarily conducted entirely within a dwelling or its accessory structures and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of dwelling for residential purposes and does not change the character thereof.
60. HOSPITAL: An institution, licensed by the State of New York, which provides primarily transient or acutely needed human physical and/or mental health services and which includes inpatient facilities.

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61. **HOTEL:** A building, or portion thereof, containing rooms occupied by transient guests who are lodged with or without meals and in which there may be provided such services as are accessory and incidental to the use thereof as a temporary residence, such as dining, conference centers, recreational facilities and gift shops for the guests of the hotel.
62. **HOUSE OF WORSHIP:** A building, or portion thereof, together with its accessory buildings and uses, where persons regularly assemble for religious worship, services, and social events and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain ceremonies and purposes.
63. **INDUSTRIAL USES:** A business use or activity at a scale greater than home industry, involving the manufacture, fabrication, processing, reduction, assembly, or destruction of any article, substance, or commodity, or any other treatment thereof in such a manner as to change the form, character, or appearance thereof.
64. **LAUNDROMAT:** A facility which provides self-service washing or drying for use by retail customers.
65. **LIVE/WORK:** A dwelling which is owner occupied, and which provides a commercial ground floor space and residential space above, for the family, craft or business, and retail space for creating sales.
66. **LOT LINE:** Any line dividing one lot from another or separating a lot from a street right-of-way line.
67. **LOT, CORNER:** A lot at the junction of, and having frontage on, two or more intersecting streets.
68. **LOT, DEPTH:** The mean distance between the front and rear lot lines, measured in the general direction of its side lot lines.
69. **LOT, THROUGH:** A lot having frontage on two streets, but not at the intersection of those two streets.
70. **LOT, WIDTH:** The mean distance of a lot measured at right angles to its depth, at the required setback line.
71. **LOT:** (Includes “plot”) A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this Chapter.
72. **MEMBERSHIP CLUB:** An unincorporated association of persons for common social purpose or an association incorporated under the Membership Association Law, and which association or membership corporation is not conducted for profit and is not a part of, related to, or associated with a profit-making venture and which is managed by officers or directors, serving without pay and chosen or elected directly by members who form such an association or membership corporation.
73. **MIXED USE:** A development or a single building in which there may be a blend of uses including residential, commercial, cultural, institutional, or industrial, where those functions are physically and functionally integrated; most prominently a ground floor with a restaurant, theater, or retail shop and offices and/or residential use above.
74. **MOBILE HOME:** A structure mounted on axles and wheels containing living facilities and which was designed to be towed by an automobile or truck from place to place. Such structure will not be considered a mobile home for purposes of this Chapter if it is

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placed on a permanent foundation and modified to meet applicable building code requirements for a residential structure.

75. **MOTEL:** See ‘hotel’.
76. **MUSEUM:** A building serving as a repository for a collection of natural, scientific or literary curiosities, objects of interest or works of art, and arranged, intended and designed to be used by members of the public for viewing, with or without an admission charge, together with customary accessory uses including, for example, retail sale of goods to the public; café food service; art, dance and music performances, literary readings, and showing of films.
77. **NONCONFORMING LOT:** Any lot lawfully existing on record on the effective date of this Chapter, or any amendment thereto, that does not meet the bulk and area requirements of this Chapter for the zoning district in which such lot is situated as a result of the enactment.
78. **NONCONFORMING STRUCTURE:** Any building lawfully existing on the effective date of this Chapter, or any amendment thereto, that does not meet the bulk and area requirements of this Chapter for the zoning district in which such building is situated as a result of the enactment.
79. **NONCONFORMING USE:** Any use lawfully existing on the effective date of this Chapter, or any amendment thereto, that does not conform to the district use regulations of this Chapter for the zoning district in which such use is situated as a result of the enactment.
80. **NURSING HOME:** An institution, licensed by the State of New York, which provides nursing care and related medical services on a 24-hour basis to primarily non-transient clients for remuneration.
81. **OFFICE PARK:** A group of two or more principal buildings and their accessory uses, together with any open space remaining, located on one lot, which buildings have a unified Site Plan and shall be designed to function as one project. The buildings in an “office park” shall be occupied or used principally for businesses or professional offices that are designed, constructed, and maintained on a coordinated basis.
82. **OPEN SPACE:** That portion of the lot that is unencumbered by any structure or any other impervious surface.
83. **PARKING AREA COMMUNITY:** A building, or part thereof, or a surface used for parking vehicles for remuneration.
84. **PARKING SPACE:** A space, available for the parking of one vehicle.
85. **PARKS, OPEN SPACE AND RECREATION:** Those areas owned or used by the City, other public entity or government, or non-profit organizations that are devoted to parks, playgrounds, recreation areas, nature preserves, or open space.
86. **PERSONAL SERVICES:** An establishment that is primarily engaged in frequent or recurring provision of individual services generally related to personal needs, and is not separately defined herein. These uses may also include accessory retail sales of products related to the service provided. Examples of personal services include but are not limited to: barber shops, nail salons, massage facilities, tailors.
87. **PROFESSIONAL OFFICE:** The office of a member of a recognized profession maintained for the conduct of that profession in any of the following related categories:

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- architectural, engineering, planning, law, interior design, accounting, insurance, real estate, medical, dental, optical, or any similar type of profession.
88. **PUBLIC UTILITY:** Any person, firm, corporation, or governmental agency duly authorized to furnish to the public, under governmental regulation, electricity, gas, water, sewage treatment, steam, cable television, telephone, or telecommunications but shall not mean any person or entity that provides wireless telecommunication services to the public.
89. **RECREATIONAL VEHICLE:** A vehicular unit, which is designed as a temporary dwelling for travel, recreational, and vacation use, and which is self-propelled, mounted on, or pulled by another vehicle. Examples include, but are not limited to a travel trailer, camping trailer, truck camper, motor home, fifth-wheel trailer, or van camper.
90. **RESIDENTIAL CARE FACILITY:** A supervised residential board and care establishment, used as a group residence or extended care facility of the care of persons, where compensation and/or reimbursement of costs is paid to an operator, pursuant to state or federal standards, licensing requirements, or programs funding residential care services. The residential care facility provides common eating facilities for residents and common meeting or social or recreation areas. Such housing may also include daily activity assistance, such as dressing, grooming, bathing, etc.
91. **RESTAURANT:** Any establishment where the principal use is the preparation and sale of food and beverages to customers seated at a table or counter, served by a waiter or waitress, or at a buffet for consumption of the food on the premises. A restaurant may include the serving of alcoholic beverages and the provision of carry-out food service if they are incidental to the consumption of food and beverages. The term “restaurant” does not include a business whose principal operation is as a bar, cabaret, carry-out food service, or a fast-food establishment.
92. **RETAIL:** A business that sells goods directly to the general public, for business, personal or household consumption, where such goods are available for immediate purchase and removal from the premises by the purchaser and are not defined elsewhere in this Chapter. Retail businesses include but are not limited to hardware stores, liquor stores, newsstands, shoe stores, stationery stores, convenience stores.
93. **ROOMING HOUSES:** Any dwelling, other than a boarding house, within which are boarding units rented individually and occupied for sleeping and/or living purposes to non-transient occupants. No common rooms are provided for the use of the residents.
94. **SCHOOL OF GENERAL INSTRUCTION (EDUCATIONAL SERVICES):** Any public school operated under the laws of the State of New York or nonpublic school offering courses in general instruction at least five days per week and seven months per year and generally serves students in grades corresponding to Pre-K through 12th grade.
95. **SELF-STORAGE:** A building or group of buildings consisting of individual, self-contained units leased to individuals, organizations, or businesses for storage of personal property.
96. **SETBACK:** The horizontal distance from such lot line to the part of the building which is nearest to such line.

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97. **SHOPPING CENTER:** An area planned, as a whole with one Site Plan approval, for occupancy of three or more retail stores, light industrial uses, or professional offices with common accessory parking, that are designed, constructed, and maintained on a coordinated basis.
98. **SIGN:** Includes every sign, billboard, general sign, wall sign, roof sign, illuminated sign projecting sign, temporary sign, marquee and canopy and shall include any announcement, declaration, demonstration, display, illustration or insignia used to advertise or promote the interests of any person when the same is placed out of doors in view of the general public.
99. **STORY, HALF:** A story under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two (2) feet above the floor of such story.
100. **STORY:** The portion of a building which is between one floor level and the next higher floor level, or the roof. If a mezzanine floor area exceeds 1/3 of the area of the floor immediately below, it shall be deemed to be a story. A basement shall be deemed to be a story when its ceiling is six or more feet above the finished grade. A cellar shall not be deemed to be a story if unfinished and without human occupancy.
101. **STREET:** A public or private way which affords the principal means of access to abutting properties.
102. **TATOO PARLOR:** Any building or premises in which a tattooist lawfully conducts their practice of marking a body with indelible ink or pigments.
103. **TAXI SERVICE:** A service that offers transportation in motor vehicles to persons for compensation. The business may include facilities for servicing, storing, repairing, and fueling the vehicles.
104. **TECHNICAL SCHOOL:** A school established to provide for the teaching of industrial, clerical, managerial, trade, or artistic schools.
105. **THEATER/AUDITORIUM:** A place of public assembly used for spectator presentations including dramatic, operatic, musical, dance, motion picture, or other performance with temporary or permanent seating, for admission to which an entrance fee is received.
106. **TOWNHOME:** See “dwelling, row or attached.”
107. **TRAILER:** Any vehicle without motive power, designed to be towed by a motor vehicle, except as defined elsewhere herein.
108. **TRANSIENT:** Temporary daily or weekly occupancy.
109. **USE, ACCESSORY:** A use that is clearly incidental to the principal use of a building or lot.
110. **WHOLESALE:** An establishment primarily engaged in the display, storage, distribution and sale of merchandise to retailers to industrial, commercial, institutional, or professional business users, or to other wholesalers, or acting as agents or brokers and buying merchandise for, or selling to such individuals or companies. Such establishments are not generally open to the general public.
111. **YARD: (from rear, side):** The portion of the lot between the lot line and the required set-back; or if no minimum setback is required the portion of the lot between the lot line and the façade of the building.

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ARTICLE III—ADMINISTRATION

§300.7. Administration and Enforcement Official

- A) The provisions of this Chapter shall be administered and enforced by the Building Inspector in accordance with the provisions established in Chapter 122, §122-1 through §122-27 of the Code of the City of Newburgh. The Building Inspector shall be provided with the assistance of such other public officials and employees as the City Manager may direct.
- B) No building permit, Certificate of Occupancy or other permit or license shall be issued if it would be in conflict with the provisions of this Chapter or Article I of Chapter 122, entitled “Administration and Enforcement of Uniform Code”, or Chapter 172 entitled, “Fire Prevention” of the Code of the City of Newburgh, or any other applicable local, state, or federal law or regulation.
- C) In accordance with §122-5 of the Code of the City of Newburgh, the Building Inspector may delegate, in writing, to such other officials the authority to perform inspections, review applications, issue notices of violation and issue permits and to enforce the provisions of this Chapter. In the performance of such functions, these officials shall be responsible to the Building Inspector, and the Building Inspector shall be responsible for the work that they perform.

§300.8. Applicant’s Requirements

- A) In order to apply to the City Planning Board, Zoning Board of Appeals, or Architectural Review Commission, except as specifically provided for elsewhere in this Chapter, the Applicant must have a certain legal interest in that for which he/she is applying, which interest must be one of the following:
 - 1. Owner
 - 2. Contract Vendee/Purchaser or holder of an option to purchase wherein the purchase agreement or option is binding and subject to cancellation based solely on the adjudication of the Application
 - 3. A verified agent of one of the above. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner that the proposed work is authorized by the owner and that the Applicant is authorized to make such application.

§300.9. Schedule of Fees, Collection Procedures

- A) The schedule of fees for applications made pursuant to this Chapter shall be as specified in §163-1. Schedule of Code Fees, of the Code of the City of Newburgh. A copy of this schedule and the procedure for collecting those fees shall be available in the office of the Building Inspector.

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§300.10. Escrow

A) Escrow Deposits:

1. In accordance with Chapter 163 of the Code of Ordinances of the City of Newburgh, any application for a Special Use Permit, Site Plan or subdivision approval, zoning amendment, variance, or other appeal, the reviewing board may require an Applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the City of reviewing the particular type of application before it. The reviewing board may also consider the City's survey of professional review expenses in determining the initial sum of money to be deposited in an escrow account by an Applicant.

B) Escrow Funds:

1. In accordance with Chapters 158 and 163 of the Code of Ordinances of the City of Newburgh, escrow funds shall be used to cover the reasonable and necessary costs of reviewing an application. Costs may include staff costs or consultant fees for planning, engineering, legal, and other professional and technical services required for the proper and thorough review of an application. The reviews governed by this section shall include all environmental review pursuant to law including review of the proposed action under the State Environmental Quality Review Act (SEQR).
2. The review expenses provided for herein are in addition to application or administrative fees required pursuant to other sections of the City of Newburgh. Funds deposited by Applicants pursuant to this section shall not be used to offset the City's general expenses of professional services for the several boards of the City or its general administrative expenses.
3. Fees charged strictly as a result of a SEQR review shall in no event exceed the maximum amounts that can be charged pursuant to the SEQR regulations in §617.13 "Fees and costs" of the State Environmental Quality Review Act.
4. Upon receipt of monies requested for an escrow account, the Building Inspector shall remit to the City Comptroller who shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Applicant/Application and shall keep a separate record of all such monies deposited and the name of the Applicant and project for which such sums were deposited.
5. Itemized vouchers shall be submitted to the City Comptroller for services rendered on behalf of the City regarding a particular application. After review and approval in accordance with §300-10 (C) vouchers shall be paid out of the monies so deposited, and shall debit the separate record of such account accordingly.

C) Review of Vouchers; Payment

1. The Director of Planning and Development shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the City in connection with the review and consideration of applications. In auditing the vouchers, the Director of Planning and Development may

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take into consideration the size, type and number of buildings to be constructed, the topography of the site at issue, environmental conditions at such site, the infrastructure proposed in the application and any special conditions the applicable Board (City Planning Board, Zoning Board, Architectural Review Board) may deem relevant.

2. In no event shall an Applicant make direct payment to any consultant retained by the City to review applications.
- D) If at any time during the processing of an application there shall be insufficient monies within the established escrow account to pay the approved vouchers in full, or if it shall reasonably appear to the reviewing board that escrow funds will be insufficient to meet vouchers yet to be submitted, the reviewing board shall cause the Applicant to deposit additional sums as the board deems necessary or advisable in order to meet such expenses or anticipated expenses.
- E) In the event the Applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit or certificates of occupancy may be withheld or suspended by the reviewing board, officer or employee of the City until such monies are deposited.
- F) Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the City have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within sixty (60) days after the Applicant's request.

§300-11. Building Permits, Certificates of Occupancy and Site Plan Approval

A) Building Permit

1. The Building Inspector shall issue building permits and certificates of Occupancy where appropriate for buildings constructed or altered in accordance with the provisions of the Uniform Fire Prevention and Building Code. In the case of demolition, this permit shall be called a "demolition permit".
2. No building permits or Certificates of Occupancy shall be issued by the Building Inspector except where all the provisions of this Chapter have been complied with.
3. No land shall be used or occupied and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy has been issued by the Building Inspector in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code.

- B) Site Plan Approval. Site Plan approval from the City Planning Board shall be required for the conversion or change in use of any existing building, structure, or parcel of land as provided in §300-31 and in accordance with the provision for the Overlay Districts as provided in Articles IV and V.

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§300-12. Application for Building Permit

- A) Applications for Building Permits shall be prepared and submitted in accordance with the regulations provided in the Uniform Fire Prevention and Building Code and any additional regulations provided in the relevant sections of the Code of the City of Newburgh.
- B) All applications required by this Chapter shall be on such forms specified by the Building Inspector. All forms shall be available from, and returned to, the Building Inspector.
- C) Applications shall be accompanied by the additional information required by this Chapter and that may also be indicated on the forms.
- D) Unless otherwise noted on the forms, or written direction from the Building Inspector, applications and supporting material shall be provided in hard copy in a number and size proscribed on the form, and optionally, as digital files.
- E) An application shall not be considered as submitted nor shall it be accepted and processed until the application, completely and correctly filled in is accompanied by all the minimum basic information and the proper fee as established under this Chapter.
- F) Process to Obtain Permits: The process to obtain necessary permits to erect, occupy, or change the use of a permitted structure or lot are as follows:
 - 1. Any person intending to undertake new construction, structural alteration, or change in the use of a building or lot shall apply to the Building Inspector for a building permit by submitting the appropriate application form and paying the required fee. For rules governing changes of use, see §300-31, and Articles VI and VII.
 - 2. The Building Inspector shall grant or deny the permit as provided in §300-12(G), or refer the application to the City Planning Board if a Special Use Permit and/or Site Plan approval is required in accordance with §300-31.
 - 3. If a building permit is issued, the Applicant may proceed to undertake the action permitted. Upon completion of any construction, the Applicant shall apply to the Building Inspector for a Certificate of Occupancy (for building permits only).
 - 4. If the Building Inspector finds that the Applicant's action has been taken in accordance with the building permit, the Building Inspector shall issue a Certificate of Occupancy as provided in §300-13(B), allowing the structure to be occupied.
 - 5. If the Building Inspector denies a building permit application and does not refer the application to the City Planning Board, Zoning Board of Appeal or Architectural Review Commission, the Applicant may appeal in accordance with the provisions of §300-14.
- G) Action Upon Application
 - 1. The Building Inspector shall promptly review the application and approve or deny it, providing the reason for denial in writing. A copy of the approved or disapproved

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- application shall be delivered or mailed to the Applicant within a time frame not to exceed thirty (30) working days of the submittal to the Building Inspector.
2. An application with the approval of the Building Inspector shall become effective when the Building Inspector has filed written approval of the permit application. A copy of the building permit shall be placed in the permanent file for the property.
- H) Invalid Approval: No building permit shall be valid unless it complies with all provisions of this Chapter. Any permit approved in violation of this Chapter shall be void.
- I) Failure to Complete Construction.
1. In accordance with §122-17, Duration of Building Permit; extensions, of the Code of the City of Newburgh, 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 allow a maximum of two (2) extensions for periods not exceeding three (3) months each provided an application for extension is received at least thirty (30) days prior to the expiration of such building permit.
 2. Any structure for which a building permit has been issued which remains partially complete with no substantial progress over a six (6) month period shall be considered a violation of this Chapter to be remedied pursuant to §300-121.
- J) Termination of Building Permit: An approved building permit shall terminate and become void if there is no construction of the new use within six (6) months of the date of approval.
- K) Withdrawal by Applicant. In the event that it is determined by the Applicant after the issuance of a building permit and payment of the required fee that the proposed construction is not desired and there is no intent to proceed with reference to the same, than and in that event a letter signed by the Applicant, expressing his/her intention not to continue, shall be received by the Building Inspector.

§300-13. Certificates of Occupancy

No building or structure hereafter erected, constructed, enlarged, altered, or moved and no enlarged, extended, altered, or relocated portion of an existing building or structure shall be occupied or used until a Certificate of Occupancy has been issued by the Building Inspector, in accordance with the provisions of the Uniform Fire Prevention and Building Code, Chapter 172, Fire Prevention of the Code of the City of Newburgh, this Chapter, and any other applicable laws and regulations.

- A) Exception for minor alterations. No Certificate of Occupancy shall be required for any alteration of or ordinary repairs to an existing building or structure which is not structural in nature and which does not require a building permit pursuant to the provisions of this Chapter, the Uniform Fire Prevention and Building Code, Chapter 172, Fire Prevention, of the Code of the City of Newburgh.

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B) Issuance of a Certificate of Occupancy:

1. The Building Inspector shall examine the location of any new structures or improvements to existing structures and shall determine whether or not such new structures or improvements comply with the setbacks and other requirements of this Chapter, including the terms and conditions of any Site Plan approval, Special Use Permit, variance, subdivision approval, or conservation easement granted. The Building Inspector shall maintain complete records of the dates of inspections conducted hereunder, the names of all persons attending such inspections, the extent of completion of the work on each date, and any other observations relevant to determining compliance with this Chapter.
2. After work has been completed, inspected, and found to be in full compliance with the building permit, the Building Inspector shall issue a Certificate of Occupancy. A copy of the Certificate of Occupancy shall be placed in the permanent property file for the property.

C) Effective Date of Certificate of Occupancy. A Certificate of Occupancy shall become effective upon filing in the permanent file for the property, together with the building permit and all previous applications and approvals granted.

D) Before issuing a Certificate of Occupancy, the Building Inspector must confirm with the City Comptroller that all fees incurred by the City for the review and processing of said application have been paid and deducted from the escrow account. Only when confirmation that all fees have been paid, can the Building Inspector issue the Certificate of Occupancy.

§300-14. Reapplication After Denial

- A) When an application has been duly processed and denied and no appeal has been made or when an appeal has been made but the body appealed to has sustained the denial, said application shall not be eligible for reconsideration for one (1) year following such denial.
- B) A new application affecting all or part of the same property or use must be substantially different from the denied application to be eligible for consideration within one (1) year of the denial of the original application.

(§300-15 through §300-20 reserved)

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ARTICLE IV—LAND USE AND OVERLAY DISTRICTS

§300-21. Establishment of Districts

- A) For the purposes listed in §300-4, the City of Newburgh is hereby divided into the following Zoning Districts:
 - B) Traditional Zoning Districts:
 - 1. Residential – Low Density (R-Low)
 - 2. Residential –Medium Density (R-Med)
 - 3. Residential– High Density (R-High)
 - 4. Planned Office District (PO)
 - 5. Commercial District (CD)
 - 6. Conservation Development District (CDD)
 - 7. Industrial District (IND)
 - C) Form Based Districts
 - 1. Broadway Corridor (BC)
 - 2. Downtown Neighborhood (DN)
 - 3. Waterfront Gateway (WG)
 - 4. Planned Waterfront District (PWD)
 - D) Overlay Districts
 - 1. In addition to these land use districts, the following overlay districts are hereby created:
 - a) East End Historic District Overlay (EEH)
 - b) Colonial Terraces Architectural Design District Overlay (CTA)
 - c) Waterfront Protection Overlay (WPO)
 - d) Neighborhood Commercial Overlay (NC)
 - 2. Overlay districts do not change the use and dimensional requirements of the underlying land use districts, unless specifically so stated in this Chapter. On any given parcel of land, more than one overlay district may apply.

§300-22. Zoning Map

- A) The location and boundaries of the zoning districts are established as shown on the Zoning Map of the City of Newburgh, attached hereto and made a part of this Chapter.
- B) Re-adoption of Maps. The Official Zoning Map shall be kept in the office of the City Clerk, the Building Inspector/Code Enforcement, and the Planning Department, and shall be reviewed for accuracy and updated at least once annually with any Zoning Map amendments adopted in the previous year by the City Council or its designee.
- C) Zoning Map Amendment. Changes may be made in district boundaries or other matter portrayed on the Zoning Maps only by zoning amendments adopted by the City Council. Such changes shall be noted by the City Clerk on the Official Zoning Maps promptly after the City Council adopts such an amendment.

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- D) Final Zoning Authority. Each ordinance adopting an amendment shall be the final authority as to the current status of lands, structures and uses in the City.
- E) Authorized Map Changes. Any unauthorized map change made by any person shall be considered a violation of this Chapter, punishable under Article IVX of this Chapter.

§300-23. Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of any of the Zoning Districts, the following rules apply:

- A) Where district boundaries are indicated as approximately following or parallel to the center lines of streets or highways, or the boundaries of streets, highways, or rights-of-way, the district boundary shall be construed as following or being parallel to said center or boundary lines.
- B) Where a land use district boundary divides a lot line in a single ownership existing at the effective date of this Chapter, the City Planning Board may grant a Special Use Permit to allow the uses authorized and the district requirement of the less restricted portion of such lot to extend up to a maximum of fifty (50) feet into the more restricted portion of the lot. This provision shall not apply to Overlay Districts.
- C) Where district boundaries are so indicated that they approximately follow lot lines in effect at the time of the effective date of this Chapter, the district boundary shall be construed as following said lot line.
- D) Where the boundary of a district follows shorelines, streams, creeks and waterbodies, said boundary shall be deemed to follow such shorelines and, in the event of change in the shoreline, shall be deemed as moving with the actual shoreline.
- E) Where the boundary of a district follows shorelines, creeks, streams, lakes, or other bodies of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the City, State or Federal Agency, unless otherwise indicated.
- F) Within the Water Protection Overlay District, where the overlay district is based upon natural features, such boundaries may be more precisely established through field investigation by a qualified professional.

§300-24. Higher Standards to Prevail

In their interpretation and application, the provisions of this Chapter shall be held to be the minimum requirements. 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 highest standards, shall govern.

(§300-25 through §300-30 reserved)

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ARTICLE V—LAND USE DISTRICT REGULATIONS

§300-31. Allowable Uses, Accessory and Mixed Uses; Change of Use

- A) Purpose. The use regulations in this article are intended to allow flexibility of land use to encourage business development that is consistent with the character and scale of the City of Newburgh. In reviewing applications for Special Use Permits and Site Plan approval, the City Planning Board shall impose any conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings. The City Planning Board shall deny any proposed use which does not satisfy the criteria in this Chapter.
- B) Use Restrictions and Schedule of Use Regulations. No structure or land shall be used except as provided in the Schedule of Use Regulations. In the event that a particular proposed use does not fit into one of the categories shown on the Schedule of Use Regulations, it shall be considered to be prohibited.

SCHEDULE OF USE REGULATIONS KEY

- P** Designates a use permitted by right. Usually requires a building permit and a Certificate of Occupancy from the Building Inspector, but does not require review by any municipal board.
- P*** Designates a use permitted by right subject to Site Plan review by the City Planning Board [Article XI]
- S** Designates a use permitted by Special Use Permit of the City Planning Board [Article XII]
- A** Designates a use that is permitted as a use accessory to a use permitted by right, with Site Plan approval, or with a Special Use Permit.
- C) Prohibited Uses. Any use, whether or not listed in the Schedule of Use Regulations, is prohibited if it does not satisfy the standards and criteria in §300-31, §300-129, and Appendix A.
- D) Accessory Uses. Uses customarily incidental and subordinate to principal uses shown on the Schedule of Use Regulations shall be allowed on the same terms as the principal uses, whether or not on the same lot, unless otherwise indicated on the Schedule of Use Regulations. Noncommercial recreational use shall be permitted as an accessory use in all districts.
- E) Mixed Use. The City of Newburgh encourages the mixing of uses where such mixing does not create land use conflicts. Accordingly, all Special Use Permit and/or Site Plan reviews for the same project shall be consolidated into one proceeding before the City Planning Board for Site Plan Approval.
- F) Change of Use or Structure. A change of use is the initiation of a use that is in a different use category, as listed on the Schedule of Use Regulations, from the existing use of the site

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or structure. A change of ownership, tenancy, or occupancy, or a change from one use to another within the same category, shall not be considered a change of use, unless the change would result in the expansion of any existing use or any change of use or a property or structure, enlargement or addition of a sign or an increase of more than 20 percent (20%) in vehicle trip generation as indicate in current trip generation rates contained in the publications Trip Generation or Trip Generation handbook published by the Institute of Transportation Engineers (ITE).

1. Uses by right (P). Any change of use of land or existing structures to a use permitted by right without Site Plan review (P on the Schedule of Use Regulations) shall not require approval from the City Planning Board or the Building Inspector. This shall not affect applicable requirements for obtaining building permits for construction or expansion of a structure from the Building Inspector under Chapters 121, 122, 125, and 126 of the Code of the City of Newburgh.
2. Uses by right subject to Site Plan review (P*). Except for one and two family dwellings on a single lot, any change of the use of an existing structure to a use permitted by right subject to Site Plan review shall require Site Plan review only if it involves:
 - a) The development or redevelopment of any property or structure, including but not limited to vacant property, for a new use.
 - b) Any use requiring a special Use Permit, subject to any exceptions contained in Articles XII and XIII of this Chapter.
 - c) The expansion of any existing use or any change of use of a property or structure, where the City Planning Board has determined that the alteration will substantially intensify the use or substantially modify the site with respect to the generation of traffic, pedestrian movement, parking needs, noise, glare, exposure to hazard from fire or flood, utilization of water supply, sanitary sewer, drainage or other utility system and may have a substantial impact upon the character or environment of the surrounding area.
3. Uses by Special Use Permit (“S” on the Schedule of Use Regulations)
 - a) A Special Use Permit shall be required for any change of use from a use that does not require a Special Use Permit, or a use permitted in the zone, to a use that does require a Special Use Permit.
 - b) Once a Special Use Permit has been granted, it shall run with the land and apply to the approved use and to all subsequent owners, tenants and occupants engaged in the same use. The Special Use Permit shall also apply to any subsequent use of the property in the same use category, provided that such use has no greater impact on adjoining properties, complies with all terms and conditions of the Special Use Permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking, or other changed use of outdoor areas. Any change to another use allowed by Special Use Permit shall require the granting of a new Special Use Permit or a Special Use Permit amendment.

- G) Rebuilding, Replacement, Expansion of Structures. The rebuilding/replacement on the same footprint of any structure for a use which requires Site Plan review (P*) or a Special

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Use Permit (S) shall require Site Plan review, even if it is a continuation of the same use.

H) Special Site Design Considerations.

1. In the Conservation Development District (CDD). The purpose of the CDD is to encourage conservation of environmental resources in exchange for flexibility in build and area requirements and the potential for granting more intensive development if conservation goals stated in §300-33 are achieved. A minimum of 50 percent (50%) of net land shall be preserved by a permanent conservation easement or deed restriction as open space. Buildings shall have a maximum height of four (4) stories or fifty (50) feet and a maximum length of two hundred (200) feet. Additional regulations for the CDD are in §300-33.
2. Buildings shall be placed in front of their parking lots to screen the parking from the road. This requirement shall not apply if the entire site is screened from the road by natural vegetation and/or natural topography. The City Planning Board may modify or waive this requirement where unusual lot configurations such as corner lots or through lots make compliance with this requirement impractical or impossible or where the predominant character of surroundings development is such as compliance with this requirement would serve no useful purpose, provided that the Applicant minimizes the visual impacts of such parking areas.

§300-32. Density Dimensional Regulations

- A) Applicability. The Density and Dimensional Regulations in this section apply to the 'traditional' zoning districts, as defined in §300-21. The density and dimensional regulations for the 'Form Based' districts, as defined in §300-21, are regulated in Article XV of this Chapter and in Appendix B.
- B) Purpose. The restrictions and controls in this section regulate development as set forth in Schedule of Bulk, Area, and Parking Regulations, which are supplemented by the other sections of this Chapter. This Chapter shall not interfere with or abrogate or annul any easement, covenant or other agreement between parties; provided, however, that when this Chapter imposes a greater restriction on the use of buildings or land or on the height of buildings or requires larger open spaces or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule or regulation, or by any easement, covenant or agreement, the provisions of this Chapter shall control. Where the requirements of this Chapter differ from the requirements of another statute, law, ordinance, rule or regulation, the more restrictive shall govern.
- C) Exempt Uses. The provisions of this article shall not apply in any of the following instances:
 1. Public parks, playgrounds or similar recreational areas owned or operated by a governmental authority with permission of the Building Inspector.
 2. Fire houses, police stations, or other public safety uses owned or operated by the City of Newburgh, Orange County, or by any governmental authority, with permission of the Building Inspector.

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3. Other municipal buildings, uses, or utility services operated by the City of Newburgh with permission of the Building Inspector.
- D) Additional Dimensional Requirements
1. Corner Lots. A yard equal to the required front yard shall be provided with respect to any lot line that abuts a street. The other yards shall be deemed to be side yards.
 2. Through Lots. The Building Inspector shall designate a front and rear yard in keeping with the predominant development pattern of the area and/or to promote consistency with the goals of the Comprehensive and Land Use Plans.
 3. With respect to one-, two-, three-, and four-family houses, no more than one principal building and its accessory structures and uses may be located on one lot.
- E) Subdivision of a Lot. Where a lot is subdivided from an existing lot already occupied by a building or structure, both the existing lot and the newly subdivided lot shall conform with the requirements of this Chapter with respect to existing building(s) and all yards and other required spaces in connection therewith.
- F) Required Street Frontage. No building permit shall be issued nor shall any Site Plan be approved for the construction of any new building or structure unless the lot upon which the use is to be established or such structure is to be built has frontage of at least twenty (20) feet on a dedicated public street or on a street or highway, which has been suitably improved to City road standards or a bond posted therefor and unless the actual access to such use or such structure will be over such frontage.
- G) Multiple Residential Buildings on One Lot. A lot may contain more than one principal apartment house provided that the lot conforms to the applicable density requirements of the underlying zoning district. Such lot may not later be subdivided unless the subdivided lots conform to the dimensional regulations in effect when the subdivision is proposed.
- H) Projections into Required Yards.
1. Every part of a required yard shall be open from its lowest point to the sky unobstructed, except for the ordinary projection of sills, belt courses, pilasters, leaders, chimneys, cornices, eaves and ornamental features, provided that no such projection may extend more than four (4) feet into any required yard.
 2. Bays including their cornices and eaves, may extend not more than four (4) feet into any required yard provide that the sum of such projections on any wall shall not exceed one-third (1/3) the length of such wall.
 3. An open fire balcony or fire escape may extend not more than four (4) feet into any required yard.
 4. Steps and stairs may extend not more than four (4) feet into the required side or rear setback area.
 5. Awnings or movable canopies may extend not more than four (4) feet into the required side or rear setback area.

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- I) Height Exceptions. The height limitations in the Dimensional Table shall not apply to any flagpole, radio or television receiving antenna, spire or cupola, chimney, elevator or stair bulkhead, parapet or railing, water tank, or any similar non-habitable structure, provided that such structure is firmly attached to the roof or side of a building and covers no more than ten percent (10%) of the roof area.
- J) Setbacks for Accessory Structures and Uses.
1. Any accessory structure attached to a principal building and any detached garage, tennis court, or swimming pool shall comply with the minimum setback requirements of this Chapter applicable to the principal building. Other detached accessory structures or uses may encroach into required setback areas provided that they:
 - a) Are not used for human habitation;
 - b) Have a footprint no larger than two hundred (200) square feet;
 - c) Do not exceed sixteen (16) feet in height;
 - d) Do not occupy more than ten percent (10%) of the rear setback area;
 - e) Are set back at least ten (10) feet from side lot lines;
 - f) Are not located closer to the street than the front yard setback required for a principal building, except for fences, gates, mailboxes, signs, with less than one hundred (100) square feet of footprint, as well as ornamental structures such as entry pillars and statues; and
 - g) Are not used for housing animals.
 2. For corner lots the setback from all streets shall be the same for accessory structures as for principal buildings.
 3. For watercourse setbacks see §300-46.
- K) Setbacks Involving Irregular Buildings and Lot Lines. Where structures or lot lines are irregular or unusual in configuration, all points on the structure shall satisfy the minimum setback requirements from that point on the lot line which is the shortest distance from the structure.
- L) Fences (including hedges). The setback requirements of this Chapter shall not apply to any fences less than four (4) feet high in any front, side, or rear yard, except where corner clearances are required for traffic safety.

§300-33. Conservation Development District

- A) Purpose and Intent. The purpose of the Conservation Development District (CDD) is to encourage conservation of environmental resources in exchange for flexibility in bulk and area requirements and the potential for granting more intensive development if conservation goals stated herein are achieved. The primary goals of the CDD are to:
1. Preserve open space;
 2. Preserve or enhance environmentally sensitive features;
 3. Protect steep slopes by preserving vegetative cover to minimize the impacts of erosion and sedimentation;
 4. Provide opportunities for on-site storm water management and groundwater recharge;

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5. Protect and enhance scenic views;
6. Encourage flexibility in the design of residential land uses that may not be permitted under traditional zoning regulations;
7. Promote a range of housing types;
8. Create on-site recreation opportunities;
9. Promote integration with neighboring land uses through trails and waterfront access points.

B) Allowable Uses. Any uses permitted by right in the residential R-Low, R-Med., R-High Districts.

C) Definitions. For the purposes of this section, 'environmental resource areas' are areas of slopes over twenty percent (20%), delineated wetlands, streams, lakes, one hundred (100) and five hundred (500) year floodplains and floodways, areas within the WPO, ridgelines, scenic view sheds, ecologically sensitive areas and other environmentally sensitive features determined by the City Planning Board.

D) Standards.

1. Multiple parcels allowed. Contiguous parcels under common ownership may be considered as one 'site' under this section.
2. Applications for Site Plan approval must be in keeping with, and further the goals stated in, the purpose and intent of this subsection.
3. Dimensional Standards. The density and dimensional standards in §300-32 and all other density and dimensional regulations in this Chapter other than those contained in this section and the parking and loading requirements in Article IX, shall not apply and are superseded by this subsection. Dimensional and density standards shall be approved by the City Planning Board based on physical characteristics of the site, the character of the proposed development, relevant performance standards in this Chapter, and the requirements of the SEQRA process.
 - a) The number of dwelling units allowed in a CDD shall be equal to the gross area of the CDD site less the 'environmental resource areas'; the remaining number divided by three thousand (3,000) square feet.
 - b) Applicants in the CDD may be eligible for a density bonus of up to twenty percent (20%), at the discretion of the City Planning Board, based on the plan's furtherance of the purposes of this article.
 - c) Buildings shall have a maximum length of two hundred (200) feet.
 - d) Buildings shall have a maximum height of four (4) stories or fifty (50) feet. However, the City Planning Board may adjust the maximum allowable height in order to maintain compatibility with surrounding land uses or to protect important views or to protect, preserve, and enhance the environmental features of the site.
 - e) Maximum impervious coverage shall be fifteen percent (15%) of the total gross land area, including preserved open space areas.
4. A minimum of fifty percent (50%) of the net land area of the parcel shall be preserved by a permanent conservation easement or deed restriction as open space. Open space land preserved under this subsection may include ponds and streams, wetlands and

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wetland buffers, steep slopes, ridgelines, scenic view-shed areas, and recreational areas such as trails. It shall not include land that is covered by impervious surface other than trails or paths.

5. Each CDD site must include passive recreation on the site, such as walking trails.
 6. The development area shall be treated as a unit. Regardless of the form of ownership of the property or its division into separate parcels, the open space, and other dimensional requirements in this section shall apply to the entire area zoned CDD and not to any individual parcels or lots which are portions thereof.
 7. Off-street parking must be provided on the CDD site in accordance with requirements stated in Article IX. Parking areas must be screened from environmental resource areas and adjacent residentially zoned parcels, except where doing so would not further the goals of this section (i.e., parking areas of two adjacent CDD sites may abut each other without screening).
 8. Adequate internal circulation must be provided, including adequate access for emergency vehicles.
- E) Application Procedure. For any application within the Conservation Development District, the Applicant shall prepare a conservation analysis of the land (as described in Section §300-33D to be submitted with the Site Plan Application. The Site Plan Application in a CDD shall also contain such other information as the City Planning Board deems necessary to determine whether or not the Plan complies with the requirements of this subsection. The Site Plan Application package shall also include a management plan for the future of the proposed development as a unified entity.
- F) The City Planning Board shall refer applications for Site Plan approval under this section to the Conservation Advisory Council (CAC). The CAC has thirty (30) days from the referral to provide its comments on the application.

(§300-34 through §300-35 reserved)

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ARTICLE VI—HISTORIC OVERLAY DISTRICT

§300-36. Historic and Architectural Design Overlay Districts: Purpose

- A) The National Historic Preservation Act of 1966 established the national historic preservation program, which operates as a decentralized partnership between the federal government and the state. The 1980 amendments to the National Historic Preservation Act authorized the Certified Local Government (CLG) program, a federal-state-local preservation partnership. Under this program, the Secretary of the Interior certifies local governments as CLGs if they meet several requirements developed by the National Park Service and State Historic Preservation (SHPO).
- B) To maintain CLG status, the City must adhere to requirements which include maintenance of a local historic preservation commission with the power to designate or recommend designation of historic properties; provide historic preservation guidance; and approve or disapprove demolition, relocation, new construction, or exterior alteration affecting designated properties within its jurisdiction.
- C) Based on the above authority, and inasmuch as the City of Newburgh has many significant historic, architectural and cultural resources which constitute its heritage, this section is intended to establish an Architectural Review Commission:
 - 1. To foster public knowledge, understanding, and appreciation in the beauty and character of the City of Newburgh, and in the accomplishments of its past;
 - 2. To ensure the harmonious, orderly, and efficient growth and development of the City;
 - 3. To enhance the visual character of the city by encouraging new design and construction that complements the City's historic buildings;
 - 4. To protect and promote the economic benefits of historic preservation to the City, its inhabitants and visitors;
 - 5. To protect property values in the City;
 - 6. To promote and encourage continued private ownership and stewardship of historic structures;
 - 7. To identify as early as possible and resolve conflicts between the preservation of historic landmarks/districts and alternative land uses; and
 - 8. To conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.
- D) Scope. In 1977 the Newburgh City Council designated the East End Historic District. In 1985 the district was enlarged and added to the National Register of Historic Places. The Colonial Terraces was added and Design Guidelines adopted by City Council in 2005.

§300-37. Architectural Review Commission

- A) Creation and Membership. There is hereby continued a Commission to be known as the "City of Newburgh Architectural Review Commission (ARC). The ARC shall consist of seven (7) members to be appointed by the City Manager as follows:

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1. At least one shall be an historian; such member may be a nonresident of the City;
 2. At least three shall be residents of a historic district or architectural design district established within the city or residents of a designated individual landmark building;
 3. At least one shall be an architect; such member may be a nonresident of the City;
 4. All should have demonstrated significant interest in and commitment to the field of historic preservation or architecture evidenced by involvement in a local or regional historic preservation group, employment or volunteer activity in the field of preservation planning, or other serious undertaking in the field of historic preservation.
 5. Except as provided above, all members shall be residents and shall have an interest in historic preservation and architectural development within the City of Newburgh;
 6. In the event that individuals cannot be identified to fulfill the qualifications of (1), (2), (3) or (4) above, members who fulfill (4) may be appointment.
- B) Members shall serve a term of five (5) years from their most recent appointment.
- C) Two (2) alternate members of the ARC shall be appointed by the City Manager for a term of two (2) years, commencing on the date of appointment. These members shall serve when members are absent or unable to participate on an application before the ARC. The Chairman of the ARC may designate an alternate substitute for a member when such member is unable to participate on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of every ARC meeting at which the substitution is made. All provisions of state law and local law, codes, rules and regulations relating to ARC member eligibility, vacancy in office, or removal, compatibility of office and service on other boards, as well as any provisions of any local law or local ordinance relating to training, continuing education, compensation and attendance, performance of duties, qualifications and others, shall also apply to alternate members.
- D) Chairman. The Chairman shall be appointed by the City Manager. If the City Manager shall not appoint a Chairman, then the Chairman shall be elected by the members of the ARC.
- E) Vacancies occurring other than by expiration of term shall be filled for the remainder of the unexpired term in the same manner as the original appointments.
- F) Meetings. The ARC shall meet at least monthly, but may be held at any time on the written request of the majority of ARC members or on the call of the Chairman.
- G) Secretary. The secretary is a staff member of the City, and not a voting member of the ARC. The Secretary shall keep and make available to the public on request all records of meeting minutes, attendance, resolutions and reports.

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- H) Quorum. A quorum for the transaction of business shall consist of four (4) of the ARC members. A majority of the full authorized membership is required to grant a Certificate of Appropriateness or designate a landmark, historic district or architectural design district.
- I) Training. Each member shall complete a minimum of four (4) hours of training each year, designed to assist the members to be more effective in carrying out their duties.

§300—38. Powers and Duties of the ARC

- A) The ARC shall exercise aesthetic judgment to maintain the character of historic and architectural design districts, or a landmark, and to prevent construction, reconstruction, alteration or demolition, which would be out of harmony with the architectural aesthetics, style, materials, colors, line and details of the district and/or landmark.
- B) In addition to the aforementioned powers, the powers of the ARC shall include:
 1. Adoption of criteria for the identification of significant local historic, architectural, and cultural landmarks and for the delineation of historic districts.
 2. Conduct surveys of significant historic, architectural, and cultural landmarks and historic districts within the City.
 3. Recommend to the city Council the designation of a local building, structure or property or a collection of buildings, structures or properties as a local landmark, historic district or architectural design district, hereafter referred to as “designated properties.”
 4. Recommend to the State Historic Preservation Office the listing of any local landmark for inclusion on the State Register of Historic Places.
 5. Increasing public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
 6. Provide advice and guidance to owners, contract vendees, and residents of historic districts on financing sources that are available specifically to properties within the historic districts, such as the federal Historic Rehabilitation Tax Credit and Property Tax Abatements.
 7. Approval or disapproval of applications for Certificates of Appropriateness pursuant to this article as to designated properties pursuant to this article and as to all changes in exterior features or demolition of designated properties duly established by ordinance of the City, with the exceptions of those changes stated in Section §300-40(A)(4) of this Chapter.

§300.39 Designation of Landmarks or Historic Districts or Architectural Design Districts

The commission shall delineate landmarks or historic districts and recommend them to the City governing board for designation under local law.

- A) Local Landmark Designation.
 1. The ARC may make a recommendation to the City Council for the local designation of a structure, building or property as a landmark if it:

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- (a) exemplifies or possesses special character, or historic or aesthetic interest of value as part of the political, economic, or social history of the City;
 - (b) is identified with persons or events significant in local, state, or national history;
 - (c) embodies the distinguishing characteristics of a type, period or method of construction or design style, or is a valuable example of the use of indigenous materials or craftsmanship; or is representative of the work of a designer, architect or builder;
 - (d) represents an established and familiar visual feature of the community by virtue of its unique location or singular physical characteristic, represents an established and familiar visual feature of the community; or
 - (e) has yielded or may be likely to yield information important in prehistory or history.
2. Notice of a proposed designation shall be sent by certified mail to the owner of the property proposed for designation at the address on file for said property owner with the city Assessor, describing the property proposed and announcing a public hearing by the City Council to consider the designation. The proposal shall also be published at least once in all official newspapers of the City at least five (5) days prior to the date of the public hearing. Once the City Council has issued notice of a proposed designation, no building permit shall be issued by the Building Inspector until the City Council has made its decision.
 3. The City Council shall hold a public hearing prior to designation of any local landmark. The ARC, owners, and interested parties may present testimony or documentary evidence at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark. The record may also contain staff reports, public comments, or other evidence offered outside of the hearing.
 4. The City Council shall forward notice of each property designated as a local landmark to the office of the Orange county Clerk for recordation.
 5. The location of each local landmark designated henceforth shall be specified in detail and shall be filed, in writing, in the Building Inspector's office for public inspection.
- B) Historic District or Architectural Design District.
1. The ARC may recommend to the City Council the designation of a group of properties as a local historic district or architectural design district if the proposed district:
 - a) Contains properties which meet one or more of the criteria for designation of a landmark; and
 - b) By reason of possessing such qualities, constitutes a distinct section of the City.
 2. Designation of an historic district or architectural design district represents an amendment to this Chapter and Zoning Map and shall be done in accordance with procedures contained in §300-39 of this Chapter and in accordance with Section 83 of the General City Law of the State of New York.
 3. The location of each local historic district or architectural design district designated henceforth shall be specified in detail and shall be filed, in writing, in the Building Inspector's office for public inspection.
 4. The location of each historic district or architectural design district shall be shown as an overlay district on the City of Newburgh Zoning Map.

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5. The City Council shall forward notice of each designated historic district or architectural design district to the office of the Orange County Clerk for recordation.

§300-40 Certificate of Appropriateness

A) Certificate required:

1. The City of Newburgh Architectural Review Commission is responsible for the approval or disapproval of proposals for exterior changes to a historic property designated under local law. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction, or move of a designated historic landmark or property within a designated historic district without first obtaining a Certificate of Appropriateness that authorizes such work from the City of Newburgh ARC.
2. The building department shall receive and file all applications issued for any individual landmark, or landmarks or historic district to which this local law applies. The building department shall transmit a copy of any such application to the commission.
3. The commission may require that the application for certificate of appropriateness (COA) be supplemented by such additional information or materials as may be necessary for a complete review by the commission. The commission may impose such reasonable conditions or restrictions as it is necessary or appropriate on a case-by-case basis to promote or achieve the purpose of this Article.
4. Exemptions: The following activities do not require a Certificate of Appropriateness under this Article:
 - a) Repair, replacement and installation of electrical, plumbing, heating and ventilation systems, provided that such work does not affect the exterior of the structure.
 - b) Caulking, weather stripping, glazing and repainting of windows.
 - c) Repair of porches, cornices, exterior siding, doors, balustrades, stairs or other trim when the repair is done in-kind to match existing material and form.
 - d) Repair of storm windows (exterior, interior or wood), provided they match the shape and size of historic windows and that the meeting rail coincides with that of the historic window; color should match the window frame trim.
 - e) Installation of new window jambs or jamb liners.
 - f) Repair or replacement of awnings when work is done in-kind to match existing materials and form.
 - g) Roof repair of historic roofing with materials that matches the existing material in form or better.
 - h) Repair of gutters and downspouts that match the existing material in form or better.
 - i) Installation of insulation where exterior siding or trim is not altered or damaged and is not inset from the new insulation or stays proud of the building plane as originally intended.
 - j) Repair of existing roads, driveways, sidewalks and curbs, provided that work is done so that there are no changes in dimension or configuration of those features. Concrete used for sidewalks, curbs and driveway aprons shall be dyed in the mix prior to placing to emulate bluestone in the historic district.
 - k) Exterior lead paint abatement that includes scraping and repainting of exterior work and masonry surfaces.

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- l) Repair of fencing when work is done in-kind to match existing material and form.
 - m) Repair or replacement of water, gas, storm or sewer lines.
 - n) Emergency repairs necessitated by a casualty to the property (fire, storm, flood, etc.)
- B) In passing upon an application for a Certificate of Appropriateness, the ARC shall not consider changes to interior spaces, unless they are open to the public, or to architectural features that are not visible from a public place, public street, or alley.
- C) Decision-Making. The ARC's decision shall be based upon the following principles:
- 1. Designated properties which contribute to the character of an historic district or architectural design district shall be retained, with their historic or architectural features altered as little as possible.
 - 2. Any alteration of a designated property shall be compatible with its historic character as well as with the surrounding district; and
 - 3. New construction shall be compatible with the district in which it is located and with the design guidelines established for such district.
 - 4. Items not contemplated at the time of this or other reference publications shall be at the discretion of the ARC.
- D) Principles of Compatibility. The ARC shall consider the following factors:
- 1. The general design, character, and appropriateness to the property of the proposed alteration or new construction.
 - 2. The scale of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood.
 - 3. Texture, materials, and color and their relation to similar features of other properties in the neighborhood.
 - 4. Visual and aesthetic compatibility with surrounding properties, including proportion of the property's front façade, proportion and arrangement of windows and other openings within the façade, roof shape, and the rhythm of spacing of properties in streets, including setback.
 - 5. The importance of historic, architectural or other features to the significance of the property.
 - 6. The proposed action's consistency with design guidelines established for an historic or architectural design district.
- E. Special Demolition Considerations. In considering applications for demolition, the ARC shall consider:
- 1. Whether the building or structure is dangerous to health, safety or life.
 - 2. The extent, significance, and expense of repairs needed to maintain the structure in good repair.
 - 3. The historic value of the structure or property.
 - 4. The contribution of the structure or property to community character, or an existing, locally-designated historic or architectural district.
 - 5. The existence and extent of hardship criteria, including whether:

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- a) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible, without being allowed the proposed demolition.
 - b) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return, without being allowed the proposed demolition.
 - c) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
6. Any other information considered necessary by the ARC.
- F) Certificate of Appropriateness Application Procedure. Prior to the commencement of any work requiring a certificate of appropriateness, the property owner, or contractor with written authorization of the owner, shall file an application for a building permit with the City of Newburgh Building Inspector and an application for such certificate with the commission. The application shall contain the following:
1. Name, address, and telephone number of applicant;
 2. Building permit application number as assigned by the building department;
 3. Location and photographs of property;
 4. Name of the NYS Registered Design Professional (i.e. Registered Architect) hired by the Applicant. Unless the residential homeowner creates the drawings themselves, all drawings submitted by a NYS RDP must have the seal and signature of the Licensee;
 5. Elevation drawings of proposed changes, if available;
 6. Perspective drawings, including relationship to adjacent properties, if available;
 7. Samples of building materials to be used, including their proposed color;
 8. Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination, and a plan showing the sign's location on the property; and any other information which the commission may deem necessary in order to visualize the proposed work;
 9. Copies of all SEQRA documents and proceedings.
 10. Upon submission of a complete application, the commission shall have the authority to, without public hearing and notice:
 - a) determine whether the proposed work constitutes ordinary maintenance and repair for which a certificate of appropriateness is not required;
 - b) approve work which is considered replacement-in-kind;
 - c) approve work that is of any other type that has been previously determined by the commission to be appropriate for delegation to staff.
- G. Consent Agenda. The ARC is empowered to consider and approve multiple applications with a single motion which have been placed on a consent agenda. The decision shall be based on:
1. The nature and extent of the alteration or demolition being proposed.
 2. The degree to which the application is in conformance with the appropriate Design Guidelines.

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3. Written 'Consent Agenda Guidance', approved by the ARC regarding paint colors, materials, and items generally suitable for specific purposes within the district.
 4. Items placed on the Consent Agenda shall be listed on the ARC's meeting agenda and announced at the meeting. A majority vote of the ARC members present at the meeting may remove an item from the Consent Agenda and place it on the regular agenda for full consideration by the ARC.
 5. The Chair of the ARC shall entertain a motion to approve items placed on the Consent Agenda upon hearing no objection to the applications remaining on the list.
 6. Applicants with items pending on the Consent Agenda do not need to attend the ARC meeting at which their application is being considered.
- H. No building permit shall be issued for such proposed work until a Certificate of Appropriateness has first been issued by the ARC. The Certificate of Appropriateness required by this section shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the City of Newburgh.
- I. In such cases when the current property owner does not plan on carrying out the work applied for, but rather wants to transfer the COA approval to a subsequent owner, the ARC approval shall be conditioned upon completion of the approved scope of work within a reasonable time-frame or twenty-four (24) months . Renewals of such conditions may be granted at the sole discretion of the ARC upon application at least thirty (30) days prior to the expiration of the time limit.
- J. The ARC shall approve, deny, or approve the application for a certificate with modifications within sixty (60) days from the closing of the public hearing, if any, and otherwise within sixty (60) days from the receipt of the completed application. The ARC shall hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views. Notice of such public hearing shall be published in the official newspaper of the City of Newburgh at least five (5) days prior to said hearing.
1. A public hearing shall not be required for an application limited to approval of paint color or repair or maintenance of a building or structure or property that does not involve the alteration or removal of any exterior feature.
 2. A public hearing shall not be required for items on the Consent Agenda.
- K. All decisions of the ARC shall be in writing. A copy shall be sent to the Applicant by regular mail and a copy filed with the Building Inspector's office for public inspection.

§300-41. Appeal of COA Decision, Hardship

- A) An applicant whose certificate of appropriateness for a proposed alteration of a landmark property has been denied may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship related to a proposed alteration, the applicant shall establish that the denial of a certificate of appropriateness will prevent the property

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owner from earning a reasonable return on investment, regardless of whether that return represents the most profitable return possible.

- B) Consultation; Plan Development. The applicant shall consult in good faith with the commission, local preservation groups, and other interested parties in a diligent effort to seek an alternative that will result in appropriate preservation of the property. The consulting parties may include interested purchasers, as well as preservation and other interested organizations, public agencies, developers, real estate agents and individuals who may be instrumental in developing an economically feasible solution.
- C) Economic Hardship; Criteria. Following the denial of a certificate of appropriateness, the applicant may request a certificate of economic hardship. In all cases other than a proposed demolition, removal or relocation, the applicant shall prove the existence of economic hardship by demonstrating to the commission that: (1) the applicant cannot realize a reasonable return if compliance with the commission's decision is required, provided, however, that the lack of reasonable return is proven by the applicant to be substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested relief, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.
- D) The commission, in the granting of a certificate of economic hardship, shall grant the minimum terms deemed necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health safety and welfare of the community.
- E) Public Hearing.
 - 1. The commission may hold a public hearing on the hardship application at which an opportunity will be provided for the applicant and public to present their views on the hardship application.
 - 2. If no public hearing is held, the commission must render a decision on the hardship application within sixty two (62) days following its receipt of a complete application.
 - 1. A complete application includes the conclusion of all activities under (c) initiated to consult with necessary parties to determine whether the property may be preserved or rehabilitated in a manner that alleviates the hardship that would otherwise result while substantially accomplishing the goals of this local law.
 - 2. A complete application also includes receipt by the commission of all submissions necessary to meet the applicant's burden of proof.
 - 3. Following the submission of a complete application, the commission may schedule a public hearing within a reasonable time and determine within 62 days following to the close of any public hearing held on the application whether the applicant has met his or her burden of proof.
- F) Commission Decision.

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1. If the commission finds that the applicant's burden of proof has not been met, the commission shall deny the application for a certificate of economic hardship.
 2. If the commission finds that the applicant's burden of proof has been met, the commission shall issue a preliminary determination of landmarks or economic hardship within 62 days of the close of any public hearing held on the application or within 62 days after the commission has received a complete application.
 3. Within 62 calendar days following the commission's preliminary determination of economic hardship the commission must make a final determination.
 4. A decision of the commission on the hardship application shall be in writing and shall state the reasons for granting or denying it. A copy shall be sent to the applicant by certified mail/return receipt requested or courier service with proof of delivery or personal service with proof of delivery and a copy filed with the City clerk's office for public inspection.
- G) No building permit or other land use approvals shall be issued unless the commission grants the hardship application. If the hardship application is granted, the commission shall approve only such work as is necessary to alleviate the hardship.

§300.42 Demolition, Removal, or Relocation of Landmark Buildings

- A) Demolition of an individual landmark or of a structure located in and contributing to the significance of a historic district shall be allowed only in case of economic hardship, unless the building department, upon due deliberation has made an express written finding that the structure presents an imminent threat to the public health, safety and welfare.
- B) Any person desiring to demolish a designated historic building shall first file an application for a historic building demolition permit with the building department and an application for such certificate with the commission. An applicant must submit the following items:
1. Current level of economic return;
 2. Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased;
 3. Annual gross and net income from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;
 4. Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three (3) years;
 5. Real estate taxes for the previous four (4) years and assessed value of the property according to the two (2) most recent assessed valuations;
 6. All appraisals obtained within the last two (2) years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 7. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;
 8. Any state or federal income tax returns relating to the property for the last two years;

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9. Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two (2) years, including testimony and relevant documents regarding: (a) any real estate broker or firm engaged to sell or lease the property, (b) reasonableness of price or rent sought by the applicant, or (c) any advertisements placed for the sale or rent of the property;
 10. Feasibility of alternative uses for the property that could earn a reasonable economic return;
 11. Report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings on the property and their suitability for rehabilitation;
 12. Cost estimates for the proposed construction, alteration, demolition, or removal, and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness;
 13. Estimated market value of the property: (a) in its current condition; (b) after completion of the proposed alteration or demolition; and (c) after renovation of the existing property for continued use;
 14. Expert testimony or opinion on the feasibility of rehabilitation or reuse of the existing structure by an architect, developer, real estate consultant, appraiser, and/or other real estate professional experienced in historic properties and rehabilitation;
 15. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property; and
 16. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.
- C) Demolition of any such building may be approved only in connection with approval of a replacement project.
- D) The commission shall hold a public hearing and shall take one of the following actions: (1) Approve the demolition permit in conformance with the provisions F of this Article below, (2) Approve the demolition hardship permit subject to a waiting period of up to one hundred twenty days to consider relocation/documentation; (3) Deny the permit.
- E) During the continuance period, the commission may investigate relocation of the building (on site) or modification of the building for future uses in a way which preserves the architectural and historical integrity of the building.
- F) Demolition, Removal or Relocation Hardship Criteria
1. Certificate of appropriateness for demolition, removal or relocation. An applicant whose certificate of appropriateness for a proposed demolition, removal or relocation of a landmark, resource or property has been denied may apply for relief on the ground of economic hardship. In order to prove the existence of economic hardship sufficient to justify demolition, removal, or relocation, the applicant shall establish that the denial of a certificate of appropriateness will prevent the property owner from earning a reasonable return on investment, regardless of whether that return represents the most profitable return possible.

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2. Certificate of Appropriateness for demolition. The applicant for a certificate of appropriateness for demolition must establish to the commission's satisfaction, an imminent plan of reuse or redevelopment of the affected property. The applicant for an income-producing property shall establish that:
 - a) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and,
 - b) the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and,
 - c) efforts to find a purchaser interested in acquiring the property and preserving it have failed.
 - d) In deciding upon such application for removal, relocation or demolition, the commission may consider whether the owner has created his own hardship through waste and neglect, thereby permitting the property to fall into a serious state of disrepair.
3. Before approving the removal, relocation or demolition of an individual landmark or structure within a historic district, the commission may suspend the application for up to one hundred and eighty (180) days to allow the applicant to consult in good faith with the commission, local preservation groups, and the public in a diligent effort to seek a less intrusive alternative to demolition.

§300.43. Administration and Enforcement

- A) Enforcement. All work performed pursuant to a Certificate of Appropriateness issued under this article shall conform to the requirements stated in the Certificate or reasonably implied therein. It shall be the duty of the Building Inspector to periodically inspect any such work to assure compliance with the Certificate and all applicable law. In the event any requirement included in the Certificate of Appropriateness has not been met, or upon notification of that fact by the historic preservation commission, the Building Inspector shall issue a stop-work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop-work order is in effect.
- B) Any owner or person in charge of a property who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this local law in the absence of a certificate of appropriateness, a finding of economic hardship, or other approval by the commission, may be required by the City Council to restore the property and its site to its appearance prior to the violation.
- C) Maintenance Required. Nothing in this article shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district which does not involve a change in the design, material, color, or outward appearance. No owner or person with an interest in a designated property shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural or historic feature which would, in the judgment of the ARC,

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produce a detrimental effect upon the character of a historic or architectural district as a whole or the life and character of a landmark. Examples of such deterioration include:

1. Deterioration of exterior walls or other vertical supports;
2. Deterioration of roofs and other horizontal members;
3. Deterioration of exterior chimneys;
4. Deterioration or crumbling of exterior stucco or mortar;
5. Ineffective waterproofing of exterior walls, roofs, or foundations, including broken windows or doors and
6. Deterioration of any features so as to create a hazardous condition which could lead to a claim that demolition is necessary for the public safety.

D) Violations. If, in the judgment of the commission, a violation exists that will result in a detrimental effect upon the life and character of a designated historic resource, landmark, property or on the character of a historic district as a whole, the commission shall notify the Building Inspector. If, upon investigation, the Building Inspector finds non-compliance with the requirements of the Property Maintenance Code of the New York State Fire Prevention and Building Code, or any other applicable law or regulation, the building inspector shall order such remedies as are necessary and consistent with this local law and shall provide written notice thereof to the secretary of the commission.

E) Penalties

1. Failure to comply with any of the provisions of this article shall be deemed a violation, and upon conviction the violator shall be liable to a fine of not less than \$500 or fifteen (15) days in jail or both for each day the violation continues.
2. Any person who demolishes, alters, constructs or permits a designated property to fall into a serious state of disrepair in violation of this article shall be required to restore the property and its site to its appearance prior to the violation. An action to enforce this subsection may be brought by the City in any court of competent jurisdiction. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

F) Appeals. Any person aggrieved by a decision of the commission relating to a certificate of economic hardship or a certificate of appropriateness may, within fifteen (15) days of the decision, file a written appeal to the City governing board for review of the decision. Appellate review shall be based on the same record that was before the commission and using the same criteria in this Article.

§300-44. Designation of Districts and Standards

A) Design Guidelines. The City Council, by resolution, may adopt design guidelines for any historic or architectural design district. Said design guidelines shall be drafted with the input and participation of the ARC and owners of property located within the district. A public hearing shall be held prior to the adoption of design guidelines, and notice of said public hearing shall be in accordance with section §300-39.

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- B) The ARC, in its deliberations, shall be guided by design guidelines that have been duly adopted by the City Council in any review authorized herein.
- C) The East End Historic District. The ARC, in its deliberations, shall be guided by the East End Historic District Guidelines, duly adopted by the City Council by ordinance No. 2-2008, dated February 25, 2008 and by the City Council's adoption of the CLG update scheduled for 2015.
- D) Colonial Terraces Architectural Design District. The ARC, in its deliberations, shall be guided by the 'Colonial Terraces Design Guidelines' duly adopted by the City Council by Ordinance No. 3-2—5, dated June 20, 2005.

(§300-45 reserved)

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ARTICLE VII—OTHER OVERLAY DISTRICTS

§300-46. Waterbody Protection Overlay (WPO) District

- A) Purpose and Intent. The Waterbody Protection Overlay District (WPO) is established to provide protection to the City's waterbodies, creek and stream corridors. Creating and preserving vegetated stream and creek buffers will be protective of water quality, will prevent erosion and preserve and enhance animal habitat and plants to sustain the ecological services provided by aquatic resources such as ponds, lakes, and streams. It is also imperative to note the designation of the Hudson River as a National Heritage Site in the mid-Hudson region.
- B) The purpose of this section is to regulate land uses within or adjacent to a stream corridor or waterbody to protect water quality, habitat and biodiversity, and scenic resources, and to reduce the risk of damage from flooding. It is important to note that the entire Quassaick Creek Watershed, which originates in Ulster County, and drains the northeastern portion of Orange County, flows through the City of Newburgh to the Hudson River. It is therefore imperative to the protection of public health, safety, and welfare to appropriately manage development adjacent to this critical resource. The primary goals of the WPO are to:
1. Promote the ecological health, biodiversity and natural habitats of the creeks, stream corridors and waterbodies with the City of Newburgh by:
 - a) Maintaining and restoring riparian buffer vegetation;
 - b) Minimizing stream channel constraints; and
 - c) Other best management practices.
 2. Provide for responsible development of parcels adjacent to the City's creeks, streams and waterbodies.
 3. Protect public health and welfare by preserving water quality, filtering pollution and sediments and reducing the risk of damage from flooding.
 4. Enhance the aesthetic character of the City's creeks, streams and waterbodies, which are a source of civic pride.
 5. Promote public access to the shore of the creeks, streams and waterbodies.
 6. Re-orient development to feature the streams, creeks and waterbodies and allow the public to use the shore and the water resources for passive and active recreation.
 7. Promote public awareness of the vital ecological and historic value of the mapped waterbodies of the City of Newburgh.
- C) Boundaries. The Water Protection Overlay District includes all land lying within one hundred (100) feet of the top of the bank on each side of the following waterbodies. Where there is no clearly defined bank, the district boundary shall be measured from the mean high-water line of the waterbody. Where there are steep slopes – also protected from development, the measurement will be from the top of the bank and continued along the top of the slope where it levels off until one hundred (100) feet is met.
1. Quassaick Creek
 2. Gidneytown Creek
 3. Harrison Pond

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4. Strook's Pond to the east of Harrison Pond and west of Gidneytown Creek
 5. Crystal Lake
 6. Muchattoes Lake
 7. Unnamed Ponds (2) southwest of Crystal Lake
 8. Unnamed Stream that flows into and out of Crystal Lake and is tributary to the Quassaick Creek. (Note: The portion of this unnamed stream northeast of Crystal Lake is not mapped on the National Hydrography dataset and is not accurately mapped by the NYS DEC.)
 9. That portion of the Hudson River that is not within the Planned Waterfront District (PWD) Zoning District.
- D) Regulatory Effect and Land Uses. The requirements of the Waterbody Overlay District shall apply to parcels that have any part within the WPO District, as shown on the zoning map, not just the portion of parcels within the WPO. The requirements of this section will be in addition to the requirements of the underlying zoning district.
- E) Setbacks. Within the WPO District, no principal structure shall be located within one hundred (100) feet of a creek, stream or waterbody, and no accessory structure two hundred (200) square feet or greater shall be located within fifty (50) feet of a watercourse. These setbacks shall not apply to docks, piers, bridges, and other structures, which, by their nature, must be located on, adjacent to, or over the watercourse. For purposes of determining setbacks, measurements shall be horizontal distances measured from the top of the bank or mean high-water line, as appropriate. For lots in existence prior to the effective date of this Chapter, and for any project for which an environmental impact statement has been prepared, the City Planning Board may modify these setback requirements, provided that the City Planning Board finds that the proposed construction will comply with the Subsection §300-46(F)(2).
- F) Site Plan Approval Requirement. Within the WPO District, no person shall clear, fill, dredge, excavate, deposit materials, or undertake any construction activities within the WPO without Site Plan approval as detailed in this Section.
1. All parcels having any part within the WPO shall be subject to Site Plan review and approval and may not be exempted from that requirement based on §300-46.
 2. The City Planning Board may only grant site Plan approval for any of the activities noted in §300-31 if it finds the proposed activity is compliant with the following appropriate conditions:
 - a) The proposed activity will not result in erosion or pollution from surface or subsurface runoff. In making such determination, the City Planning Board shall consider slopes, drainage patterns, water entry points, soils erosion, depth to bedrock and high-water table, and other relevant factors.
 - b) The proposed activity includes appropriate measures to minimize stormwater quantity and velocity, improve stormwater quality, promote inflow and infiltration, protect stream and lake/pond banks from erosion, improve the water quality of the City's waterways, and increase public awareness of these critical resources. This

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section applies to the entire parcel, not just the portion of the parcel within the WPO. These measures may include any of :

1. Vegetated stream-bank buffers;
 2. Rain Gardens and bio-retention swales;
 3. Storage and reuse of roof, sidewalk, and parking lot runoff;
 4. Pervious paving materials;
 5. Appropriately placed, designed, and managed constructed wetlands;
 6. Public access to resource;
 7. Public education materials (signs, kiosks, viewing areas, etc.);
 8. Other measures identified by the City, County, State or regional planning entities as appropriate to further the goals specified above.
- c) Any areas of natural resource preservation on the Site shall be linked, to the extent practical, with preservation areas on adjacent parcels.
 - d) The proposed activity would provide passive, non- permanent recreation and walking trails and/or public pedestrian access to the creek, stream or waterbody and will comply with all other applicable provisions of this Chapter.
 - e) Any new encroachment into the WPO has been demonstrated to be, in the City Planning Board's opinion, the only practicable alternative, taking into consideration other alternatives requiring no or lesser impacts within the WPO.
 - f) Any encroachment into the WPO is required so as not to deprive the owner of all reasonable returns on investment relating to the development of their parcel, if said parcel is in an undeveloped condition and in single ownership.
 - g) The planting and keeping of gardens in areas already cleared of natural vegetation and currently existing in a maintained condition (i.e. lawn).
 - h) The proposed activity will not result in degradation of scenic character and will be compatible with its surroundings.
3. If a Special Use Permit, Variance or Subdivision approval is required in connection with a project located in the WPO and subject to the provisions herein, the requirements of this section shall be considered in such a proceeding, and no separate Site Plan approval shall be required.
 4. The City Planning Board shall refer the Site Plan application to the Conservation Advisory Council. The CAC has thirty (30) days from the date of referral to provide its comment on the application.

G) Erosion and Stormwater Management

1. For any Special Use Permit, Site Plan, Variance, or Subdivision application in which the area to be disturbed lies partially or wholly within the WPO, an erosion and sediment control plan shall be required pursuant to the Stormwater Management regulations in Chapter 248 of the Code of the City of Newburgh pursuant to § 248-60 (A).

H) For lots in existence prior to the effective date of this Chapter that are currently developed with a building, parking lot, or any other impervious surface within the WPO, and are applying for amendments to their Site Plan, Subdivision, Special Use Permit or Variance, at the time of application

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1. No increase in the amount of the WPO covered by impervious surface is allowed;
2. Site Plans must make maximum use of Low Impact Development techniques and other water quality/quantity improving development tools described in §300-86(F)(2)(b).

§300-47. Neighborhood Commercial Overlay District

- A) The purpose and intent of the Neighborhood Commercial Overlay District (NC) is to:
1. Recognize the existing development pattern within the area of the City along the gateways to the city and westernmost portion of Broadway.
 2. To allow multiple uses within buildings and within lots in order to promote market-driven uses and redevelopment within targeted areas of the City, as identified in the Future Land Use Plan.
- B) Within the NC Overlay District, the following uses are added to the list of uses permitted as of right but require site plan approval.
1. Retail Store
 2. Restaurant
 3. Personal Services
 4. Professional Office
 5. Mixed Use
 6. Animal Care Facility
 7. Adult Day Care Facility
 8. Child Care Center
 9. Technical School
- C) Off-Street Parking. Off-street parking required for the uses listed in paragraph (B) shall be the same as those listed for the “C-Commercial” district.
- D) Bulk and area requirements for the uses listed in paragraph (B) above shall be the same as the underlying zoning.

(§300-48 through §300-50 reserved)

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ARTICLE VIII—SUPPLEMENTARY REGULATIONS

§300-51. Environmental Performance Standards

- A) Compliance with Performance Standards. No use shall hereafter be established, altered, moved or expanded unless it complies with the performance standards set forth in this section. Continued conformance with such standards, once applicable, shall be a requirement for the continuance of any Certificate of Occupancy.
- B) Purpose of Performance Standards. Consistent with the general purposes of this Chapter, performance standards shall set specific controls on potentially objectionable external aspects of all uses in order to:
1. Reduce to a reasonable minimum the dissemination of smoke, gas, dust, odor or other atmospheric pollution outside the building in which the use is conducted.
 2. Control noise and light perceptible beyond the boundaries of the site of the use.
 3. Limit the discharge of treated wastes and prohibit the discharge of untreated wastes into any watercourse.
 4. Limit the dissemination of vibration, heat or electromagnetic interference beyond the immediate site on which the use is located.
 5. Limit physical hazard by reason of fire, explosion, radiation or any similar cause.
 6. Regulate and control the generation and flow of vehicular traffic in order to prevent hazardous conditions, traffic congestion, and excessive noise in the streets.
- C) Noise. No noises shall be emitted in violation of Chapter 212 of the Code of the City of Newburgh. In addition, the following specific standards apply to noise:
1. Sound levels shall be determined at the lot line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.
 2. No person, firm or corporation shall allow the emission of sound which, as measured at the lot lines, has a sound level in excess of:
 - a) Sixty (60) decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m. and,
 - b) Fifty (50) decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m.
 3. Sounds emitted at levels lower than those prohibited by Subsection 2 above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive or in continual disharmony with the character of an adjoining or nearby residential neighborhood.
 4. Exemptions. The following shall be exempt from the noise level regulations:
 - a) Noises not directly under the control of the property user.
 - b) Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset, Monday through Friday.

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- c) The noises of safety signals, warning devices, emergency pressure-relief valves or other emergency warning signals.
 - d) Bells or chimes from a church or other place of worship.
- D) Exterior Illumination and Glare. No use shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of 0.5 footcandle. All exterior lighting, including security lighting, in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties. The city Planning Board may require special efforts to reduce the impacts of exterior lighting, such as limiting hours of lighting, planting screening vegetation, or installing light shields to alleviate the impact of objectionable or offensive light and glare on neighboring residential properties and public thoroughfares.
- E) Review Procedures. As a part of Site Plan review of potentially objectionable external aspects and therefore be subject to these performance standards, the reviewing board may require the Applicant, at his or her own expense, to provide such evidence as it deems necessary to determine whether the proposed use will comply with these standards.

§300-52. Environmental Constraints

- A) Wetlands in Lot Areas Calculations. In computing minimum lot sizes pursuant to the Dimensional Table, the area of wetlands shall be subtracted from the total acreage in the lot area calculations.
- B) Steep Slopes. For any subdivision, Special Use Permit, Site Plan, Building Permit, Zoning Permit, or variance that involves the disturbance of slopes greater than 15%, conditions shall be attached to ensure that:
1. Adequate erosion control and drainage measures will be in place so that erosion and sedimentation do not occur during or after construction, as determined by the Planning Board.
 2. Cutting of trees, shrubs, and other natural vegetation will be minimized, as determined by the Planning Board.
 3. Safety hazards will not be created due to excessive road or driveway grades or due to potential subsidence, road washouts, landslides, flooding or avalanches, as determined by the Planning Board.
 4. Proper engineering review of plans and construction activities will be conducted by the City to ensure compliance with this section, paid for by escrow deposits paid by the Applicant.
 5. No Certificate of Occupancy will be granted until all erosion control and drainage measures required pursuant to this section have been satisfactorily completed.

Note: There will be no building allowed within the one hundred (100) feet of a waterbody within the Water Overlay District according to the procedural measurements outlined, in reference to §300-46.

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- C) Slope determinations shall be made based upon the topographic information required for a particular approval, along with such other topographic information as a reviewing board or official shall reasonably require or the Applicant shall offer. In cases of uncertainty or dispute, a qualified professional retained by the City, at the Applicant's expense, shall determine the location of regulated slopes.
- D) Not more than fifty percent (50%) of any land within easements or rights-of-way for overhead utilities (69 KV or greater) or within a designated street line shall be counted as part of any minimum lot area requirement. No building, structure, yard, or land proposed for prolonged habitual human occupancy shall be located within such easement; however, a road may traverse the easement.
- E) In calculating minimum lot area or allowable density, or dwelling unit count subject to §300-33, the portion(s) of the lot that include the following shall be subtracted from the total lot area prior to the calculation of the size subject to the fifty percent (50%) allowable build area:
 - 1. Ponds, streams, rivers, lakes;
 - 2. Delineated wetlands;
 - 3. Lands having slopes greater than twenty percent (20%);
 - 4. Areas within the Federal Emergency Management Agency designated one-hundred (100) and five hundred (500) year floodplains and floodways;
 - 5. Areas within the WPO;
 - 6. Ridgelines;
 - 7. Scenic Viewsheds;
 - 8. Ecologically sensitive areas and other environmentally sensitive features determined by the City Planning Board.

§300-53. Screening and Buffering in Nonresidential Districts with respect to Lots in the “C”, “Ind” and “PO” Districts.

- A) There shall be a landscaped buffer strip along each boundary which adjoins a lot in the Residential Districts or an existing dwelling in any district. This strip shall be at least seven (7) feet in width and shall contain screening or plantings in the center of the strip not less than four (4) feet in width and six (6) feet in height at the time of occupancy of such lot. This planting strip shall be maintained by the owner or occupant and shall be maintained as a dense screen on a year-round basis.
- B) At least fifty percent (50%) of the plantings shall consist of evergreens.
- C) At the discretion of the City Planning Board, a solid wall or fence of at least six (6) feet in height may be substituted for such a landscaped buffer strip.

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§300-54. Parking and Storage of Tractors, Trailers, and Buses

- A) No person shall park, keep, or store, nor permit the parking, keeping, or storing on any lot within the Residential Districts of any “tractor”, “tractor-trailer combination”, “semitrailer”, or “bus” as defined in the Vehicle and Traffic Law of the State of New York.
- B) This section shall not be construed as permitting the continuation of any such storage, parking, garaging, or keeping as a nonconforming use, to a business lawfully in operation as of the effective date of this Chapter.
- C) The outside storage of not more than one (1) unoccupied recreational vehicle or boat and trailer not exceeding thirty-five (35) feet in length is permitted within lots in the Residential Districts.

§300-55. Outdoor Swimming Pools

- A) All swimming pools must meet the requirements of the New York State Building Code and must be operated and maintained in compliance with the New York Sanitary Code.
- B) No Swimming pool shall be filled or used until the Building Inspector certifies that the swimming pool meets all necessary requirements and that the owner has presented evidence of liability insurance of not less than \$100,000.

§300-56. Preservation of Public Rights-Of-Way

- A) Notwithstanding any other provision contained herein, the rights of the City to open, grade, pave and complete for public use the severable streets and roads laid out pursuant to the authority of the Laws of 1867, Chapter 674, and set forth in the commissioner’s Report of the Streets and Roads in the City of Newburgh dated February 11, 1868, shall be preserved and maintained.
- B) Notwithstanding any other provision contained herein and for the purpose of ensuring a connection between the shore of said City and the navigable waters of the Hudson River and enabling the authorities of the City to extend all streets terminating at the river into the waters of the Hudson River, all estate, title and interest to all such lands under water of the river in front of said streets shall be vested in the City for the use and purpose of public streets and highways forever.
- C) Notwithstanding any other provision contained herein, all existing public rights-of-way and easements, including but not limited to rights of travel on City streets and access to the Hudson River, shall be preserved and maintained.

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- D) Notwithstanding any other provision contained herein, all rights granted to the City of Newburgh by the Charter of the City of Newburgh and the laws of the State of New York to extend existing City Streets to the Hudson River shall remain in force and effect.
- E) Notwithstanding any other provision contained herein, all rights granted to the City of Newburgh by the Charter of the City of Newburgh and the laws of the State of New York to extend Front Street shall remain in force and effect.

§300-57. Public Utilities

Nothing in this Chapter shall restrict the construction or use of underground or overhead distribution conduits of public utilities operating under the laws of the State of New York. Public utility buildings and electrical substations are permitted in all zoning districts; however, they are only permitted in a residential district when the location within such district is necessary for the direct furnishing of service to customers and provided that no offices, warehouses, construction, repair shops or garage facilities are included, and provided that a Special Use Permit is obtained from the City Planning Board. Nothing herein shall be construed to allow cellular or personal communication facilities in accordance with this section.

§300-58. Mobile Homes

No mobile home shall be permitted in any district in the City of Newburgh, except as an office by a contractor during construction, upon issuance of a permit by the Building Inspector and payment of the appropriate fee.

§300-59. Animal Care Facilities

- A) The City Planning Board will determine the maximum number and type of animals to be boarded based on site conditions, ability of the proposed facility to provide a safe and sanitary environment for the animals and their caretakers, and the ability to mitigate any potential noise, odor, or community character impact.
- B) The City Planning Board may consider the number and size of animals to be sheltered and impose reasonable conditions to protect neighbors, aesthetic impact and animal safety in order to ensure the health, safety and general welfare of the community.
- C) All boarding of pets shall be indoors.
- D) If stored outside, no animal waste or substance which produces a noxious or offensive odor or dust shall be stored or permitted to accumulate within 200 feet from any lot line, 100 feet from any street, wetland, lake or stream. The storage area, whether inside or outside shall not attract or harbor vermin, rodents, flies or other animals and shall be subject to the approval of the City Planning Board. If the Building Inspector or other code Enforcement

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Officer determines that a problem does exist, he or she shall so notify the owner in writing and the owner must commence steps to rectify the situation within a timely fashion but not to exceed thirty (30) days. If the problem is not rectified in a satisfactory manner, the Building Inspector or other Code Enforcement Officer may commence criminal proceedings against the owner or other person(s) responsible for such violation(s) and, upon a conviction thereof, such owner or other responsible person shall be liable for any and all fines and/or penalties applicable to violations of this Chapter. If the situation is not rectified within thirty (30) days from the date upon which the violation should have been rectified, the Building Inspector or Code Enforcement Officer may commence any and all appropriate proceedings for revocation of the Special Use Permit.

§300-60. Adult Uses

- A) Location. No adult use shall be located within five hundred (500) feet of:
1. Any dwelling unit, provided that as of the effective date of this Chapter said dwelling existed.
 2. Any lot within the Residential Districts and the Broadway Corridor, Downtown Neighborhood, Waterfront Gateway or the Planned Waterfront District zoning districts.
 3. Another adult use.
 4. Any school, church, house of worship, park, playground, or playing field.
- B) No more than one adult use as defined in this Chapter shall be located on any lot.
- C) In all districts, a nonconforming adult use shall terminate within one year after the effective date of this Chapter or from such later date that the adult establishment becomes nonconforming, except that such use may be continued for a limited period of time by the Zoning Board of Appeals provided that:
1. An application is made by the owner of such use to the Zoning Board of Appeals at least one hundred and twenty (120) days prior to the date on which such use must terminate.
 2. The Applicant has made, prior to the nonconformity, substantial financial expenditures related to the nonconforming use;
 3. The Applicants has not recovered substantially all of the financial expenditures related to the nonconforming use; and
 4. The period for which such use may be permitted to continue is the minimum period sufficient for the Applicant to rec over substantially all of the financial expenditures incurred related to the nonconforming use.
 5. For the purposes of this section, “financial expenditure” shall mean the capital outlay made by the Applicant to establish the adult use, exclusive of the fair market value of the building in which the use is located and exclusive of any improvements unrelated to the nonconforming adult use.

(§300-61 through §300-65 reserved)

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ARTICLE IX—OFF-STREET PARKING AND LOADING

§300-66. General Requirements

- A) Applicability. In any district, if a new structure is constructed, the use of any structure is enlarged or extended, and the use of any lot is established or any existing use is changed after the effective date of this Chapter, off-street parking and off-street loading spaces shall be provided in accordance with the requirements of the bulk and area tables for the appropriate district as well as the requirements of this article.
- B) Exemption. If a structure or use in existence prior to the effective date of this Chapter is expanded or enlarged, it shall not have to comply with the requirements of this Article if such expansion or enlargement would require less than a fifteen percent (15%) increase in the number of parking spaces that would have been required of the use as it existed on the effective date of this Chapter.
- C) When units or measurements determining the number of required parking or loading spaces result in a requirement of a fractional space, any fraction equal to or greater than one-half shall be rounded up.
- D) Except as provided in §300-54 or §300-157, parking and loading spaces required by this Chapter shall be required to be on the same lot as the use they are intended to serve.
- E) Off-street parking in front of the building will only be permitted with site plan approval from the Planning Board. The plan shall include trees and plantings that adequately screen the parked cars from street views.

§300-67. Off-Street Parking Standards

- A) New building in ‘Traditional’ Zoning Districts. ‘Traditional’ zoning districts, as defined in § 300-21(B), shall be subject to the minimum off-street parking requirements specified in the Schedule of Bulk, Area, and Parking Regulations.
- B) ‘Form-Based Zoning Districts. ‘Form-Based districts, as defined in §300-21 (C), shall be subject to the minimum off-street parking requirements specified in Article XV.
- C) New buildings shall include off-street parking plans as part of the design of the building. Uses that are particularly ‘parking dependent’ such as theaters and supermarkets, shall include the number of parking spaces associated with their use as outlined in the Schedule of Use Tables accompanying this Chapter.

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§300-68. Design, Layout and Construction of Parking Areas

- A) Standards for Parking and Loading Spaces. When five (5) or more parking spaces or two (2) or more loading spaces are required, said spaces shall meet the following standards, and the plans shall be approved by the Building Inspector.
1. Each perpendicular parking space shall not be less than nine (9) feet by eighteen (18) feet. No less than three hundred (300) square feet of parking area, including space for maneuvers, shall be provided per parking space, and the arrangement of parking spaces shall be approved by the Building Inspector.
 2. Each loading space shall be not less than 1,000 square feet in horizontal area nor less than fourteen (14) feet in height, including space for maneuvering, and the arrangement of layout of off- street loading areas shall be approved by the Building Inspector.
 3. Any portion of any entrance or exit driveway shall not be closer than twenty (20) feet to the curb line of an intersecting street nor closer than five (5) feet to any lot line, and both distances shall be maintained by a curb.
 4. Any two driveways leading from a street to a single lot shall not be within thirty (30) feet of each other at their intersections with the front lot line for an interior lot and forty (40) feet for a corner lot.
 5. Any entrance or exit driveway for a residential use shall not exceed twenty (20) feet nor be less than twelve (12) feet in width at its intersection with the front lot line. Any entrance or exit driveway for a nonresidential use shall not exceed twenty-four (24) feet nor be less than twelve (12) feet in width at its intersection with the front lot line.
 6. Exits and entrances shall be a minimum of fifty (50) feet from any entrance or exit located on the same side of the street on which the entrance or exit abuts, unless the Planning Board determines that this distance may be reduced without impacting public safety.
 7. Exits and entrances shall be a minimum of two hundred (200) feet, as measured along the side of the street on which they abut, from any school, public playground, church, public library, hospital, or institution for dependents or children.
- B) Location and Screening,
1. All off-street parking shall be located behind or to the side of the principal building, except as provided in §300-31(H)(2), §300-33(D), §300-66E, and §300-143. Parking spaces located in a side yard shall, if possible, be screened from public view. Adjoining parking areas shall be connected directly to one another or to a service road or alley wherever feasible to reduce turning movements onto roads.
 2. If a parking lot containing five (5) or more spaces lies within or borders the WPO, or any R District, a buffer zone at least ten (10) feet wide shall be planted with trees or dense vegetation to provide screening along all boundary lines, unless the adjoining properties are in the “C”, “PO”, or “Ind” districts.
 3. No portion of the area used for parking within the “Commercial”, “Industrial”, or “Planned Office” districts shall be within twenty (20) feet of a residential dwelling on an adjoining lot. The Planning Board may reduce this setback requirement based on

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the unique circumstances of the site plan application or the inclusion of additional mitigation, such as appropriate landscaping, fencing, or similar measures designed to screen and buffer the parking lot from the residential dwelling.

- C) Construction of parking areas. Parking areas shall be surfaced with a suitable durable dustless surface, including but not limited to asphalt, concrete, paving stones, or Belgian block, which shall meet the approval of the City Planning Board. Parking areas shall be constructed with adequate drainage. Surfacing, grading, and drainage shall facilitate groundwater recharge by minimizing impermeable pavement and runoff. Overflow or peak period parking surfaces shall be permeable. Oil traps may be required for larger paved parking lots.

- D) Landscaping and Screening
 1. Parking areas shall be designed and landscaped to avoid long, uninterrupted rows of vehicles by breaking them into separate parking lots divided by tree lines, alleys, pedestrian areas, or buildings. Parking lots containing more than forty (40) spaces shall be divided into smaller areas by landscaped islands at least five (5) feet wide located no more than one hundred twenty (120) feet apart. All islands shall be planted with three-inch minimum caliper shade trees at a density of at least one tree for every twenty (20) linear feet of island. Parking lots containing fewer than forty (40) spaces shall provide at least one three-inch minimum caliper shade tree per eight (8) spaces.
 2. The screening shall consist of a solid fence or wall not less than three (3) feet nor more than six (6) feet in height or shrubbery planted not more than three (3) feet apart on center, at least two (2) feet from the lot line, and all maintained in good condition. No portion of an area used for parking shall be closer than five (5) feet to a sidewalk.
 3. A substantial bumper of masonry, steel or heavy timber shall be placed near all interior lot lines to protect structures and property abutting a parking or loading area for parking areas with five (5) vehicles or more.

- E) Lighting. Lighting within parking lots shall be on low poles of twelve (12) to fifteen (15) feet maximum height, with color-corrected lamps and cutoff luminaires designed to minimize glare and light pollution. Design of poles and luminaires shall be compatible with the style of the architecture and adjoining streetscape treatment. Sidewalks leading from parking lots shall be lit with bollard lighting and indirect illumination of buildings and vegetation.

- F) Nonconforming parking lots shall be brought into conformity with this Section to the extent practical whenever a Site Plan or Special Use Permit application is filed for an expansion or change of use.

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§300-69. Off-Street Loading Space Requirements

- A) General Requirement. Loading docks and service areas shall be located to minimize visual intrusion on public spaces and ensure pedestrian and automobile safety by separating truck traffic and loading operations from pedestrian and automobile circulation. Where appropriate, loading docks shall be screened by walls extending from a building face or placed within arcades or other architectural features assigned to blend them with the architecture of the building. Adjacent buildings shall be sited to allow shared access to loading docks through the use of common loading zones or service alleys.
- B) In any district, in connection with every building or building group or part thereof hereafter erected and having a gross floor area of 10,000 square feet or more which is to be occupied by industrial, distribution, or commercial uses, there shall be provided and maintained on the same zone lot with such building off-street loading berths in accordance with the following requirements:

Use	Square Feet of Floor Area	Required Off-Street Loading Berths
Retail, Commercial,	10,000 - 25,000	1
Wholesale, Industrial	25,000 - 40,000	2
Storage	40,000 - 60,000	3
	60,000 - 100,000	4
	For each additional 50,000	+1
Marinas, Boat Repair	Per 10,000	1

- C) Each loading space shall be not less than ten (10) feet in width, twenty-five (25) feet in length, and fourteen (14) feet in height and may not occupy any part of a required front or side yard.

§300-70. Shared Parking and Special Off-Street Parking Permit

- A) The use of the same off-street parking or loading spaces by two or more uses is allowed, subject to the provisions of Article XII or when an Applicant has been granted a Special Off-Street Parking Permit pursuant to the requirements of this section.
- B) When an application made pursuant to this Chapter does not require Site Plan approval, an Applicant may apply for a Special Off-Street Parking Permit from the City Planning Board. The City Planning Board may grant a Special Off-Street Parking Permit to an Applicant in

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order to modify the number of parking spaces otherwise required by this Chapter.

- D) In order to grant the Special Off-Street Parking Permit and modify the required off-street parking requirements, the City Planning Board must find that:
1. such a reduction would still allow for adequate off-street parking given the use and the zoning district; or,
 2. Adequate on-street parking within 500 feet is available; or,
 3. The owner can secure a written agreement for shared parking from a use within five hundred (500) feet.
- E) When off-street parking or loading serves two or more uses, whether such uses are on the same lot or on separate lots within five hundred (500) feet, the City Planning Board may reduce the number of off-street parking spaces required of each use if it finds that the number of off-street parking spaces proposed will substantially meet the intent of this article by reason of variation in the probable time of maximum parking demand for each use. In such event, the City Planning Board may condition the Special Off-Street Parking Permit on certain hours of operation for each use.
- F) Procedure
1. Applications for a Special Off-Street Parking Permit shall be submitted to the Building Inspector in the manner and form proscribed by the City Planning Board, accompanied by the fee as listed in Chapter 163 of the Code of the City of Newburgh.
 2. Complete applications for a Special Off-Street Parking Permit that are received by the deadline stipulated in the approved City Planning Board Policies and Procedures, which is available in the office of the Building Inspector, will be reviewed by the City Planning Board at the next regularly scheduled meeting.

(§300-71 through §300-75 reserved)

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ARTICLE X—NONCONFORMING USES AND STRUCTURES

§300-76. Continuation of Nonconforming Uses and Structures

- A) Any structure or use, which was legal when built or commenced, and which was in existence on the effective date of this Chapter, or amendment of this Chapter, which becomes non-conforming as a result of such enactment or amendment of this Chapter, may be continued as a legal non-conforming use.
- B) Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three (3) months of the date of such permit and the ground story framework of which, including the second tier of beams, shall have been completed within six (6) months of the date of the permit and which entire building shall be completed according to such plans as filed within one (1) year from the effective date of this Chapter.

§300-77. Discontinuance and Reestablishment

- A) Discontinuance. Whenever a nonconforming use has been discontinued for a period of eighteen (18) months, such use shall not thereafter be reestablished except as provided in §300-78(A), and any future use shall be in conformity with the provisions of this Chapter.
- B) Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.
- C) Reestablishment. The City Planning Board may issue a Special Use Permit for the reestablishment of the use after the eighteen (18) month period has expired if the Applicant has been prevented from continuing the use during the one-year period due to strikes, acts of God, disability, or other similar hardship beyond the Applicant's control.

§300-78. Change of Non-Conforming Uses

- A) A nonconforming use of a structure or parcel of land may, upon Special Use Permit by the City Planning Board, be changed to another non-conforming use, which is of the same or lesser impact, except that no use prohibited by Article V shall be permitted under any circumstances. No structure in which a non-conforming use has been changed to a use of lesser impact shall again be devoted to a non-conforming use with greater impact. In determining whether a use is of greater or lesser impact, the City Planning Board shall consider the impact criteria listed in §300-104. No nonconforming use shall be extended or expanded to displace a conforming use.
- B) Any nonconforming use of any open space on a lot outside a structure or of a lot not occupied by a structure shall not be extended.

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- C) any conforming principal use of a nonconforming structure may be extended throughout the existing structure.
- D) A nonconforming structure shall not be moved to any other location on the lot or any other lot unless every portion of such structure, the use, and the lot shall be deemed conforming.

§300-79. Restoration, Expansion and Repair

A non-conforming use or structure shall not be extended, enlarged, or structurally altered except as provided below.

- A) Any non-conforming use or structure determined to be unsafe may be restored to a safe condition, provided that such work on any nonconforming structure shall not place it in greater non-conformity.
- B) A building used for residential purposes, that is a non-conforming structure or use, may be rebuilt in the event of its total or partial destruction by fire or other in accordance with the provisions provided below. Such rebuilding shall require Site Plan approval by the City Planning Board.
 - 1. The area occupied by the foundation of the building must occupy the same or lesser amount of the area occupied by the damaged building.
 - 2. The rebuilt structure may not exceed the original height of the total or partially destroyed structure.
 - 3. The total square footage of the repaired or rebuilt building must be the same as, or less than, the damaged or destroyed building.
- C) “Building used for residential purpose” as herein, shall mean a building, which at the time of the damage by fire or other causes was used solely for residential purposes or, if the building was vacant, that it is designed solely for residential purposes.

§300-80. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.

§300-81. Special Permit Uses

Any preexisting legal use which is allowable by Special Use Permit under this Chapter, but which has not been issued a Special Use Permit, shall be considered a permitted use. The expansion of such a use shall require Site Plan approval, unless such expansion has been permitted by a prior Site Plan approval.

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§300-82. Construction Started Prior to this Chapter

Any structure, for which construction was begun prior to the effective date of this Chapter, or of any amendment thereto, may be completed and used in accordance with the approved plans and specification for such structure. Any structure for which construction has not begun pursuant to approved plans shall be subject to the provisions of this Chapter and any amendments thereto, even if all pre-construction approvals have been granted. For purposes of this Subsection, “beginning construction” shall mean excavation and the pouring of footings or the installation of any other means of permanently attaching a structure to the ground.

§300-83. Existing Nonconforming Lots

- A) Any lot of record created prior to the effective date of this Chapter, which does not comply with the area, density, or dimensional requirements of this Chapter shall be deemed to comply with such requirements, and no variance shall be required for its development or for any addition to or other alteration of a structure, provided that the following conditions are satisfied.
 - 1. The following minimum area and dimensions are maintained, unless smaller dimensions are permitted in the district:
 - a) Lot area: 2,000 square feet.
 - b) Side setback: Fifteen percent (15%) of lot width but not less than five (5) feet per side.
 - c) Rear setback: Fifteen percent (15%) of lot depth but not less than ten (10) feet.
 - 2. All Health Department regulations are satisfied.
- B) A nonconforming lot may be subdivided only if the subdivision plat shows that every subdivided portion of such lot will be merged with adjoining properties to increase the area of such properties, thereby eliminating the nonconforming lot.
- C) Notwithstanding the foregoing provisions, any undeveloped lot in a subdivision which was not properly approved by the City Planning Board or City Council or not filed in the office of the County Clerk, and whose area or dimensions do not comply with the requirements of this Chapter, shall be considered a violation of this Chapter and shall not be protected under paragraph (A) of this Section.

(§300-84 through §300-85 reserved)

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ARTICLE XI—SITE PLAN APPLICATION AND APPROVAL

§300-86. Site Plan Review

- A) Purpose. The City of Newburgh requires Site Plan review by the City of Newburgh Planning Board in accordance with the requirements of Article V. The purpose of Site Plan review is to provide oversight of specific types of development to ensure compliance with all appropriate land development regulations and consistency with the City's adopted planning and policy documents.
- B) Applicability. Site Plan approval by the City of Newburgh Planning Board shall be required by all permitted uses listed in the Schedule of Use Regulations as requiring Site Plan approval only. Site Plan review shall be included as an integral part of the Special Use Permit approval process as required in Article XII of this Chapter.

§300-87. Required Information

- A) An application for Site Plan approval shall be accompanied by plans and descriptive information sufficient to clearly portray the intentions of the Applicant. Site Plans shall be prepared by a licensed professional engineer, architect, or landscape architect and shall include the following, unless waived by the City of Newburgh Planning Board:
 - 1. A vicinity map drawn at the scale of 1,000 feet to the inch or larger that shows the relationship of the proposal to existing community facilities which affect or serve it, such as roads, shopping areas, schools, etc. The map shall also show all properties, subdivisions, streets, and easements within 500 feet of the property.
 - 2. An existing conditions map, showing existing buildings, roads, utilities, and other man-made features, as well as topography and all existing natural land features that may influence the design of the proposed use, such as rock outcrops, existing watercourses, wetlands, floodplains, drainage retention areas, soils, marshes, wooded areas, single trees with a diameter of twelve (12) inches or more, measured three (3) feet above the base of the trunk, and other significant existing features located within any area where clearing will occur.
 - 3. A field survey of the boundary lines of the parcel, giving complete descriptive data by bearings and distances, made and certified by a licensed surveyor.
 - 4. A Site Plan drawn at a scale and on a sheet appropriate to the project. The information listed below shall be shown on the Site Plan and all sheets submitted in the Site Pan application package:
 - a) Name of the project, section, block and lot number, street names and project site boundaries, fire lanes, date of plan, North arrow and scale of plan, name and address of the owner of record, developer, and seal of the engineer, architect, and landscape architect. If the Applicant is not the owner of record, a letter of authorization shall be required from the owner.
 - b) The names of all owners of record of all adjacent property within five hundred (500) feet of the site's perimeter.

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- c) Zoning district boundaries with five hundred (500) feet of the site's perimeter shall be drawn and identified on the Site Plan, as well as any school, overlay and/or special district boundaries.
 - d) Boundaries of the subject property, building or setback lines if different from those required in this Chapter, and lines of existing streets and lots as shown on the official map of the City of Newburgh or City tax map.
5. The location and use of all existing and proposed structures within the subject property as shown on the official map of the city of Newburgh or tax map, including all dimensions of height, area, all exterior entrances, and all anticipated future additions and alterations.
6. The location, height, size, materials and design of all proposed signs.
7. Traffic flow patterns within the site, entrances and exits, and loading and unloading areas, as well as curb cuts on the site and with one hundred (100) feet of the site. The City of Newburgh Planning Board may, at its discretion, require a detailed traffic study for large developments or for those in heavy traffic areas to satisfy the requirements of §300-91.
8. The location, size, dimensions, access and egress, circulation patterns and design of an off-street parking areas, including location of handicapped accessible parking and required signage.
9. The location of all present and proposed overhead or underground utility systems including:
 - a) Sewage lines, septic systems.
 - b) Water supply system (valves and hydrants, wells).
 - c) Telephone, cable and electrical systems.
 - d) Storm drainage system, including existing and proposed drain lines, culverts, catch basins, headwalls, endwalls, hydrants, manholes and drainage swales.
10. Erosion and sedimentation control plan to prevent the pollution of surface or ground water, erosion of soil both during and after construction, excessive runoff, excessive raising or lowering of the water table, and flooding of other properties as applicable.
11. Existing and proposed topography at two (2) foot contour intervals or such other contour interval as the Board shall specify. All elevation shall refer to the nearest United States Coastal and Geodetic Bench Mark.
12. The Location of all Floodplain Boundaries as Determined by the Federal Emergency Management Agency. In accordance with Chapter 175, Flood Damage Prevention, of the Code of the City of Newburgh, if any portion of the parcel is within the one-hundred-year (100-year) floodplain, the area will be shown and base flood elevations given. Areas shall be indicated within the proposed site and with fifty (50) feet of the proposed site where soil removal or filling is required, showing the approximate volume in cubic yards. The plan shall specify all nonstructural measures to minimize flood damage, including but not limited to:
 - a) The setback of buildings and structures away from the floodplain.
 - b) The planting of vegetation and installation of drainage.
 - c) The flood-proofing of buildings or their elevation above the base flood level.
13. Lighting Plan, Including the Existing and Proposed Location, Height, Intensity and Bulk Type (Sodium, Incandescent, etc.) of all External Lighting Fixtures. The direction

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of illumination and methods to eliminate glare onto adjoining properties shall also be shown.

14. A landscaping, planting and grading plan showing proposed changes to existing features and any proposed new features shall be shown.
 15. For new construction or alterations to any structure, a table containing the following information shall be included:
 - a) Estimated area of structure intended to be used for particular uses such as retail operation, office, storage, etc.;
 - b) Estimated maximum number of employees;
 - c) Maximum seating capacity, where applicable; and
 - d) Number of parking spaces existing and required for the intended use.
 16. Elevations at a scale of 1/4 inch equals one (1) foot for all exterior facades of the proposed structure(s) and/or alterations to or expansions of existing facades, showing design features and indicating the type and color of materials to be used.
 17. Where appropriate, the City of Newburgh Planning Board may request soil logs, percolation test results, and storm runoff calculations.
 18. Disposition plans for disposal of construction and demolition waste, either on site or at an approved disposal facility.
 19. SEQRA – Environmental Assessment Form or Draft Environmental Impact Statement.
 20. Where appropriate, a cultural resource survey of resources with historic or archaeological significance.
 21. Where the Applicant wishes to develop in stages, the Site Plan application must include the complete ultimate proposed development
 22. Identification of any hazardous materials associated with a proposed industrial use.
 23. Disclosure of information on the use, storage, treatment and disposal of any hazardous materials associated with a proposed industrial use.
 24. Other information that may be deemed necessary by the City of Newburgh Planning Board.
- B) Additional Viewshed Analyses for the WG, PWD, and portion of the DN districts.
1. Purpose and Intent. The purpose of this sub-section is to protect and enhance the City's scenic viewshed, comprised of natural, aesthetic and cultural resources formed by the landscape and geologic features of the City. It is the intent of the City of Newburgh to preserve scenic views to and from the Hudson River, the Hudson Highlands and the East Bank of the Hudson River.
 2. The views from the following locations are recognized by the City of Newburgh as providing significant benefits to the residents and visitors of Newburgh and as important parts of Newburgh's cultural heritage. The detailed description of the current views is noted specifically, to highlight the character of the current view as emphasis to the importance of its preservation.
 - a) The Dutch Reformed Church and at Montgomery and South Streets. From this vantage point looking south-southeast, the view is of Hudson Highlands, Bannerman's Island, and the Hudson.
 - b) Washington's Headquarters. The views to the southeast and east focus on the Hudson River and mountains beyond. The Hudson River, the lawn and the roof line

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- of the building in the center of the view are horizontal in design. To the northeast there is a clear view of the Hudson River, the mountains beyond and the Newburgh-Beacon Bridge.
- c) Broadway and Colden Street. The foreground is occupied by open space identified for pedestrian walkways to the northeast, to the waterfront. Marine Drive, in the middle ground, runs parallel to the Hudson River. On the Hudson River's edge are low buildings that do not obstruct the view. The Newburgh-Beacon Bridge fades into the horizon. The view to the southeast features the sloping parkland in the foreground, low industrial buildings and a marina bay in the middle ground. The southeast view is dominated by the Hudson River, and the Hudson Highlands. There is some light industrial use presently in the middle ground. The foreground is sloping parkland and an undeveloped site.
 - d) Newburgh Public Library. The view from the eastern wall of the Newburgh Public Library, at an elevation of approximately one hundred (100) feet above sea level, provides a view of the Hudson.
 - e) The view to the south terminates at Orange County Community College. The north-facing view is of the Hudson Highlands, the Hudson River and the Newburgh Beacon Bridge. Existing structures on the waterfront frame the bottom of the view from this highpoint.
 - f) Bay View Terrace. The views from Bay View Terrace, between Overlook Place and Monument Street offer views of the Hudson River, the Hudson Highlands, Bannerman's Island and points north and south.
3. Visual Impact Analysis
 - a) All applications for Site Plan approval within the WG, PWD or DN districts shall be evaluated for their impacts to the scenic views defined above during the Site Plan review process.
 - b) Visual Impact Analyses for applications requiring Site Plan approval will be evaluated by the Planning Board. If the Application does not require Site Plan approval, the Visual Impact Analyses will be evaluated by the Building Inspector.
 4. Visual Impact Analysis Methodology.
 - a) In connection with the Site Plan approval process, the City Planning Board shall require the Applicant to prepare photographic simulations of the proposed structure(s), within the context of the site, to determine whether or not a proposed structure or activity will adversely affect the scenic viewshed.
 - b) The City Planning Board can authorize alternative state-of-the-art visual impact assessment techniques to be employed by an Applicant in the preparation of the Visual Impact Assessment. Use of an alternative visual impact assessment methodology may only be employed by mutual agreement of the Applicant and the City Planning Board.
 5. Referral. To assist in the evaluation, the City Planning Board shall refer all applications for Site Plan approval within the WG and PWD Zoning Districts to the Conservation Advisory Council (CAC). Such referral shall be done so as to allow the CAC at least thirty (30) days, but no more than 30 days after the next scheduled regular meeting to review and return comments

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6. Public Hearing. The City Planning Board must hold a public hearing on all Site Plan applications in accordance with Section §300-130.
 7. Evaluation Criteria. When making their determination of impacts to the scenic viewshed, Site Plan approval may only be granted by the City Planning Board if, with appropriate conditions attached, the proposed activity:
 - a) Will not significantly impair scenic character and will be aesthetically compatible with its surroundings.
 - b) Will minimize the removal of native vegetation, except where such removal may be necessary to open up or prevent the blockage of scenic views and panoramas from public places.
 - c) Will locate and cluster buildings and other structures in a manner that minimizes their visibility from public places.
 8. Waivers. The City Planning Board may waive one or more of the specific requirements of this subsection upon a written finding that such waiver will not impair the scenic preservation purposes of this Article. Any development which is the subject of a detailed visual assessment as part of an environmental impact statement shall be eligible for such waivers if supported by SEQR findings.
- C) Waivers. Upon findings by the City of Newburgh Planning Board that, due to special conditions peculiar to a site, certain information required in this section, §300-87, is inappropriate or unnecessary, the Board may vary, waive or defer the provision of such information, provided that such variance or waiver will not have detrimental effects on the public health, safety, or general welfare or have the effect of nullifying the intent and purposes of the Site Plan submission, City of Newburgh Master Plan or this Chapter.

§300-88. Procedures

- A) Applicability. This section applies for Site Plan approval applications where no Special Use Permit is required.
- B) Pre-Application Planning Board Workshop
 1. Purpose. The purpose of the optional Pre-Application Planning Board Workshop is to provide cooperative consultation between the City of Newburgh and Applicants by providing the Applicant with the opportunity for informal discussion of site development proposals with the City Planning Board. The goal of the Pre-Application Planning Board Workshop discussion is for the City Planning Board to guide Applicants toward productive use of their land within the regulations, thereby avoiding and minimizing to the extent practicable, the potential for environmental impact. The intent of the Pre-Application Planning Board workshop is for the City Planning Board to provide Applicants with their general impressions of the proposed site development application, and provide the Applicant with general suggestions and advice, which may be incorporated into the formal submission.
 2. Process. Once the Building Inspector has referred an application to the City Planning Board for Site Plan approval in accordance with the requirements of §300-31, and prior to submission of a formal site development plan, an Applicant may request to be placed

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on a City Planning Board Workshop for an informal discussion of the proposal with the City Planning Board. Materials provided by the Applicant to the City Planning Board can be schematic, but provide sufficient information for the City Planning Board to provide informal comments and direction to the Applicant.

C) Post-Application Technical Workshop

1. Purpose. The purpose of the mandatory Post-Application Technical Workshop is to provide Applicants with the technical expertise of the City staff in advance of filing a formal application for review by the Planning Board. The goal of the Post-Application Technical Workshop is to provide Applicants with technical guidance on the required submission materials, and the roadmap through the review and approvals process.
2. Process. Prior to the submission of a formal site development plan, the Applicant must meet with the City Engineer, City Attorney, City Building Inspector, Department of Planning and Development, City Department of Fire Prevention and City Planning Board Chairperson (or designated representative) to discuss the proposed site development plan in order to determine, which of the subsequent requirements may be necessary in developing and submitting the required Site Plan.

D) Submission. An application for Site Plan approval shall be submitted to the Building Inspector, in accordance with the submission requirements (number of copies, digital files, etc.) and within the required deadlines stipulated in the approved City Planning Board Policies and Procedures available in the office of the Building Inspector. The information enumerated in §300-87 shall be submitted, as required along with:

1. A SEQRA Environmental Assessment Form or Draft Environmental Impact Statement.
2. The Site Plan application fee and any required escrow deposit for review costs, as determined by the City Engineer.

E) Application for Area Variance. Where a proposed Site Plan contains one or more features which do not comply with the dimensional regulations of this Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §300-115 without a decision or determination by the Building Inspector.

F) SEQRA Compliance. Upon receipt of application materials it deems complete, the City of Newburgh Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within the later of twenty (20) calendar days or the receipt of any additional information reasonably necessary to make the determination. Where the proposed action may have a significant effect on the environment, the City Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decision-making in this Chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.

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G) Referrals.

1. The Orange County Department of Planning. Upon receipt of application materials it deems to be complete, the City of Newburgh Planning Board shall refer to the Orange County Department of Planning in accordance of Section 239M of the General Municipal Code, any application for a Site Plan affecting real property, which shall be accompanied by a full statement of the matter under consideration, as defined herein, with five hundred (500) feet of the boundary of:
 - a) The municipal boundaries
 - b) Any existing county or state park or other recreational area
 - c) Any existing or proposed county or state roadway
 - d) Any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines
 - e) Any existing or proposed county- or state-owned land on which a public building or institution is situated.
2. Conservation Advisory Council. The City of Newburgh Planning Board shall refer any Site Plan application to the Conservation Advisory Commission for review and recommendations. Such referral shall be done so as to allow the CAC at least 30 days, running concurrently within the required 62 day City Planning Board required SEQRA timeframe, to review and return comments.

§300-89. Criteria

In reviewing Site Plans, the City of Newburgh Planning Board, and any City of Newburgh Board and/or Committee to which the Site Plan has been referred, shall consider the criteria set forth below. The City Planning Board may also use as approval criteria, the Orange County Department of Planning “Orange County Design Manual”, and may adapt the recommendations of those documents to the requirements of this Chapter.

A) Layout and design

1. All structures in the plan shall be integrated with each other and with adjacent structures and shall, where practical, be laid out in a pattern that is consistent with the character of the City of Newburgh and/or within the neighborhood in which the development is proposed.
2. Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, and placement and shall harmonize with traditional elements in the architectural fabric of the area.
3. Architectural design shall be in keeping with the character of the City of Newburgh. In general, the design shall avoid flat roofs, large expanses of undifferentiated facades, and long, plain wall sections.
4. Where appropriate, setbacks shall maintain and continue the existing setback pattern of surrounding properties.

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5. The City Planning Board shall encourage the creation of landscaped parks or squares easily accessible by pedestrians.
 6. Impacts on historic and cultural resources shall be minimized.
- B) Nonpoint Source Pollution Protection Plans to achieve the following objectives:
1. Natural ground contours should be followed as closely as possible.
 2. Areas of steep slopes, where high cuts and fills may be required, should be avoided.
 3. Extreme care should be exercised in areas adjacent to natural drainageways so that their final gradient and resultant discharge velocity will not create additional erosion problems. Construction and post-construction runoff levels should be maintained at or below preconstruction levels at all times.
 4. Natural protective vegetation should remain undisturbed, if at all possible, and restored when necessary.
 5. The amount of time that disturbed ground surfaces are exposed to the energy of rainfall and runoff should be limited.
 6. The velocity of the runoff water on all areas subject to erosion should be reduced below that necessary to erode the materials.
 7. A ground cover should be applied sufficient to restrain erosion on that portion of the disturbed area undergoing no further active disturbance.
 8. Runoff from a site should be collected and detained in sediment basins to trap pollutants which would otherwise be transported from the site.
 9. The angle for graded slopes and fills should be limited to an angle no greater than that which can be retained by vegetative cover. Other erosion-control devices or structures should be used only where vegetation and grading are not sufficient to control erosion.
 10. The length as well as the angle of graded slopes should be minimized to reduce the erosive velocity of runoff water.
- C) Landscaping
1. Landscape buffers shall be provided between uses that may be incompatible, such as large-scale commercial uses and residences. Such buffers may include planted trees and shrubs, hedgerows, berms, existing forest land or forest created through natural succession. The width of such buffer areas will depend upon the topography, scale of the uses, and their location on the property but shall normally be between fifty (50) feet and two hundred (200) feet.
 2. Landscaping at all seasons of the year, shall be an integral part of the entire project area and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.
 3. Primary landscape treatment shall consist of shrubs, ground cover, and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Landscape plants selected should generally be native to the region and appropriate to the growing conditions of the growing environment.
 4. Insofar as practical, preservation of existing trees over twelve (12) inches in diameter will be attained to the maximum extent possible and other vegetation shall be conserved and integrated into the landscape design plan.

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5. For landscaping parking lots, see § 300-108(D).

D) Parking, Circulation and Loading.

1. Roads, driveways, sidewalks and off-street parking and loading space shall be safe and shall encourage pedestrian movement.
2. Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic existing roads. The construction of connected parking lots, service roads, alleys, footpaths, bike paths, and new public streets to connect adjoining properties shall be required where appropriate.
3. Off-street parking and loading standards in Articles VIII and IX shall be satisfied.

However,

- a) The City Planning Board shall have the authority to reduce the amount of off-street parking required in the underlying zone by up to twenty five percent (25%) when it finds that:
 - i. Such a reduction would still allow for adequate off-street parking given the use and the zoning district; or,
 - ii. Adequate on-street parking within five hundred (500) feet is available; or,
 - iii. The owner can secure a written agreement for shared parking from a use within five hundred (500) feet.
 - b) When off-street parking or loading serves two or more uses, whether such uses are on the same lot or on separate lots within five hundred (500) feet, the City Planning Board may reduce the number of parking spaces that would otherwise be required for each use upon a determination by the Board that the overall number of spaces to be provided will substantially meet the intent of this article by reason of variation in the probable time of maximum parking demand of each use. In such event, the City Planning Board may condition the Site Plan approval on certain hours of operation for each use.
4. Access from and egress to public highways shall be approved by the appropriate highway department, including city, county, and state.
 5. All buildings shall be accessible by emergency vehicles.

E) Reservation of Parkland. Before the City Planning Board may approve any Site Plan containing residential units, such Site Plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

1. The City Planning Board shall not require land for park, playground or other recreational purposes until it has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the City. Such findings shall include an evaluation of the present and future needs for park and recreational facilities in the City based on projected population growth to which the particular Site Plan will contribute. Such findings shall provide an individualized determination that such required dedication or reservation is related both in nature and extent to the impact of the proposed Site Plan.
2. In the event the City Planning Board makes a finding pursuant to the preceding subsection that the proposed Site Plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreation purpose, but that a suitable

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park or parks of adequate size to meet the requirement cannot be properly located on such Site Plan, the City Planning Board may require a sum of money in lieu thereof. In making such determination of suitability, the Board shall assess the size and suitability of lands shown in the Site Plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate community. Any monies required by the City Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited in the City of Newburgh Fund for Parkland, to be used by the City exclusively for park, playground or other recreational purposes, including the acquisition of property. Such payment shall be a condition of the Site Plan approval and shall be assessed in accordance with the Site Plan recreation fee schedule established under Chapter 163, Fees, of the Code of the City of Newburgh. No Site Plan shall be signed by the Chairman of the City of Newburgh Planning Board until such payment has been received by the City and receipt therefor provided to the city Planning Board.

F) Miscellaneous Standards

1. Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.
2. Exterior lighting fixtures shall be shielded to prevent light from shining directly onto neighboring properties or public ways, and to minimize light spillage. Light standards shall not exceed twenty (20) feet in height.
3. Drainage of the site shall recharge groundwater to the extent practical. The peak rate of surface water flowing off site shall not increase above predevelopment conditions and shall not adversely affect drainage on adjacent properties or public roads.
4. Applicable requirements for proper disposal of construction and demolition waste shall be satisfied and any necessary permits or agreements for off-site disposal shall be obtained.
5. No materials shall be placed below the finished grade of a site other than sand, gravel, rocks and soil that are uncontaminated by any solid waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.
6. Hazardous Material. All hazardous materials are properly stored, treated, and disposed of in accordance with all relevant and applicable local, state and federal requirements.

§300-90. Public Hearing

The City of Newburgh Planning Board may, at its sole discretion, hold a public hearing on Site Plan in accordance with the procedures presented herein. If the City Planning Board determines that a Public Hearing is required, the City Planning Board shall hold such hearing within sixty two (62) days of accepting a completed application.

- A) At least ten (10) days prior to such hearing the Secretary of the City Planning Board shall:

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1. Mail, by regular mail, at the Applicant's expense, a notice in English and Spanish an announcement of the meeting to all property owners within five hundred (500) feet of the exterior boundaries of the property affected by the Application.
 - a) The Secretary of the Planning Board arranges for the Applicant to obtain the appropriate list from the Assessor's Office, prepares one copy in English and Spanish of the announcement of the meeting and a brief description of the application.
 - b) The Applicant prepares the envelopes, stamps them and returns the prepared mailing to the Secretary of the Board with a copy of the list of those to receive the mailing.
 2. Cause to be published in the official newspaper of the City, a notice (in English and Spanish) of such hearing and of the substance of the Application, at the Applicant's expense to be paid in advance.
- B) Prior to said hearing, the Secretary of the Board shall prepare an affidavit of mailing, swearing that the required mailings and publication have been performed, which documents shall become part of the application. The affidavit of mailing will be made available to the Applicant to present to the City Planning Board for the record of proceedings.
- C) For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the Assessment roll of the City of Newburgh.

§300-91. Action

- A) The City of Newburgh Planning Board shall approve, approve with modifications and/or conditions, or deny any application for a Site Plan within sixty two (62) days after a public hearing, or if no public hearing is held, within sixty two (62) days of receipt of a final complete Site Plan application. The time within which the City Planning Board must render its decision may be extended by mutual consent of the Applicant and the City Planning Board. Any decision shall contain written findings explaining the rationale for the decision in light of the standards provided herein.
- B) Criteria for decisions on Site Plans shall be limited to those listed in §300-89.
- C) Conditions. In granting Site Plan approval, the City of Newburgh Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related and incidental to the proposed Site Plan and may be necessary in the Board's opinion to meet the objectives herein set forth. Upon granting of Site Plan approval, any such conditions must be met in connection with issuance of permits by applicable enforcement agents or officer of the City. These conditions may include:
1. Increasing dimensional or area requirements;
 2. Requiring the set-aside of perpetual open space land pursuant to §300-33;
 3. Specifying location, character and number of vehicle access points;
 4. Requiring landscaping, planting and screening;

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5. Requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities; and
6. Requiring performance guaranties to insure the completion of the project in accordance with the conditions imposed.

D) Referrals

1. Orange County Department of Planning

- a) No action shall be taken on applications referred to the Orange County Department of Planning until either the Orange County Department of Planning has issued its recommendation or thirty (30) days have elapsed from the date of the receipt of the complete application, unless the County and City Planning Board agree to an extension of the County's time period for review.
- b) County Disapproval. A majority-plus-one vote of the City of Newburgh Planning Board shall be required to grant any Special Use Permit which receives a recommendation of disapproval from the Orange County Department of Planning. The City Planning Board shall set forth its reasons for such contrary action.

E) The decision of the City of Newburgh Planning Board shall be filed in the office of the City Clerk within five (5) business days after such decision is rendered and a copy thereof mailed to the Applicant. A resolution of either approval or approval with modifications and/or conditions shall include authorization to the City Planning Board Chairman to stamp and sign the Site Plan upon the Applicant's compliance with applicable conditions and the submission requirements stated herein.

F) If the City Planning Board's resolution includes a requirement that modifications be incorporated in the Site Plan, conformance with these modifications shall be considered a condition of approval.

G) If the Site Plan is disapproved, the City Planning board may recommend further study of the Site Plan and resubmission to the City Planning Board after it has been revised or redesigned.

§300-92. Implementation, Amendment and Enforcement of Approved Site Plan

A) Implementation. Within six (6) months after receiving approval of a Site Plan, with or without modifications, the Applicant shall submit multiple copies, as specified in the adopted City of Newburgh Planning Board Policies and Procedures available in the office of the Building Inspector, of the Site Plan to the City Planning Board for stamping and signing.

1. The Site Plan submitted for stamping shall conform strictly to the Site Plan approved by the City Planning Board, except that it shall further incorporate any required revisions or other modifications and shall be accompanied by the following additional information:
 - a) Record of application for and approval status of all necessary permits from federal, state, and county officials.

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- b) Detailed sizing and final material specification of all required improvements.
 - c) An estimated project construction schedule. If a performance guaranty pursuant to Subsection B is to be provided by the Applicant for all or some portion of the work, a detailed site improvements cost estimate shall be included.
 - d) Proof of payment of the City Planning Board's review costs.
2. Upon stamping and signing the Site Plan, the City of Newburgh Planning Board shall forward a copy of the approved Site Plan to the Building Inspector and the Applicant. The Building Inspector may then issue a building Permit or Certificate of Occupancy if the project conforms to all required conditions.
- B) Performance Guaranty. A Certificate of Occupancy shall be issued until all improvements shown on the Site Plan are installed or a sufficient performance guaranty has been posted for improvements not yet completed. The performance guaranty shall be posted in accordance with the procedures specified in §27-a.7 of General City Law. The amount and sufficiency of such performance guaranty shall be determined by the City Engineer and all required forms and security shall be approved by the city of Newburgh Corporation Counsel.
- C) As-Built Plans and Inspection of Improvements. No Certificate of Occupancy shall be granted until the applicant has filed a set of as-built plans with the City Engineer and the Building Inspector, indicating any deviations from the approved Site Plan. The Building Inspector shall be responsible for the inspection of site improvements, including coordination with the City Engineer, and shall grant a Certificate of Occupancy upon a finding that the project as built complies in all material respects with the Site Plan.
- D) Site Plan Amendments. An approved Site Plan may be amended by filing an application with the City Planning Board for a Site plan amendment.
1. If the City Planning Board finds that such proposed amendment is consistent with the terms of any applicable Site Plan approval and does not represent a substantial change from the approved Site Plan, it shall grant the amendment.
 2. If the City Planning Board determines that the proposed amendment is consistent with the terms of the applicable Site Plan approval but is a substantial change from the approved Site Plan, it shall require a revised Site Plan approval process and follow the applicable procedures for Site plan approval contained herein.
 3. If the City Planning Board determines that the proposed amendment is inconsistent with the terms of the Site Plan approval, it shall deny the amendment, and require a revised Site Plan approval process and follow the applicable procedures for Site Plan approval contained herein.
- E) Expiration, Renewal, Revocation and Enforcement
1. Expiration. A Site Plan approval shall expire if the Applicant fails to obtain the necessary building permits or fails to comply with the conditions of the Site Pan approval within one (1) year of its issuance or if a Special Use Permit with which it is associated expires.

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2. Renewal. The City of Newburgh Planning Board may extend the time for application for a building permit, for a period not to exceed one (1) year, if, in its opinion, such actions is warranted by the particular circumstances thereof. Applications for such an extension/ renewal must be received at least forty five (45) days prior to expiration. The City Planning Board may grant up to a two (2) one-year renewals/extension of the Site Plan approval at its discretion. In considering a Site Plan renewal, the City of Newburgh Planning Board shall evaluate whether any significant changes to the City of Newburgh's Master Plan or Code of the City of Newburgh have occurred since the issuance of the original approval. Should the City Planning Board determine that the Site Plan is substantially noncompliant with the City of Newburgh's Master Plan or Code of the City of Newburgh, the City Planning Board may deny the Site Plan renewal, and he Applicant may file an amended Site Plan application. Site Plans that have expired shall not be eligible for renewal.
 3. A Site Plan approval may be revoked by the City Planning board that approved it, upon notice and opportunity to be heard, if the permittee violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.
- F) Violation. Any violation of the conditions of a Site Plan approval shall be deemed a violation of this Chapter and shall be subject to enforcement action as provided herein.

(§300-93 through §300-100 reserved)

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ARTICLE XII—Special Use Permits

§300-101. Purpose

- A) The city of Newburgh land use regulations are designed to allow a variety of uses of land, provided those uses do not adversely affect neighboring properties, the natural environment, or the character of the City. Therefore, to ensure that these uses are appropriate to their surroundings and consistent with the purposes of this Chapter, some uses are permitted only upon issuance of a Special Use Permit by the City Planning Board.
- B) Accessory uses or structures used in connection with a Special Use Permit shall be subject to the same approval requirement as the principal structure or use.
- C) Considerations. On application and after public hearing, the City Planning Board may authorize by resolution, the issuance of a Special Use Permit only for those uses in a district where this Chapter requires such a permit. In making its determination, the City Planning Board shall give consideration to any or all of the following as they may be appropriate:
 - 1. The special use requested is listed among the special uses in the zone for which the application is made.
 - 2. Criteria for particular special use(s) as listed in §300-103 of this Chapter, as applicable.
 - 3. The special use is of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
 - 4. The special use will not impair the integrity or character of the zone or adjoining zones nor be detrimental to the public health, morals or welfare.
 - 5. The special use will not impair the nature and condition of all adjacent structures and uses.
 - 6. The special use is in conformity with adopted Planning and Policy Documents including, but not limited to:
 - a) The City of Newburgh Master Plan
 - b) The City of Newburgh Local Waterfront Revitalization Plan
 - c) The City of Newburgh Land Use Plan

§300-102. Application and Procedures

- A) Preapplication Meeting. Before filing an application, a preliminary conference with the Building Inspector is required to discuss the nature of the proposed use and to determine the information that will need to be submitted in the Site Plan required to be submitted with the Special Use Permit application.
- B) An application for a Special Use Permit shall be submitted to the Building Inspector in accordance with the application submission deadlines as prescribed by the Building

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Inspector.

- C) Each application shall fully set forth the circumstances of the case. Every application shall refer to the specific provision of the Chapter involved.
- D) Fee. All applications for Special Use Permits made to the City Planning Board shall be accompanied by the fee as provided for in Chapter 163 of the Code of Ordinances of the City of Newburgh.
- E) Application for a Special Use Permit shall require Site Plan approval in accordance with the Site Plan regulations contained in this Chapter. The City Planning Board may waive Site Plan approval for a Special Use Permit application that will involve no physical alteration or disturbance to a site. At a minimum, the application for a Special Use Permit shall be accompanied by a plan showing the size and location of the lot, and the location of all buildings and proposed facilities, including access drives, parking areas, and all streets within two hundred (200) feet of the lot lines.
- F) If an application is for a parcel or parcels on which more than one use requiring a Special Use Permit is proposed, the Applicant may submit a single application for all such uses. The City Planning Board may grant the application with respect to some proposed uses and not others. For purposes of determining SEQRA compliance, all proposed uses on a single parcel or on contiguous or related parcels under single or related ownership shall be considered together.
- G) Application for Area Variance. Notwithstanding any provision of law to the contrary, where a proposed Special Use Permit contains one or more features, which do not comply with the dimensional requirements of this Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to §300-115 without a decision or determination by the Building Inspector.
- H) State Environmental Quality Review Act (SEQRA) Compliance. Upon receipt of application materials it deems complete, the City Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and environmental assessment form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within the later of twenty (20) calendar days, or the receipt of any additional information reasonably necessary to make the determination. Where the proposed action may have a significant effect on the environment, the City Planning Board shall issue a positive declaration and require the submission of a draft environmental impact statement (DEIS). No time periods for decision-making in this Chapter shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation regulations or the issuance of a negative declaration.
- I) Referrals.

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1. Orange County Department of Planning. Upon receipt of application materials it deems to be complete, the City Planning Board shall refer to the Orange County Department of Planning in accordance of Section 239m of the General Municipal Code, any application for a Special Use Permit affecting real property, which shall be accompanied by a full statement of the matter under consideration, as defined herein, within five hundred (500) feet of the boundary of:
 - a) The City of Newburgh.
 - b) Any existing county or state park or other recreational area.
 - c) Any existing or proposed county or state roadway.
 - d) Any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines.
 - e) Any existing or proposed county- or state-owned land on which a public building or institution is situated.
2. Conservation Advisory Council. The City Planning Board shall refer any Special Use Permit application within the Waterbody Protection Overlay district (WPO) to the CAC within ten (10) days of receipt, for review and recommendations. Such referral shall be done so as to allow the CAC at least thirty (30) days to review and return comments, unless extended by mutual agreement between the advisory agency and applicant or acting agency in the case of direct action.

J) Notice and Hearing.

1. The City Planning Board shall hold a public hearing on a complete Special Use Permit application within sixty two (62) days of its submission.
2. At least ten (10) days prior to such hearing the Secretary of the City Planning Board shall:
 - a) Mail, by regular mail, at the Applicant's expense, a notice in English and Spanish an announcement of the meeting to all property owners within three hundred (300) feet of the exterior boundaries of the property affected by the Application.
 - b) The Secretary of the Planning Board arranges for the Applicant to obtain the appropriate list from the Assessor's Office, prepares one copy in English and Spanish of the announcement of the meeting and a brief description of the application.
 - c) The Applicant prepares the envelopes, stamps them and returns the prepared mailing to the Secretary of the Board with a copy of the list of those to receive the mailing.
3. Cause to be published in the official newspaper of the City, a notice (in English and Spanish) of such hearing and of the substance of the Application, at the Applicant's expense to be paid in advance.
4. Prior to said hearing, the Secretary of the Board shall prepare an affidavit of mailing, swearing that the required mailings and publication have been performed, which documents shall become part of the application. The affidavit of mailing will be made available to the Applicant to present to the City Planning Board for the record of proceedings.
5. For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the assessment roll of the City of Newburgh.

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6. The Applicant shall also be required to post a notice on a sign purchased from the City Clerk stating that there is a pending application on the property, and providing the date, time, and place of the hearing, the place and times the application may be reviewed by the public, and a telephone number to call for further information. This sign shall be posted in public view in a conspicuous location within three (3) days after the City Planning Board establishes a public hearing date, shall be updated if more hearing dates are scheduled, and shall remain in place until the day after the hearing is closed.

K) Action

1. The City Planning Board shall approve, approve with modifications and/or conditions, or deny any application for a Special Use Permit within 62 days after the public hearing. The time within which the City Planning Board must render its decision may be extended by mutual consent of the Applicant and the Planning Board. Any decision shall contain written findings explaining the rationale for the decision in light of the standards contained in §300-103 and §300-104.
2. The Special Use Permit and accompanying Site Plan shall be implemented as provided in §300-92.
3. Conditions. The City Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed Special Use Permit and may be necessary in the Board's opinion to meet the objectives herein set forth. Upon its granting of said Special Use Permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City. These conditions may include:
 - a) A time limitation on the term of the Special Use Permit
 - b) Imposing operating conditions including, for example, hours of operation
 - c) Increasing dimensional or area requirements
 - d) Requiring the set-aside of perpetual open space land pursuant to §300-33
 - e) Specifying location, character and number of vehicle access points
 - f) Requiring landscaping, planting and screening
 - g) Requiring clustering of structures and uses in order to preserve environmental resources and minimize the burden on public services and facilities
 - h) Requiring action by the Applicant, including the posting of performance bonds and furnishing of guaranties to ensure the completion of the project in accordance with the conditions imposed
 - i) Requiring the recording of an easement
 - j) The installation of storm water management controls
- k) Referrals
 1. Orange County Department of Planning
 - i. No action shall be taken on applications referred to the Orange County Department of Planning until either the Orange County Department of Planning has issued its recommendation or thirty (30) days have elapsed from the date of its receipt of the complete application, unless the county and City Planning Board agree to an extension of the County's time period for review.

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- ii. County Disapproval. A majority-plus-one vote of the City Planning Board shall be required to grant any Special Use Permit which receives a recommendation of disapproval from the Orange County Department of Planning. The City Planning Board shall by resolution set forth its reasons for such contrary action.
 - 2. Conservation Advisory Council
 - i. Where the City Planning Board has referred the application for a Special Use Permit to the CAC for its advisory opinion, prior to making its determination, the City Planning Board shall consider the recommendation from the CAC with reference to the consistence of the proposed action. In the event that the CAC recommendation is not forthcoming with thirty (30) days following referral of the Coastal Assessment Form (CAF), the City Planning Board shall make its determination without the benefit of the CAC recommendation.
 - ii. If the City Planning Board receives comments/recommendation for the CAC and determines to proceed contrary to the recommendation(s) the City Planning Board shall include in its Findings, the reasons set forth for such contrary action.
 - l) No Special Use Permit shall be issued for property where the Building Inspector has found a violation of this Chapter, and where such violation has not been corrected, unless the granting of such Special Use Permit and Site Plan approval will result in a correction of said violation.
 - m) Filing. The decision of the City Planning Board shall be filed in the office of the City Clerk within five (5) business days after such decision is rendered and a copy thereof mailed to the Applicant.
- L) Expiration, Enforcement, Renewal and Amendment, Revocation
 - 1. Expiration. A Special Use Permit shall expire if the Special Use Permit use or uses cease for more than twenty four (24) consecutive months for any reason or if the Applicant fails to obtain the necessary building permits or fails to comply with the conditions of the Special Use Permit within twelve (12) months of its issuance without renewal.
 - 2. Enforcement
 - a) The City Planning Board may establish a schedule of inspection to be conducted by the Building Inspector to determine continued compliance with this Chapter and any conditions of the Special Use Permit.
 - b) In any case where the conditions of a Special Use Permit have not been or are not being complied with, the Building Inspector shall give the permittee notice of intention to revoke such permit at least ten (10) days prior to a City Planning Board review thereon.. After conclusion of the review, the City Planning Board may authorize the Building Inspector to revoke such permit.
 - c) Granting of a Special Use Permit does not exempt the Applicant from complying with all of the requirements of building codes and other ordinances.
 - 3. Renewal and Amendment

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- a) **Renewal.** Where a Special Use Permit has been granted, but the Applicant has failed to obtain the necessary building permits or fails to comply with the conditions of the Special Use Permit within twelve (12) months of its issuance, the City Planning Board may grant one (1) six (6) month extension, provided the Applicant submits a written request to the City Planning Board detailing the circumstances that have prevented the Applicant from pursuing a building permit or compliance with the conditions of the Special Use Permit. This renewal application must be submitted to the City Planning Board no less than sixty (60) days prior to the expiration of the Special Use Permit. The Applicant is responsible for tacking the dates. The Applicant will not receive notification from the City Planning Board, nor City Staff relative to renewal or expiration dates or required actions.
- b) **Amendment.** The terms and conditions of any Special Use Permit may be amended in the same manner as required for the issuance of a Special Use Permit, following the criteria and procedures in this article. Any enlargement, alteration, or construction of accessory structures not previously approved shall require Site Plan review only, provided that the use does not change.
4. **Revocation.** Any violation of the conditions of a Special Use Permit shall be deemed a violation of this Chapter and shall be subject to enforcement action as provided in Article XV. A Special Use Permit may be revoked by the City Planning Board if the permittee violates the conditions of the Special Use Permit or engages in any construction or alteration not authorized by the Special Use Permit.

§300-103. Standards for Individual Special Uses

In addition to the other criteria in this Chapter, the following individual special uses shall meet the criteria below.

- A) **Home Occupation, Professional Home-Based Office, or Live /Work:** Home occupations are deemed to be accessory uses and are permitted within a single-dwelling unit, or in a building or other structure accessory to a dwelling unit, and only by the person or persons maintaining their primary residence in said dwelling unit, subject to the requirements contained herein. For the purposes of this section, “primary residence” is defined as the location of an individual’s residence for more than six (6) months of the year. A home occupation shall not require full site development plan submission. However, an Applicant shall be required to submit a lot survey indicating the location and size of the home or accessory building and the area of the home or accessory building to be used for purposes of the home occupation.
 1. The minimum lot size shall be that specified for the Zoning District.
 2. **Extent of Use.** Such occupation is carried on in an area not thirty three percent (33%) of the gross floor area of the principal building.
 3. At no time shall any premises be used in such a manner to cause the emanation therefrom of offensive or noxious odors, vapors, fumes, glare, dust, smoke, gas, vibration, noise, or radiation or be used in such a manner as to cause injury, annoyance or disturbance to any of the surrounding properties and to their owners and occupants.

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4. Mechanical and Electrical Equipment. Mechanical or electrical equipment capable of producing noise, electrical or magnetic interference with radio or television reception in the neighborhood shall be prohibited unless also equipped with means to prevent such interference.
 5. Outdoor Storage. There shall be no outdoor storage of materials, supplies, or equipment associated with the home occupation.
 6. Employees on Site. No more than two (2) paid or non-paid employees or assistants in addition to the home occupant may be engaged on the premises of the home occupation at any given time.
 7. Permitted Uses. It shall include no more than one of the following uses, provided that such uses are clearly incidental and secondary to the use of the dwelling unit for residential purposes:
 - a) Custom dressmaking
 - b) Art/music/dance instruction for not more than nine students simultaneously. Concerts or recitals are prohibited.
 - c) Professional office of engineer, architect, lawyer, insurance, real estate, accounting, or similar customary home office based professions
 - d) Photography, using home scale equipment
 - e) Professional Craft Workers and Artists and other uses consistent with the scope and intent of this section as determined and approved by the approving agency.
 8. Materials Delivery. The size, frequency, and duration of deliveries for the home occupation must be in keeping with the character of the zoning district and surrounding land uses.
 9. The City Planning Board may approve the operation of a home occupation subject to any condition it deems necessary to ensure that the use does not diminish or impact the peace, security and the overall residential quality of the neighborhood. This includes the provision of necessary off-street parking, if required.
 10. Evidence of Use. The home occupation shall not display or create outside the building any evidence of the home occupation, except that one unanimated, non-illuminated flat wall or window sign, having an area of not more than six (6) square feet, shall be permitted on each lot on which the building is situated, such sign to be in conformance with Chapter 250 of the Code of the City of Newburgh and/or §300 Form Based Code for the district in which the home occupation may occur.
 11. Commercial Vehicle Parking. Not more than one (1) commercial vehicle shall be permitted in connection with any home occupation and shall be stored in an enclosed garage, or otherwise screened from the street.
 12. Alterations. No alteration of the principal residential building shall be made which alters the residential character of the building.
- B) The standards for a Child Day Care Center shall be as follows:
1. The Special Use Permit application shall describe the anticipated occupancy of the facility by age group, i.e. infant, toddler, and school age, and the hours of operation of the facility, parking and circulation plan, New York state Department of Social Services application and license, and other information required to understand the operation.
 2. A floor plan of the day-care center shall be submitted.

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3. In addition to the parking space requirements contained in the Use and Bulk Tables, additional parking spaces shall be provided for drop-off and pickup of children at a rate of one parking space per fifteen (15) children. Said spaces shall be provided directly in front of the facility along an internal driveway or in an approved parking area. The most appropriate location for drop-off parking shall include a consideration of emergency access and shall be determined by the City Planning Board during Site Plan review. The drop-off location shall be clearly posted with appropriate signage or pavement markings. Fire lanes shall not be used for drop-off areas.
 4. Outdoor play areas shall be located at a minimum distance of twenty five (25) feet from any lot line or from any parking area and twenty five (25) feet from any public right-of-way and fenced in for safety. Outdoor play areas shall be directly accessible from the principal structure and shall not require crossing any street, driveway, or parking area for access. The City Planning Board may, as part of Site Plan review and in consultation with the prospective operator, modify the area requirement to apply only to the largest age group.
 5. A six (6) foot high solid fence or opaque fence combined with hedge or tree plantings shall be provided to screen the outdoor play area where it abuts a residential zoning district.
 6. Said facility shall provide a minimum of two (2) marked exits.
 7. Day-care centers shall adhere to the requirements of the New York State Uniform Fire Prevention and Building Code and all other applicable state guidelines that govern said uses
- C) Drive-Thru Establishments and Automobile Washes
1. A traffic queuing analysis must be submitted that demonstrates that there will be no queuing on public streets or rights of way and that all sidewalk areas will be kept clear of standing vehicles.
 2. For Automobile Washes, a water management plan, including water recycling, shall be submitted and approved by the City Planning Board, which plan limits, to the extent practicable, the amount of potable water used at the facility and demonstrates that the facility will adequately capture all runoff from the facility on-Site.
- D) Shopping Center
1. The Site shall be planned and developed subject to a coordinated plan.
 2. The Site and structures shall reflect the existing community character and incorporate existing building facades to the extent possible.
 3. The Shopping Center shall encourage pedestrian usage, not require outside storage, and have no light spillage onto adjacent properties.
 4. The required off-street parking shall be based upon §300-32 and Article X of this Chapter.
- E) Cottage Industry / Live-Work
1. Adequate landscaping and/or screening must be provided around any outdoor storage areas.
 2. Delivery hours shall be regulated by the Special Use Permit.

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3. Any potentially unique adverse impacts of the use, owing to the nature of the use, must be described in the Special Use Permit application and measures to mitigate such impacts must be provided.

F) Dry Cleaner / Commercial Laundry

1. Applicants must provide copies of all applicable New York State and Federal permits required for operation.
2. A chemical storage plan must be submitted detailing the nature, amount, and method for storing all liquid and solid chemicals on the premises. The plan must detail the features that guard against the possible release of chemicals into the air, sewer system, ground, or water.

G) Cabaret

1. A building safety and evacuation plan must be submitted to, and approved by, the City Planning Board and Building Inspector.
2. Adequate parking, either on- or off-street must be identified.
3. Noise attenuation must be provided when, in the opinion of the City Planning Board, based on the proximity of the cabaret use to residential uses or the nature of the planned cabaret use, such attenuation will be needed to provide for the safe enjoyment of nearby residential users or other property owners.

§300-104. Findings

- A) In granting or denying special Use Permits, the City Planning Board shall take into consideration the scale of the proposed project, the possible impact of the proposed project on the adjacent properties and uses, and that such proposed Special Use Permit use does not interfere with or diminish the value of adjoining property. The City Planning Board shall also take account of any conditions imposed that would mitigate potential adverse impacts and preserve or enhance the character of the City of Newburgh. No Special Use Permit shall be granted for any property on which there exists a violation of the Chapter, including a violation of any condition of a previous municipal approval, unless the City Planning Board finds that the Applicant has no legal right or ability to remedy the violation or that the grant of a Special Use Permit is necessary to remedy a condition that poses a risk to public health or safety.
- B) Criteria. Before granting or denying a Special Use Permit, the City Planning Board shall make specific written findings establishing whether or not the proposed project:
 1. Will comply with all land use district, overlay district, and other specific requirements of this Chapter and other local laws and regulations and will be consistent with the purposes of this Chapter and of the land use district in which it is located.
 2. Will comply with the applicable criteria in §300-103.
 3. Will not result in excessive off-premises noise, dust, odors, solid waste, or glare or create any public or private nuisances.

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4. Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the Applicant.
5. Will be accessible to fire, police, and other emergency vehicles.
6. Will not overload any public water, drainage, or sewer system, or any other municipal facility.
7. Will not materially degrade any watercourse or other natural resource or ecosystem or endanger the water quality of an aquifer.
8. Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.
9. Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the City.
10. Will be consistent with the goal of buffering nonresidential uses that are incompatible with residential use.
11. Will comply with applicable Site Plan criteria in §300-89.
12. If the property is in a residential district, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

(§300-105 through §300-110 reserved)

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ARTICLE XIII—ZONING BOARD OF APPEALS

§300-111. Purpose and Establishment

- A) The purpose and intent of this article is to provide a body, the Zoning Board of Appeals (ZBA), to which may be referred appeals from the enforcement of this Chapter based upon alleged uncertainty in the text, error in administrative decisions or unique hardship.
- B) This Zoning Board of Appeals is not established as a means of altering this Chapter, the intent of this Chapter, or the purpose of this Chapter. It shall not permit any use in any zone which would be in conflict with such zone under the terms of this Chapter or which, in effect, would constitute a change in zoning.
- C) The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this Chapter in connection with appeals to review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of this Chapter, generally the Building Inspector. An appeal may be taken by any person aggrieved or by any officer, department, board, or committee of the City.

§300-112. Continuation, Appointment and Organization; Alternate Members

- A) The Zoning Board of Appeals, as constituted at the time of the effective date of this Chapter, shall continue in existence in accordance with the provisions of the General City Law applicable thereto.
- B) The ZBA shall consist of seven (7) members. The term of office of each member shall be seven (7) years, and his term shall continue until a successor shall be appointed. If a vacancy shall occur other than by expiration of the term, it shall be filled by appointment of the City Manager for the unexpired term.
 - 1. Chairperson. One member shall be designated by the City Manager to act as Chairperson, or, on the failure to do so, the ZBA shall elect a Chairman from its own members. The City Manager shall appoint a Secretary, and the Zoning Board of Appeals shall prescribe rules for the conduct of its affairs in accordance with the provisions included in this Chapter and all applicable State regulations.
- C) Alternate Member. Two (2) alternate members of the Zoning Board of Appeals shall be appointed by the City Manager for a term of two (2) years, commencing on the date of appointment. These members shall serve when members are absent or unable to participate on an application before the Zoning Board of Appeals.
 - 1. The Chairman of the Zoning Board of Appeals may designate one of the appointed alternate members as an alternate substitute for a member when such member is unable to participate on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of every Zoning Board of Appeals meeting at which the substitution is made.

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- D) All provisions of state law and local law, codes, rules and regulations relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of any local law or local ordinance relating to training, continuing education, compensation and attendance, performance of duties, qualifications and others, shall also apply to alternate members.

§300-113. General Powers and Duties

- A) The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this Chapter, provided that none of the following provisions shall be deemed to limit any power of the Board that is conferred by law.
- B) Appeals of Orders, Requirements, Decisions, Interpretations or Determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination appealed and shall make such order, requirement, decision, interpretation, or determination, that in the opinion of the ZBA ought to have been made in the matter by the City of Newburgh Building Inspector or other administrative official charged with the enforcement of this Chapter.
- C) Power to Interpret Chapter. On appeal from an order, requirement, decision or determination made by an administrative official or on request by any official, board or agency of the City, the Zoning Board of Appeals shall have the power to decide any of the following matters:
 1. Text: determination of the meaning of any portion of the text of this Chapter.
 2. Map: determination of the exact location of any zoning boundaries shown on the Zoning Map.
 3. Variances: granting of use or area variances, as defined herein.

§300-114. Appeals for Variance

- A) The Zoning Board of Appeals shall have the power, upon appeal of a determination but the Building Inspector, and after public notice and hearing, to vary or modify the application of any provisions of this Chapter relating to use, construction, or alteration of structures or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice is done.
- B) Variation from the strict enforcement of the terms of this Chapter may only occur where the literal enforcement of the requirements of this Chapter would involve practical difficulties or would cause undue hardships that would deprive the owner of the reasonable use of the land or buildings involved and would not carry out the spirit and purpose of this Chapter. Such a request shall be termed a 'variance'.
- C) An Applicant for a variance must demonstrate that a substantial and unique hardship would be created by the strict interpretation of the provisions of this Chapter and this hardship can

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be corrected by a variation in the regulations without causing undue hardship to others or to the city as a whole. The basis for this action is hardship on the individual rather than benefit to the public.

§300-115. Use Variance and Area Variances

A) Use Variances

1. The ZBA, on appeal from a decision or determination from the Building Inspector, shall have the power to grant use variances, authorizing the use of the land, which otherwise would not be allowed by this Chapter.
2. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the Applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship.
 - a) In order to prove such unnecessary hardship, the Applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - i. The Applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - ii. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the neighborhood;
 - iii. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - iv. The alleged hardship has not been self-created.
3. Minimum Variance. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and the adequate to address the unnecessary hardship proven by the Applicant and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.
4. If the use variance is granted for a nonresidential use, the Applicant shall obtain Site Plan approval from the City Planning Board prior to commencing the use or obtaining a building permit.

B) Area Variances. The ZBA shall have the power, upon an appeal from a decision or determination of the Building Inspector, to grant area variances from the area or dimensional requirements specified in this Chapter.

1. The Zoning board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider whether:
 - a) 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;

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- b) The benefit sought by the Applicant can be achieved by some method feasible for the Applicant to pursue, other than an area variance;
 - c) The requested area variance is substantial;
 - d) The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - e) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.
- C) Ineligible Hardship. The following types of cases shall not be construed as eligible for consideration as hardship cases within the meaning of this Chapter:
1. The Applicant, with or without knowledge of the provisions of this Chapter, has acquired the site subsequent to the effective date of this Chapter.
 2. The Applicant has caused a self-imposed hardship by changing his circumstances after the effective date of this Chapter. (Example: The Applicant in selling a portion of a larger site has either created a new lot which is deficient in total area or has rendered the existing larger segment on which the structure is located insufficient in yard space.)
 3. The Applicant would realize financial advantage from a change to the site, the structure or the use.
- D) Transference. Unless otherwise specified at the time the variance is granted, the variance pertains to the subject property and not to the individual who applied. Consequently, the variance is transferable to any future owner of the subject property but cannot be transferred by the Applicant to a different site should said Applicant move to another location.
- E) Expiration. Unless otherwise specified at the time the variance is granted, it pertains to the subject property for an indefinite time. However, in the case where work has not been commenced and diligently prosecuted within one year after the date of granting of a variance, then without further action such variances shall become null and void.
- F) Imposition of conditions and safeguards. The Zoning Board of Appeals shall, in the granting of both use and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- G) Referral to City Planning Board. Where the Zoning Board of Appeals finds the zoning classification of a particular property to be conducive to the deprivation of all reasonable use of the land or building by the owner thereof and where such Board deems the same condition to apply generally to other land or buildings in the same neighborhood or zone said Board shall deny a variance on the grounds that the conditions and circumstances are not unique and shall call this condition to the attention of the City Planning Board accompanied by a recommendation that this Chapter be amended.

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§300-116. Procedures

- A) Contents of the Application. Appeals shall be submitted by filing a written notice of appeal to the Building Inspector and Zoning Board of Appeals within ninety (90) days after the filing in the City Clerk's office of the order, requirement, decision, interpretation, or determination of the administrative official charged with the enforcement of such ordinance or local law by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought.
- B) Applications for appeals shall be filed on forms required by the ZBA. Such application shall refer to the specific relevant provisions of this Chapter and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination by the Building Inspector. The Building Inspector shall transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals. In addition to these required materials, the application shall include as necessary:
1. A plot plan drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot
 2. A site context map showing the zoning of the parcel in question as well as the zoning of all adjacent properties
 3. Complete copies of the required application materials in the number and format prescribed by the Building Inspector.
 4. Fees. All appeals or requests for a variance made to the Zoning Board of Appeals
- C) Referrals
1. Orange County Department of Planning
 - a) Requests for variances that require referral to the Orange County Department of Planning shall be so referred pursuant to the General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended. The referral shall be accompanied by a full statement of such proposed action, and any materials and of forms required by the Orange County Department of Planning.
 - b) No action shall be taken on variances referred to the Orange County Department of Planning until either the Orange County Department of Planning has issued its recommendation or thirty (30) days have elapsed from the date of its receipt of the full statement of the proposed variance, unless the Orange county Department of Planning and City of Newburgh Zoning Board of Appeals agree to an extension of the County's time period for review.
 - c) County Disapproval. A majority-plus-one vote shall be required to approve any variance, which receives a recommendation of disapproval from the Orange County Department of Planning because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.
 2. Planning Board Advisory Opinion: The Zoning Board of Appeals is not required to but may, in its discretion, refer any requests for appeals or applications for variances to the City Planning Board for review and recommendations. If no report is received from the City Planning board within thirty (30) days, the Zoning Board of Appeals may render its decision without said report.

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3. Conservation Advisory Council. Whenever a request for appeal or application for variance involves the City's waterfront area, the Zoning Board of Appeals shall determine the consistency of the proposed action as set forth in Chapter 159-5 of the code of the City of Newburgh known as the "City of Newburgh Waterfront Consistency review Law.: The Zoning Board of Appeals shall refer a copy of a completed Coastal Assessment Form (CAF) and other appropriate application materials to the Conservation Advisory Council within ten (10) days of its submission and, prior to making its determination, shall consider the recommendation of the CAC with reference to the consistency of the proposed action. In the event that the CAC recommendation is not forthcoming within thirty (30) days following referral of the CAF, the Zoning Board of Appeals shall make its determination without the benefit of the CAC recommendation.

D) Hearing and Public Notice

1. The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals and the Applicant shall be notified of the date.
2. At least ten (10) days prior to such hearing the Secretary of the City Planning Board shall:
 - a) Mail, by regular mail, at the Applicant's expense, a notice in English and Spanish and announcement of the meeting to all property owners within five hundred (500) feet of the exterior boundaries of the property affected by the Application.
 - b) The Secretary of the Planning Board arranges for the Applicant to obtain the appropriate mailing list from the Assessor's Office.
 - c) The Applicant prepares the envelopes, stamps them and returns the prepared mailing to the Secretary of the Board with a copy of the list of those to receive the mailing.
3. At least ten (10) days prior to the date of the hearing of appeals, the Secretary of the ZBA at the expense of the Applicant, to be paid in advance, shall give public notice by causing the publication of a notice of such hearing and the substance of the appeal, in the official newspaper of the City of Newburgh.
4. Prior to the public hearing, the Applicant shall submit to the ZBA affidavits of the Secretary of the Board swearing that the required mailings and publication have been performed, which documents shall become part of the application.
5. At the hearing, any party may appear in person or by agent or by attorney.
6. The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal.

E) Action. The Zoning Board of Appeals may, in conformity with the provisions of this Chapter, reverse, affirm, or modify, wholly or in part, the order, requirement, decision, interpretation or determination of the administrative official in accordance with the provisions of this Chapter.

1. Any such action shall be decided within sixty two (62) days after the close of the hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the Applicant and the Board.

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2. Every decision of the Zoning Board of Appeals shall be approved by the affirmative vote of a majority of all the members by resolution which contains a full record of the findings of the Zoning Board of Appeals in the case. If the Zoning Board of Appeals acts contrary to the recommendations of the City Planning Board or the County Planning Board, it shall give written reasons for such action.
- F) Filing of decision or action. Every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the City Clerk within five business days after the day such decision is rendered and shall be a public record. A copy thereof shall be mailed to the Applicant within the same five day period.
 - G) Court review of Board decisions. Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law.
 - H) Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within twelve (12) months of the date of such decision.
 - I) Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Building Inspector certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed, that such a stay of proceedings would, in the Building Inspector's opinion, by reason of facts stated in the certificate, would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by a restraining order, which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Building Inspector for due cause shown.
 - J) Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reheard may be made by any member of the Board within sixty two (62) days of the original decision. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing, the Board may reverse, modify, or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

(§300-117 through §300-120 reserved.)

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ARTICLE XIV—ENFORCEMENT, SEVERABILITY, WHEN EFFECTIVE

§300-121. Violations and Enforcement; Penalties for Offenses

- A) Inspection. To determine compliance with this Chapter, and in accordance with the provisions of the Uniform Fire Prevention and Building Code, and the Code of the City of Newburgh, the Building Inspector or any duly authorized City representative, upon showing the proper credentials in the discharge of his/her duties, may enter upon any building, structure or premises at any reasonable hour or in an emergency at any hour whatsoever upon the consent of the owner or occupant or pursuant to a lawful warrant.
- B) Notice of violation
1. Upon finding any new construction, improvements, or uses to be in violation of this Chapter, the Building Inspector shall transmit a written notice of violation, by registered or certified mail, to the owner and tenants of the property upon which the alleged violation occurs, describing the alleged violation. The notice of violation shall require an answer or correction of the alleged violation to the satisfaction of the Building Inspector within a reasonable time limit set by the Building Inspector. The notice shall state that failure to reply or to correct the alleged violation to the satisfaction of Building Inspector within the time limit constitutes admission of a violation of this Chapter. The notice shall further state that, upon request of those to whom it is directed, technical determinations of the nature and extent of the violation as alleged will be made and that if a violation as alleged is found, costs of the determinations will be charged against those responsible, in addition to such other penalties as may be appropriate, and that if it is determined that no violation exists, costs of determination will be borne by the City.
 2. If, within the time limit set, there is no reply but the alleged violation is corrected to the satisfaction of the Building Inspector, the notation "Violation Corrected" shall be made on the Building Inspector copy of the notice.
 3. If there is no reply within the time limit set (thus establishing admission of a violation of this Chapter) and the alleged violation is not corrected to the satisfaction of the Building Inspector within the time limit set, the Building Inspector shall take action in accordance with §300-121(C) of this Chapter.
 4. A permanent record of all notices of violation and their disposition shall be kept in the offices of the Building Inspector.
- C) Abatement of violations. The Building Inspector may issue a stop-work or cease and desist order and/or institute an appropriate legal action or proceeding to prevent, restrain, correct, or abate any violation of this Chapter to prevent the occupancy of premises or to prevent any activity, business, or use that violates this Chapter. Such legal action may include the issuance of an appearance ticket pursuant to the Criminal Procedure Law, §150.20(3).
- D) Penalties
1. A violation of this Chapter is an offense punishable by fine not exceeding \$250 or imprisonment for a period not to exceed fifteen (15) days, or both, for conviction of a

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first offense. Conviction of a second offense, committed within five (5) years of the first offense, is punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed fifteen (15) days, or both. Conviction of a third or subsequent offense committed within a period of five (5) years is punishable by a fine of not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed fifteen (15) days, or both. Each day's continued violation shall constitute a separate additional violation. A violation which creates an imminent hazard to health and safety shall be punishable by the same fine as above, as well as by imprisonment for a period not to exceed six (6) months per violation.

2. In addition, any person who violates any provision of this Chapter or who fails to do any act required thereby shall, for each and every such violation, pay a civil penalty of not more than \$100. When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional penalty.
 3. The imposition of penalties for any violation of this Chapter shall not excuse the violation nor permit the violation to continue. The application of the above penalties or prosecution for a violation of any provision of this Chapter shall not prevent the abatement of a violation pursuant to Subsection C, "Abatement of Violations". The expenses of the City in enforcing such removal, including legal fees, may be chargeable (in addition to the criminal and civil penalties) to the offender and may be recovered in a civil court of appropriate jurisdiction.
- E) Complaints of Violations. Whenever a suspected violation of this Chapter occurs, any person may file a signed written complaint reporting such violation to the Building Inspector. The Building Inspector may also investigate any oral complaint made to his/her office. All complaints, written or oral, shall be properly recorded, filed, and promptly investigated by the Building Inspector.
- F) Accountability. For every violation of the provisions of this Chapter, the owner, agent, contractor, lessee, ground lessee, tenant, licensee, or any other person who commits, takes part, or assists in such violation or who maintains any structures or premises in which any such violation exists shall be punishable according to the provisions of this Chapter.
- G) Existing Violations. No application shall be received nor shall any application, if received, be reviewed or be granted for any variance, zoning change, Special Use Permit, Site Plan, subdivision, building permit, license, Certificate of Occupancy or any other change set forth in this Chapter if there are any existing violations of this Chapter for the lot or lots contained in said application, unless said application is required by the Building Inspector, City of Newburgh Corporation Counsel, or the reviewing agency in settlement of the outstanding violation.

§300-122. Severability

- A) If any clause, sentence, paragraph, subdivision, section or part of this Chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not

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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 shall have been rendered.

- B) It is hereby declared to be the intent of the City Council that this Chapter would have been enacted even if such invalid provision had not been included herein.

§300-123. Amendments

- A) **Initiation.** The City Council may, on its own motion or on petition or on recommendation from the City Planning Board or Zoning Board of Appeals, amend, supplement, or repeal the regulations and provisions of this Chapter. A property owner or authorized agent may apply for amendment to this Chapter by filing a petition with the City Council. The City Council shall be under no obligation to consider or review a petition for a zoning amendment. The petition shall include a description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of five hundred (500) feet of the exterior boundaries thereof and the applicable filing fee.
- B) **Review by Planning Agencies.** As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the City Council, shall refer proposed amendments to the City of Newburgh Planning Board and to the County Planning Department as required by §§ 239-l and 239-m of the General Municipal Law.
 - 1. **Referral to Orange county Department of Planning.** No action shall be taken to approve a proposed zoning amendment referred to the Orange County Department of Planning until its recommendation has been received, or thirty (30) days have elapsed after its receipt of the full statement of the proposed amendment, unless the County and City agree to an extension beyond the thirty (30) day requirement for the County Planning Department's review.
 - 2. **Referral to the City of Newburgh Planning Board .** Every proposed amendment or change initiated by the City Council or by petition (but not if initiated by the City of Newburgh Planning Board) shall be referred to the City of Newburgh Planning Board for report thereon prior to public hearing. If the City of Newburgh Planning Board does not report within thirty (30) days of such referral, the City Council may take action without the City Planning Board report. This period of time may be extended by agreement of the City Council and City of Newburgh Planning Board.
- C) **Public Hearing and Notice.** No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard. If the City Council chooses to consider a proposed zoning amendment, it shall, by resolution at a duly called meeting, set the time and place for a public hearing on the proposed amendment and shall cause public notice to be given as required by the laws of New York State and specified below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for publication of notice and for notice to adjacent municipalities if necessary.

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1. Publication of Notice in Newspaper. Notice of the time and place of the public hearing shall be published at least ten (10) days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.
2. Notice to Adjacent Municipalities. Written notice of any proposed amendment affecting property lying within five hundred (500) feet of an adjacent municipality shall be served in person or by mail upon the Clerk of such municipality at least ten (10) days prior to the date of public hearing. Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon but shall not have the right to review by a court.

D) Adoption.

1. The City Council may adopt amendments to this Chapter by a majority vote of its membership, except in the case of local protest or disapproval by the Orange county Department of Planning as noted below.
2. Count Disapproval. A supermajority (majority-plus-one) vote of all City Council members shall be required to pass any proposal which receives a recommendation of disapproval from the Orange County Department of Planning prior to City Council action, along with a resolution setting forth the reasons for such contrary action.

E) Effective Date. Unless the amendment provides for a different effective date, each amendment adopted by the City Council shall take effect when filed with the Secretary of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

§300-124. When Effective

This chapter, together with the Zoning Map and the Schedule of Use and Bulk Regulations, and Form Based Code incorporated herein and made a part of this Chapter, shall take effect ten (10) days after its publication and posting as required by City Law.

§300-125. Repeal of Existing Zoning Ordinance

The ordinance entitled “City of Newburgh, New York, Zoning Ordinance” effective 04-15-2006 including all amendments to said ordinance, is hereby repealed as of the effective date of this Chapter.